

ILLINOIS POLLUTION CONTROL BOARD

August 8, 2013

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 13-59
)	(IEPA No. 143-13-AC)
DONNA COCKERILL and MARK)	(Administrative Citation)
JOHNSON,)	
)	
Respondents.)	

ORDER OF THE BOARD (by J.D. O'Leary):

On June 25, 2013, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Donna Cockerill and Mark Johnson (collectively, respondents). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' facility located at 1239 Sauer Road in unincorporated Riggston, Scott County. The property is commonly known to the Agency as the "Winchester Precinct/Cockerill" site and is designated with Site Code No. 1718530002. For the reasons below, the Board accepts respondents' petition to contest the administrative citation as timely filed, but directs respondents to file an amended petition to cure deficiencies identified in this order.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations. *See* 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2010); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on May 1, 2013, respondents violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter at the Scott County site. The Agency asks the Board to impose on respondents the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$1,500.

As required, the Agency served the administrative citation on respondents within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2010); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by July

23, 2013. On July 23, 2013, respondents timely filed a petition.¹ See 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b).

Although the Board accepts respondents' petition as timely filed, the Board finds that the petition is deficient. The petition states that Mr. Johnson was injured in a vehicle accident in May 2012, and was unable to "do heavy lifting" for six months, and that Ms. Cockerill was also sick around the same time. Petition at 1. Respondents' petition further states that although a salvage company was hired to remove litter from the site, the removal effort has been hindered by the winter and the salvage company employee's work schedule. *Id.*

Deficiencies of the respondents' petition must be remedied before the case can be accepted for hearing. A petition must set forth recognized grounds for why a respondent believes that the administrative citation was improperly issued. See 35 Ill. Adm. Code 108.206. Voluntary cleanups performed by a respondent are generally neither a defense to the violations alleged nor relevant to determining the civil penalty amount. See IEPA v. Jack Wright, AC 89-227, slip op. at 7 (Aug. 30, 1990) ("The Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative or voluntarily cleans-up the site").

Under the Act, if the Board finds that a respondent "has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty." 415 ILCS 5/31.1(d)(2) (2010); see also 35 Ill. Adm. Code 108.500(b). The statutory defense of "uncontrollable circumstances," however, is available only where the *violation itself* resulted from uncontrollable circumstances. See County of Jackson v. Egon Kamarasy, AC 04-63, AC 04-64 (consol.), slip op. at 19 (June 16, 2005) ("Even if weather delayed Kamarasy's cleanup, it did not *cause* the violation of Sections 21(p)(1) and (p)(7) of the Act.") (emphasis in original). Accordingly, if a respondent has caused or allowed open dumping, the respondent is not excused from liability under an administrative citation merely because the subsequent cleanup may be hindered by extreme winter weather. See IEPA v. Marshall Pekarsky, AC 01-37 (Feb. 7, 2002), *rev'd sub nom. IEPA v. IPCB and Marshall Pekarsky*, No. 2-02-0281 (2nd Dist. Mar. 18, 2003) (unpublished order under Illinois Supreme Court Rule 23).

Finally, with respect to respondents' health problems, the Board notes that it is not authorized to consider any factors in mitigation of penalty as the civil penalties for administrative citations are set by the Act. See IEPA v. Stutsman, AC 05-70, slip op. at 2 (Sept. 21, 2006).

The Board therefore directs that respondents file an amended petition with the Board stating one or more recognized grounds on which they contest the administrative citation. See, e.g., County of Jackson v. Dan Kimmel, AC 06-21 (Feb. 16, 2006) (accepting as timely filed a petition that failed to include grounds for appeal but requiring an amended petition to cure the deficiency). In addition to filing an amended petition with the Board, respondents must serve a

¹ The petition is signed by both respondents, with no indication that either is an attorney. Though an individual may represent himself or herself, a non-attorney cannot represent another person in an administrative citation proceeding. See 35 Ill. Adm. Code 101.400(a).

copy of the amended petition on the Agency and file proof of that service with the Board. *See* 35 Ill. Adm. Code 101.304.

If no amended petition is filed with the Board by September 9, 2013, which is the first business day following the 30th day after the date of this order, respondents' petition will be dismissed and a default order will be entered against them, imposing the statutory \$1,500 civil penalty. *See Ray Logsdon Estate*, AC 05-54 (Apr. 21, 2005). If an amended petition is filed pursuant to this order and respondents do not prevail on the merits of the case, respondents will have to pay not only the civil penalty but also any hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2010); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available from the Clerk of the Board and on the Board's Web site at www.ipcb.state.il.us. *See* 35 Ill. Adm. Code 108.504.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 8, 2013, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is fluid and cursive, with the first name "John" and last name "Therriault" clearly legible.

John T. Therriault, Clerk
Illinois Pollution Control Board