

ILLINOIS POLLUTION CONTROL BOARD

July 10, 2014

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 14-43
)	(IEPA No. 890-14-AC)
DAVID R. AND BETH W. MOSER,)	(Administrative Citation)
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by D. Glosser):

On April 1, 2014, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against David R. and Beth W. Moser (respondents). The administrative citation concerns respondents' facility located at 13546 North Harmony Lane, Opdyke, Jefferson County. The property is commonly known to the Agency as the "Moser, David R. & Beth W" site and is designated with Site Code # 0818155007. For the reasons below, the Board finds that respondents violated the Environmental Protection Act (Act) (415 ILCS 5 (2012)) and orders David R and Beth W. Moser to pay \$3,000 in civil penalties.

Under the Act, 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) (2012); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on March 5, 2014, respondents violated Sections 21(p)(1) and 21(p)(7), of the Act (415 ILCS 5/21(p)(1) and (7) (2012)) by open dumping waste leading to litter and in a manner resulting in deposition of general construction or demolition debris, or clean construction or demolition debris. The Agency asks the Board to impose on respondent the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$3,000. As required, the Agency served respondents with the administrative citation on March 28, 2014, which is 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).

To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. If the respondent fails to do so, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2012); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by May 2, 2014. Respondents filed a petition on April 30, 2014. The Board accepted respondents' petition, but directed respondents to file an amended petition by June 16, 2014. Respondents did not file an amended petition.

Accordingly, the Board finds that respondents violated Sections 21(p)(1) and 21(p)(7), of the Act (415 ILCS 5/21(p)(1) and (7) (2012)).

The civil penalty for violating any provision of Section 21(p)(1) and (7) is \$1,500 civil penalty for each alleged violation. *See* 415 ILCS 5/42(b)(4-5) (2012); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(p) and no indication in the record that these are second or subsequent adjudicated violations, the total civil penalty is \$3,000. Under Section 31.1(d)(1) of the Act, the Board attaches the administrative citation and makes it part of the order below.

This opinion constitutes the Board's finding of fact and conclusions of law.

ORDER

1. The Board finds that David R. and Beth W. Moser violated Sections 21(p)(1) and (7), of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (7) (2012)).
2. David R and Beth W. Moser must pay a civil penalty of \$3,000 no later than August 11, 2014, which is the first business day following the 30th day after the date of this order. David R and Beth W. Moser must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Agency. The case number, case name, and David R. and Beth W. Moser's social security numbers must be included on the certified check or money order.
3. David R. and Beth W. Moser must send the certified check or money order and the remittance form to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2012)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2012)).
5. Payment of this penalty does not prevent future prosecution if the violations continue.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the

order. 415 ILCS 5/41(a) (2012); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 10, 2014 by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

RECEIVED
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APR 01 2014
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Complainant,) AC 14-43
v.) (IEPA No.80-14-AC)
DAVID R. & BETH W. MOSER,)
Respondents.)

JURISDICTION

This Administrative Citation is issued pursuant to the authority vested in the Illinois Environmental Protection Agency by Section 31.1 of the Illinois Environmental Protection Act, 415 ILCS 5/31.1 (2012).

FACTS

1. That David R. & Beth W. Moser ("Respondents") are the current owners of a facility located at 13546 North Harmony Lane, Opdyke, Jefferson County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Moser, David R. & Beth W.
2. That said facility is designated with Site Code No. 0818155007.
3. That Respondents have owned said facility at all times pertinent hereto.
4. That on March 5, 2014, Garrison Gross of the Illinois Environmental Protection Agency's ("Illinois EPA") Marion Regional Office inspected the above-described facility. A copy of the inspection report setting forth the results of said inspection is attached hereto and made a part hereof.
5. That on 3-26-14, Illinois EPA sent this Administrative Citation via Certified Mail No. 7012 0470 0001 3000 7893.

VIOLATIONS

Based upon direct observations made by Garrison Gross during the course of the March 5, 2014 inspection of the above-named facility, the Illinois Environmental Protection Agency has determined that Respondents have violated the Illinois Environmental Protection Act (hereinafter, the "Act") as follows:

- (1) That Respondents caused or allowed the open dumping of waste in a manner resulting in litter, a violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2012).

- (2) That Respondents caused or allowed the open dumping of waste in a manner resulting in Deposition of General Construction or Demolition Debris: or Clean Construction or Demolition Debris, a violation of Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2012).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2012), Respondents are subject to a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each of the violations identified above, for a total of Three Thousand Dollars (\$3,000.00). If Respondents elect not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than May 15, 2014, unless otherwise provided by order of the Illinois Pollution Control Board.

If Respondents elect to contest this Administrative Citation by petitioning the Illinois Pollution Control Board in accordance with Section 31.1 of the Act, 415 ILCS 5/31.1 (2012), and if the Illinois

Pollution Control Board issues a finding of violation as alleged herein, after an adjudicatory hearing, Respondents shall be assessed the associated hearing costs incurred by the Illinois Environmental Protection Agency and the Illinois Pollution Control Board. Those hearing costs shall be assessed in addition to the Three Thousand Dollar (\$1,500.00) statutory civil penalty for each violation.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2012), if Respondents fail to petition or elect not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall adopt a final order, which shall include this Administrative Citation and findings of violation as alleged herein, and shall impose the statutory civil penalty specified above.

When payment is made, Respondent's check shall be made payable to the Illinois Environmental Protection Trust Fund and mailed to the attention of Fiscal Services, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Along with payment, Respondents shall complete and return the enclosed Remittance Form to ensure proper documentation of payment.

If any civil penalty and/or hearing costs are not paid within the time prescribed by order of the Illinois Pollution Control Board, interest on said penalty and/or hearing costs shall be assessed against the Respondents from the date payment is due up to and including the date that payment is received. The Office of the Illinois Attorney General may be requested to initiate proceedings against Respondents in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING THIS
ADMINISTRATIVE CITATION

Respondents have the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31/1 (2012). If Respondents elect to contest this Administrative Citation, then Respondents shall file a signed Petition for Review, including a Notice of Filing, Certificate of Service, and Notice of Appearance, with the Clerk of the Illinois Pollution Control Board, State of Illinois Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601. A copy of said Petition for Review shall be filed with the Illinois Environmental Protection Agency's Division of Legal Counsel at 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Section 31.1 of the Act provides that any Petition for Review shall be filed within thirty-five (35) days of the date of service of this Administrative Citation or the Illinois Pollution Control Board shall enter a default judgment against the Respondents.

Lisa Bonnett ^{rl}

Date:

3-24-14

Lisa Bonnett, Director
Illinois Environmental Protection Agency

Prepared by: Susan E. Konzelmann, Legal Assistant
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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CLERK'S OFFICE
APR 01 2014
STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Complainant,)
v.)
DAVID R. & BETH W. MOSER,)
Respondents.)

AC 14-43
(IEPA No. 80-14-AC)

FACILITY: Moser, David R. & Beth W.
SITE CODE NO.: 0818155007
COUNTY: Jefferson
DATE OF INSPECTION: March 5, 2014
CIVIL PENALTY: \$3,000.00

DATE REMITTED:
SS/FEIN NUMBER:
SIGNATURE:

NOTE

Please enter the date of your remittance, your Social Security number (SS) if an individual or Federal Employer Identification Number (FEIN) if a corporation, and sign this Remittance Form. Be sure your check is enclosed and mail, along with Remittance Form, to Illinois Environmental Protection Agency, Attn.: Fiscal Services, P.O. Box 19276, Springfield, Illinois 62794-9276.