

ILLINOIS POLLUTION CONTROL BOARD
December 19, 2013

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 14-4
)	IEPA File No. 170-13-AC
MARK AND CHERYL ROGERS,)	(Administrative Citation)
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On July 8, 2013, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Mark & Cheryl Rogers (respondents). See 415 ILCS 5/31.1(c) (2012); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' facility located at 17310 N. State Highway 78, Canton, Fulton County. The property is commonly known to the Agency as the "Rogers, Mark & Cheryl" site and is designated with Site Code No. 0578175005.

On November 7, 2013, the Board found that respondents violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), 21(p)(3) and 21(p)(7) (2012)). On November 20, 2013, Mark & Cheryl Rogers filed a letter with the Board, which the Board construed as a motion to reconsider the November 7, 2013 order.

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902. In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 92-156 (Mar. 11, 1993), the Board observed that "the intended purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." *Id.*, citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1991).

The Board has considered respondents' letter as a request to reconsider the Board's November 7, 2013 decision. While the Board sympathizes with Mark & Cheryl Rogers, the Board denies the request as the letter presents no new evidence or a change in the law, which leads the Board to conclude that the Board's decision was in error. Therefore, the Board denies the motion, affirms its order of November 7, 2013, and closes the docket. As the November 7, 2013 order included a due date for penalty payment which has now passed, the Board's order below adjusts the due date.

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

ORDER


1. The Board denies Mark & Cheryl Rogers' motion to reconsider.
2. The Board affirms its finding that Mark & Cheryl Rogers violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), 21(p)(3) and 21(p)(7) (2012)).
3. If they have not already done so, Mark & Cheryl Rogers must pay a civil penalty of \$4,500 no later than January 21, 2014, which is the first business day following the 30th day after the date of this order. Mark & Cheryl Rogers must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and Mark Rogers' and Cheryl Rogers' social security numbers must be included on the certified check or money order.
4. Mark & Cheryl Rogers must send the certified check or money order and the remittance form to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
5. 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)).
6. 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 December 19, 2013 by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board