

ILLINOIS POLLUTION CONTROL BOARD
April 19, 2007

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| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | AC 07-44 |
| |) | (IEPA No. 51-07-AC) |
| HAROLD TOMLINSON, LARRY |) | (Administrative Citation) |
| TOMLINSON, and JERRY TOMLINSON, |) | |
| |) | |
| Respondents. |) | |

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On February 20, 2007, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Harold, Larry, and Jerry Tomlinson (respondents). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns respondents' facility located at 140 Wilbern Road in Wilbern, Marshall County. The facility is designated with Site Code No. 1238070002. For the reasons below, the Board: (1) grants the Agency's motion to dismiss the administrative citation as to Jerry Tomlinson; and (2) finds that Harold and Larry Tomlinson violated the Environmental Protection Act (Act) (415 ILCS 5 (2004)) and orders them to pay \$4,500 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 at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2004); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that respondents violated Sections 21(p)(1), (3), and (7) of the Act (415 ILCS 5/21(p)(1), (3), (7) (2004)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the deposition of general or clean construction or demolition debris. The administrative citation asks the Board to impose a \$1,500 civil penalty on respondents for each of the three alleged violations, for a total civil penalty of \$4,500. According to the administrative citation, respondents are the present owners of the Wilbern facility and Harold Tomlinson d/b/a Tomlinson Disposal Service is the facility's current operator.

However, on March 15, 2007, the Agency filed a motion to dismiss this administrative citation as to Jerry Tomlinson. In the motion, the Agency states that it failed to serve the administrative citation on Jerry Tomlinson within 60 days of the observed violation as required

by the Act. *See* 415 ILCS 5/31.1(b) (2004). The Board grants the Agency's motion and dismisses the administrative citation as to Jerry Tomlinson. *See* 35 Ill. Adm. Code 108.402.

As required, the Agency did serve the administrative citation on Harold and Larry Tomlinson within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2004); *see also* 35 Ill. Adm. Code 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 a 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) (2004); 35 Ill. Adm. Code 108.204(b), 108.406. Here, any petition for review was due on March 23, 2007. Harold and Larry Tomlinson failed to timely file a petition. Accordingly, the Board finds that Harold and Larry Tomlinson violated Sections 21(p)(1), (3), and (7) of the Act.

The civil penalty for violating any provision of subsection (p) of Section 21 is \$1,500 for each violation, except that the penalty amount is \$3,000 for each violation that is the person's second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500(a). Because there are three violations and no indication in the record that these are second or subsequent adjudicated violations, the total civil penalty is \$4,500. 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 dismisses the administrative citation as to Jerry Tomlinson.
2. Harold and Larry Tomlinson must pay a civil penalty of \$4,500 no later than May 21, 2007, which is the first business day following the 30th day after the date of this order.
3. Harold and Larry Tomlinson 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 Harold and Larry Tomlinson's social security numbers must be included on the certified check or money order.
4. Harold and Larry Tomlinson must send the certified check or money order and the remittance form to:

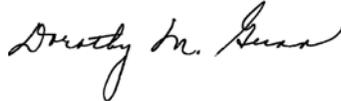
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
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) (2004); *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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 19, 2007, by a vote of 3-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board