

ILLINOIS POLLUTION CONTROL BOARD
February 19, 2009

ILLINOIS ENVIRONMENTAL)	
PROTECTION,)	
)	
Complainant,)	
)	
v.)	AC 09-2
)	(IEPA No. 85-08-AC)
THEODORE and ELIZABETH)	(Administrative Citation)
HOLLEMBEAK and HOLLEMBEAK)	
CONSTRUCTION, INC.,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

On January 23, 2009, Theodore Hollembeak, Elizabeth Hollembeak, and Hollembeak Construction, Inc. (collectively, respondents) filed a “Motion to Dismiss” (Mot.). Respondents request that the Board dismiss the petition for review filed by Theodore Hollembeak. Mot. at 1; *see* IEPA v. Theodore Hollembeak, Elizabeth Hollembeak, and Hollembeak Construction, Inc., AC 09-2 (July 21, 2008) (petition for review).

Below, the Board first reviews the procedural history of this case before addressing the motion to dismiss. After deciding that motion, the Board issues its final order regarding all three of the respondents.

PROCEDURAL BACKGROUND

On July 11, 2008, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against the respondents. *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 108.202(c). The Agency alleged that respondents violated Sections 21(p)(1), (p)(3), and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2006)). The Agency alleged that respondents violated these provisions by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the deposition of general construction or demolition debris or clean construction or demolition debris at Hollembeak Concrete, Inc.’s Brown County facility.

On July 21, 2008, Theodore Hollembeak filed a petition for review (Pet.) denying the allegations and stating that there were uncontrollable circumstances pertaining to the alleged violations. Pet. at 1; *see* 35 Ill. Adm. Code 108.206. In an order dated August 7, 2008, the Board stated that, although it had not yet received proof of service from the Agency, it accepted the petition as timely filed. In the same order, the Board noted that, although an individual may represent himself or herself, a non-attorney cannot represent another person in a Board adjudicatory proceeding, such as an administrative citation action. *See* 35 Ill. Adm. Code

101.400(a). The Board also noted that any person other than an individual must appear through an attorney-at-law licensed and registered to practice law. *See id.* Because the petition was signed by Theodore Hollebeak and failed to identify Theodore Hollebeak as an attorney, the Board directed Elizabeth Hollebeak and Hollebeak Concrete, Inc. to file an amended petition through an attorney-at-law if either of them wished to contest the citation. The Board's order stated that, if Elizabeth Hollebeak and Hollebeak Concrete, Inc. failed to file an amended petition in a timely manner, it would enter a default order against them.

On September 25, 2008, the Agency filed proof that it had timely served the administrative citation on Theodore and Elizabeth Hollebeak on July 10, 2008, and on Hollebeak Concrete, Inc. on July 12, 2008.

In an order dated November 5, 2008, the Board noted that it had received the Agency's proofs of service, acknowledged accepting as timely a petition filed by Theodore Hollebeak on behalf of the respondents on July 21, 2008, and directed Elizabeth Hollebeak and Hollebeak Concrete, Inc. to file an amended petition within 14 days of the date of the order. In the same order, the Board stated that, if it did not within 14 days receive an amended petition accompanied by an attorney's appearance from Elizabeth Hollebeak and Hollebeak Concrete, Inc., it would enter a default order against them and proceed to hearing only as to Theodore Hollebeak. The Board did not receive a timely amended petition from either Elizabeth Hollebeak or from Hollebeak Concrete, Inc., and no attorney had filed an appearance on behalf of either of the two of them.

In an order dated December 4, 2008, the Board acknowledged that it had previously accepted as timely a petition for review filed by Theodore Hollebeak. In the same order, the Board found that Elizabeth Hollebeak and Hollebeak Construction, Inc. had defaulted by failing to file an amended petition to contest the administrative citation. The Board therefore found that Elizabeth Hollebeak and Hollebeak Construction, Inc. had violated the Act as alleged by the Agency in its administrative citation. Although the Board directed the hearing officer to proceed to hearing with regard only to Theodore Hollebeak, the Board withheld issuing its final order regarding Elizabeth Hollebeak and Hollebeak Concrete, Inc. until the Board made its final determination regarding Theodore Hollebeak.

On January 23, 2009, respondents filed a motion to dismiss the petition for review.

DISCUSSION

In the motion to dismiss the petition for review, respondents state that, "since the filing of the original Petition by Theodore Hollebeak, Elizabeth Hollebeak, and Hollebeak Construction, Inc., a decision was made by the parties to pay the fines as imposed by the Illinois Environmental Protection Agency and to request dismissal of the petition for hearing." Mot. at 1.

Section 101.500(d) of the Board's procedural rules provides in pertinent part that, "[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the

motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d). The Board has received no response to respondents’ motion to dismiss.

The Board grants the motion to dismiss and dismisses the petition for review filed on July 21, 2008. The administrative citation is therefore “non-contested” (35 Ill. Adm. Code 108.406), and the Board must find that Theodore Hollembeak committed the alleged violations and impose the statutory civil penalty. 415 ILCS 5/31.1(d)(1) (2006); 35 Ill. Adm. Code 108.500(a); *see IEPA v. Harold Graves*, AC 06-23, slip op. at 2 (Sept. 6, 2007), citing *IEPA v. Lester Smith*, ASC 05-2, slip op. at 1 (Oct. 6, 2005). Accordingly, the Board finds that Mr. Hollembeak violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2006)). In this regard, the Board notes that it previously found that Elizabeth Hollembeak and Hollembeak Construction, Inc. had both violated those provisions. *IEPA v. Theodore Hollembeak, Elizabeth Hollembeak, and Hollembeak Construction, Inc.*, AC 09-2, slip op. at 3 (Dec. 4, 2008). Having now found that each of the three respondents has violated the Act as alleged in the Agency’s citation, the Board proceeds below to its final order in this proceeding.

The civil penalty for violating any provision of Section 21(p) is \$1,500 for each violation, except that the penalty increases to \$3,000 for each second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2006); 35 Ill. Adm. Code 108.500(a)(2). Because there are three violations of Section 21(p) and nothing in this record suggests that these are second or subsequent adjudicated violations, the total civil penalty is \$4,500. The motion to dismiss suggests that respondents have decided to pay the statutory penalties instead of contesting the violations alleged by the Agency. *See* Mot. at 1. As provided in the order below, respondents are not required to pay the statutory \$4,500 penalty if they have already paid it. *See IEPA v. Harold Graves*, AC 06-23, slip op. at 2 (Sept. 6, 2007), citing *IEPA v. Olen G. Parkhill*, AC 00-16 (Feb. 3, 2000). Under Section 31.1(d)(1) of the Act (415 ILCS 5/31.1(d)(1) (2006)), the Board attaches the administrative citation and makes it part of the order below.

This opinion and order constitutes the Board’s findings of fact and conclusion of law.

ORDER

1. The Board grants the motion to dismiss and dismisses the petition for review of the administrative citations.
2. The Board finds that Theodore Hollembeak, Elizabeth Hollembeak, and Hollembeak Construction, Inc. violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2006)).
3. Unless respondents have already done so, respondents must pay the statutory civil penalty of \$4,500 no later than Monday, March 9, 2009, which is the first business day following the 30th day after the date of this order.
 - a) Respondents 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 respondents' social security number(s) or federal employed identification number(s) must be included on the certified check or money order.

- b) Respondents must send the certified check or money order to:

Illinois Environmental Protection Agency
 Fiscal Services Division
 1021 N. Grand Ave. E.
 PO Box 19276
 Springfield, IL 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) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
5. Payment of the statutory civil penalty does not prevent future prosecution if 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) (2006); *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, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 19, 2009, by a vote of 5-0.



John T. Therriault, Assistant Clerk
 Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

RECEIVED
CLERK'S OFFICE
JUL 11 2008
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

ORIGINAL

Complainant,

AC 09-2

v.

(IEPA No. 85-08-AC)

THEODORE & ELIZABETH HOLLEMBEAK
and HOLLEMBEAK CONCRETE, INC.,

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 (2006).

FACTS

1. That Theodore and Elizabeth Hollembeak are the present owners and Hollembeak Concrete, Inc. is the current operator ("Respondents") of a facility located at 402 Pittsfield Road, Mt. Sterling, Brown County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Mt. Sterling/Hollembeak Concrete.

2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 0090105033.

3. That Respondents have owned/operated said facility at all times pertinent hereto.

4. That on May 30, 2008, William Zierath of the Illinois Environmental Protection Agency's Springfield Regional Office inspected the above-described facility. A copy of his

inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

VIOLATIONS

Based upon direct observations made by William Zierath during the course of his May 30, 2008 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) (2006).

- (2) That Respondent caused or allowed the open dumping of waste in a manner resulting in open burning, a violation of Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3)(2006).

- (3) 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) (2006).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2006), 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 Four Thousand Five Hundred Dollars (\$4,500.00). 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 August 15, 2008, 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 (2006), 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 One Thousand Five Hundred 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) (2006), 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, Respondents 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 (2006). 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.


Douglas P. Scott, Director
Illinois Environmental Protection Agency

Date: 7/9/08

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

REMITTANCE FORM

ORIGINAL RECEIVED
CLERK'S OFFICE
JUL 11 2008
AC 09-2
STATE OF ILLINOIS
Pollution Control Board
(IEPA No. 85-08-AC)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
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Complainant,)
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v.)
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THEODORE & ELIZABETH HOLLEMBEAK)
and HOLLEMBEAK CONCRETE, INC.,)
)
)
Respondents.)

FACILITY: Mt. Sterling/Hollembeak Concrete SITE CODE NO.: 0090105033
COUNTY: Brown CIVIL PENALTY: \$4,500.00
DATE OF INSPECTION: May 30, 2008

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.