

ILLINOIS POLLUTION CONTROL BOARD
May 21, 2009

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 09-24
)	(IEPA No. 317-08-AC)
QUINN and GLENNA HUNLEY,)	(Administrative Citation)
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On November 24, 2008, complainant, the Illinois Environmental Protection Agency (Agency), timely filed an administrative citation against respondents, Quinn and Glenna Hunley (respondents). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns a property allegedly owned and operated by respondents, located at 2136 North Illinois Route 130 in rural West Salem, Edwards County, designated with Site Code No. 0478570005, and commonly known to the Agency as “West Salem/Hunley, Quinn & Glenna.” For the reasons below, the Board grants respondents’ motion to withdraw their amended petition, finds that respondents violated the Environmental Protection Act (Act) (415 ILCS 5 (2006)), and imposes the statutory civil penalty of \$1,500.

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) (2006); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that respondents violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2006)) by causing or allowing the open dumping of waste in a manner resulting in litter. The Agency asks the Board to impose a \$1,500 civil penalty on respondents for the alleged violation. As required, the Agency served the administrative citation within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 108.202(b). On February 19, 2009, the Board accepted for hearing respondent’s amended petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2006); 35 Ill. Adm. Code 101.300(b)(2), 108.204(b). The case has not yet been to hearing.

On May 14, 2009, respondents filed a motion to withdraw their amended petition to contest. *See* 35 Ill. Adm. Code 108.208. The Board grants the motion and dismisses the amended petition. The administrative citation is therefore “non-contested” (35 Ill. Adm. Code 108.406) and the Board must find that respondents committed the violation alleged and impose

the corresponding civil penalty (415 ILCS 31.1(d)(1) (2006); 35 Ill. Adm. Code 108.500(a)). See *IEPA v. Lester Smith*, AC 05-2 (Oct. 6, 2005) (finding violations and imposing statutory civil penalty after respondent's withdrawal of petition). Accordingly, the Board finds that respondents violated Section 21(p)(1) of the Act.

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 is one violation of Section 21(p) and nothing in this record suggests that this is a second or subsequent adjudicated violation, the civil penalty is \$1,500. Respondents' motion to withdraw states that on April 29, 2009, counsel for respondents forwarded to the Agency "a cashiers check payable to Illinois Environmental Protection Trust Fund in the amount of One Thousand Five Hundred and no/100 Dollars (\$1500.00)." Motion at 1. Accordingly, as provided in the order below, respondents are not required to pay the \$1,500 civil penalty if it has already been paid. See *IEPA v. Olen G. Parkhill*, AC 00-16 (Feb. 3, 2000) (after withdrawal of petition by respondent and representations that the penalty had been paid, the Board ordered respondent to pay the civil penalty "unless the penalty has already been paid."). 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 grants respondents' motion to withdraw and dismisses their amended petition to contest the administrative citation.
2. The Board finds that respondents violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2006)).
3. Unless the civil penalty has already been paid, respondents must pay a civil penalty of \$1,500 no later than June 22, 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 numbers must be included on the certified check or money order.
 - b. Respondents must send the certified check or money order and the remittance form to:

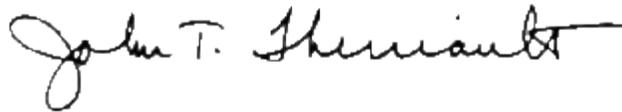
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (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 civil penalty does not prevent future prosecution if the violation continues.

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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 21, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board

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

5. That on 11-20-08, Illinois EPA sent this Administrative Citation via Certified Mail No. 7007 0220 0000 0152 4905.

VIOLATIONS

Based upon direct observations made by Garrison Gross during the course of his October 1, 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).

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 One Thousand Dollars (\$1,500.00). 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 December 30, 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.

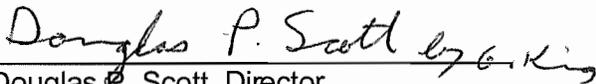
Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2006), if Respondents fail to petition or elect not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall 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, 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 (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: 11/20/08

Prepared by: Susan E. Konzelmann, Legal Assistant
Division of Legal Counsel
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NOV 24 2008

STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
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Complainant,)
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v.)
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QUINN & GLENNA HUNLEY,)
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Respondents.)

AC 09-24

(IEPA No. 317-08-AC)

FACILITY: West Salem/Hunley, Quinn & Glenna

SITE CODE NO.: 0478570005

COUNTY: Edwards

CIVIL PENALTY: \$1,500.00

DATE OF INSPECTION: October 1, 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.