

ILLINOIS POLLUTION CONTROL BOARD  
August 6, 2009

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY )  
 )  
Complainant, )  
 )  
v. ) AC 07-30  
 ) (IEPA No. 375-06-AC)  
 ) (Administrative Citation)  
BOBBY G. MYERS and DONALD D. )  
MYERS, )  
 )  
Respondents. )

MICHELLE M. RYAN APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY; and

H. WESLEY WILKINS APPEARED ON BEHALF OF THE RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by G.L. Blankenship):

On May 21, 2009, the Board issued an interim opinion and order, finding that Bobby G. Myers and Donald D. Myers violated Section 21(p)(1) and (3) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) and (3) (2008))<sup>1</sup> at a site located at 3050 Mt. Glen Road, rural Cobden, Union County. The December 5, 2006 violations were alleged in an administrative citation issued by the Illinois Environmental Protection Agency (Agency). The site is known to the Agency as the “Cobden/Myers” site and is designated with Site Code No. 1818515003.

In the May 21, 2009 decision, after the Board found that respondents had violated the Act, the Board held that under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2008)), the respondents were subject to the statutorily-fixed \$3,000 civil penalty. In addition, the Board held that the respondents, by unsuccessfully contesting the administrative citation at hearing, also must pay the hearing costs of the Agency and the Board. The hearing in this case was held on December 4, 2009, at the Union County Courthouse in Jonesboro.

Because no information on hearing costs was then in the record, the Board directed the Agency and the Clerk of the Board each to file documentation of their respective hearing costs, supported by affidavit, by June 22, 2009, and to serve the filing on the respondents. The Board also gave the respondents an opportunity to respond to the requests for hearing costs and noted that, after the time periods for these filings had expired, the Board would issue a final opinion and order assessing the civil penalty and any appropriate hearing costs.

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<sup>1</sup> All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

The Board did not receive the Agency's statement of hearing costs by June 22, 2009, so the Board will not assess hearing costs on behalf of the Agency. See 35 Ill. Adm. Code 108.502. On May 28, 2009, the Clerk of the Board submitted an affidavit of the Board's hearing costs totaling \$266.78, the entirety of which reflects the costs of court reporting. The Clerk served this documentation on the respondents, which did not respond to either the statement of the Board's hearing costs or the Clerk's affidavit. See 35 Ill. Adm. Code 108.502-108.506.

The Board finds the hearing costs reasonable and below orders the respondents to pay those costs under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2008)). The Board incorporates by reference the findings of fact and conclusions of law from its May 21, 2009 interim opinion and order. Under Section 31.1(d)(2) of the Act (415 ILCS 5/31.1(d)(2) (2008)), the Board attaches the administrative citation and makes it part of the Board's final order.

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

### **ORDER**

1. The Board finds that the respondents violated Sections 21(p)(1) and (3) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (p)(3) (2008)).
2. The Board assesses the statutory civil penalty of \$3,000 for the violation, as well as hearing costs totaling \$266.78, for a total amount due of \$3,266.78. The respondents must pay \$3,266.78 no later than Monday, September 21, 2009, which is the first business day following the 45th day after the date of this order. The must pay this amount 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 or federal employer identification number must be included on the certified check or money order.
3. The respondents must send the certified check or money order to:  
  
Illinois Environmental Protection Agency  
Attn.: Fiscal Services  
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) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).
5. Payment of this 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) (2008); *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 opinion and order on August 6, 2009 by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board