

ILLINOIS POLLUTION CONTROL BOARD
March 18, 2010

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 10-09
)	(IEPA No. 293-09-AC)
TONY A. LUTTRELL,)	(Administrative Citation)
)	
Respondent.)	

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

On January 21, 2010, the Board issued an opinion and order finding that the respondent Tony A. Luttrell (Luttrell), had violated the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2008))¹ as alleged in an administrative citation filed by the complainant, Illinois Environmental Protection Agency (Agency). On February 23, 2010, the Agency filed a motion asking the Board to reconsider the January 21, 2010 order. Today the Board grants the Agency's motion to reconsider and, vacates the January 21, 2010 order and enters a default order against Luttrell.

The Agency alleges in the administrative citation that Luttrell violated Sections 21(p)(1) and (p)(7) of the (415 ILCS 5/21(p)(1), (p)(7) (2008)) at the site on October 27, 2009, by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of general or clean construction or demolition debris. Because the administrative citation addresses an allegedly second or subsequent violation of Sections 21(p)(1) and (p)(7) by Luttrell, the Agency seeks the statutory civil penalty of \$6,000 for this alleged violation. *See* 415 ILCS 5/42(b)(4-5) (2008). On January 21, 2010, the Board found that respondent violated Sections 21(p)(1) and (p)(7) of the Act. The order imposed a civil penalty of \$3,000 for these violations.

MOTION TO RECONSIDER

On February 23, 2010, the Agency filed a motion for reconsideration (Mot.) of the Board's January 20, 2010 order. *See* 35 Ill. Adm. Code 101.520. Any response from Luttrell was due by March 9, 2010. *See* 35 Ill. Adm. Code 101.520(b). The Board received no response and Luttrell is therefore deemed to have waived any objection to the Board granting the motion. *See* 35 Ill. Adm. Code 101.500(d).

A motion to reconsider may be brought "to bring to the [Board's] attention newly discovered evidence which was not available at the time of the hearing, changes in the law or

¹ All citations to the Act will be to the 2008 compiled statutes because the provisions at issue have not been substantively amended in the 2008 compiled statutes.

errors in the [Board's] previous application of existing law.” Citizens Against Regional Landfill v. County Board of Whiteside County, PCB 92-156, slip op. at 2 (Mar. 11, 1993), citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1991); *see also* 35 Ill. Adm. Code 101.902. In addition, a motion to reconsider may specify “facts in the record which were overlooked.” Wei Enterprises v. IEPA, PCB 04-23, slip op. at 3 (Feb. 19, 2004). The Agency’s motion “requests that the Board reconsider its January 20, 2010 order based on clarification of the record and enter an order requiring payment of a total civil penalty of \$6,000, as requested in the Administrative Citation.” Mot. at 2. In the motion, the Agency also states that the Administrative Citation filed on December 1, 2009, states under the heading “Civil Penalty”: “On May 2, 2002, and September 5, 2002, the Board found Tony A. Luttrell in violation of Sections 21(p)(1) and 21(p)(7) of the Act in AC 02-48 and AC 03-01.” *Id.* at 2. The Board accordingly grants the motion to reconsider and vacates the January 21, 2010 order.

DEFAULT

On December 4, 2009, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Tony A. Luttrell (respondent). *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent’s facility located at approximately 800 North Aspen Road, Xenia, Clay County. The property is commonly known to the Agency as the “Xenia/Luttrell, Tony A. and Crystal K. (northeast)” site and is designated with Site Code No. 0258095001. For the reasons below, the Board finds that respondent violated the Environmental Protection Act (Act) (415 ILCS 5 (2008)) and orders respondent to pay \$6,000 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) (2008); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on October 27, 2009, respondent violated Sections 21(p)(1) and (p)(7), of the Act (415 ILCS 5/21(p)(1), (p)(7) (2008)) by causing or allowing the open dumping of waste in a manner resulting in (a) litter, and (b) deposition of general construction or demolition debris, respectively. The Agency asks the Board to impose the statutory \$6,000 civil penalty on respondent. As required, the Agency served the administrative citation on respondent within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2008); *see also* 35 Ill. Adm. Code 101.300(c), 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 the 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) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by January 7, 2010. Respondent

failed to timely file a petition. Accordingly, the Board finds that respondent violated Sections 21(p)(1) and (p)(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) (2008); 35 Ill. Adm. Code 108.500(a). The administrative citation alleges that the Section 21(p)(1) and (p)(7) violations are respondent's second or subsequent violation of these provisions. Because this is a second or subsequent adjudicated violation of Section 21(p)(1) and (p)(7) (*see IEPA v. Tony A. Luttrell*, AC 02-48 (May 2, 2002) and *IEPA v. Tony A. Luttrell*, AC 03-1 (September 5, 2002)), respondent is subject to a total civil penalty of \$6,000. 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 the Agency's motion to reconsider and vacates the Board's January 21, 2010 order.
2. The Board finds that respondent violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(7) (2008)).
3. Respondent must pay a civil penalty of \$6,000 no later than April 19, 2010, which is the first business day following the 30th day after the date of this order. Respondent 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 respondent's social security number or federal employer identification number must be included on the certified check or money order.
4. Luttrell 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) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).
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) (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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 4, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 04 2009

STATE OF ILLINOIS
Pollution Control Board

ADMINISTRATIVE CITATION

ILLINOIS ENVIRONMENTAL PROTECTION)
 AGENCY,)
)
 Complainant,)
)
 v.)
)
 TONY A. LUTTRELL,)
)
 Respondent.)

AC 10-9
 (IEPA No. 293-09-AC)

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 (2008).

FACTS

1. That Tony A. Luttrell ("Respondent") is the present owner and operator of a facility located at approximately 800 North Aspen Road, Xenia, Clay County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency ("Illinois EPA") as Xenia/Luttrell, Tony A. and Crystal K. (northeast).

2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 0258095001.

3. That Respondent has owned and operated said facility at all times pertinent hereto.

4. That on October 27, 2009, Garrison Gross of the Illinois EPA's Marion 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.

5. That on December 1, 2009, Illinois EPA sent this Administrative Citation via Certified Mail No. 7007 3020 0002 3214 4289.

VIOLATIONS

Based upon direct observations made by Garrison Gross during the course of his October 27, 2009 inspection of the above-named facility, the Illinois Environmental Protection Agency has determined that Respondent has violated the Illinois Environmental Protection Act (hereinafter, the "Act") as follows:

- (1) That Respondent 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) (2008).

- (2) That Respondent caused or allowed the open dumping of waste in a manner resulting in deposition of clean or general construction or demolition debris, a violation of Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2008).

CIVIL PENALTY

On May 2, 2002, and September 5, 2002, the Board found Tony A. Luttrell in violation of Sections 21(p)(1) and 21(p)(7) of the Act in AC 02-48 and AC 03-01.

Because this Administrative Citation addresses a second or subsequent violation of Sections 21(p)(1) and 21(p)(7) of the Act, pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2008), Respondent is subject to a civil penalty of Three Thousand Dollars (\$3,000.00) for each of the violations identified above, for a total of Six Thousand Dollars (\$6,000.00). If Respondent elects not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than December 31, 2009, unless otherwise provided by order of the Illinois Pollution Control Board.

If Respondent elects 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 (2008), and if the Illinois Pollution Control Board issues a finding of violation as alleged herein, after an adjudicatory hearing, Respondent 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 Three Thousand Dollar (3,000.00) statutory civil penalty for each violation.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2008), if Respondent fails to petition or elects 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, Respondent 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 Respondent 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 Respondent in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING THIS
ADMINISTRATIVE CITATION

Respondent has the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31/1 (2008). If Respondent elects to contest this Administrative Citation, then Respondent 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 Respondent.

Douglas Scott
Douglas Scott, Director
Illinois Environmental Protection Agency

Date: December 1, 2009

Prepared by: Michelle M. Ryan, Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.)
)
TONY A. LUTTRELL,)
)
Respondent.)

AC 10-9

(IEPA No. 293-09-AC)

FACILITY: Xenia/Luttrell SITE CODE NO.: 0258095001

COUNTY: Clay CIVIL PENALTY: \$6,000

DATE OF INSPECTION: October 27, 2009

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.