

ILLINOIS POLLUTION CONTROL BOARD  
December 2, 2010

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 11-11
	)	(IEPA No. 291-10-AC)
JAMES and PATRICIA QUISENBERRY,	)	(Administrative Citation)
	)	
Respondents.	)	

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

On October 22, 2010, the Illinois Environmental Protection Agency (Agency) filed an administrative citation against James and Patricia Quisenberry (respondents). *See* 415 ILCS 5/31.1 (2008); 35 Ill. Adm. Code 108. The administrative citation concerns the respondents' property located in Section 3, Township 20 North, Range 1 West of the Third Principal Meridian, Logan County. The property is commonly known to the Agency as the "Oran Township/Quisenberry" site and is designated with Site Code No. 1078120004.

For the reasons below, the Board finds that the respondents violated the Environmental Protection Act (Act) (415 ILCS 5 (2008)) and enters a default order assessing the statutory civil penalty of \$4,500. In this opinion, the Board provides background before discussing today's rulings.

**BACKGROUND**

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. *See* 415 ILCS 5/21(o), (p), 22.51, 22.51a, 55(k), 31.1(c), 42(b)(4), (4-5) (2008); 35 Ill. Adm. Code 108.

The Act requires that the complainant serve the administrative citation on the respondent within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2008). The Act further requires that the complainant file the administrative citation with the Board "no later than 10 days after the date of service." 415 ILCS 5/31.1(c) (2008). Under the Act, to contest an administrative citation, the respondent must file a petition with the Board within "35 days from the date of service" of the citation. 415 ILCS 5/31.1(d)(1) (2008). If the respondent fails to do so, the Act requires the Board to find that the respondent committed the violations alleged and impose the corresponding civil penalty. *Id.*

In this case, the Agency alleges that on August 24, 2010, the respondents violated Sections 21(p)(1), 21(p)(3), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 21(p)(3), 55(k)(1) (2008)) by causing or allowing the open dumping of waste in a manner resulting in the following: litter; open burning; and used tires not altered, covered, or otherwise prevented from accumulating water. The Agency asks the Board to impose the statutory \$1,500 civil penalty per violation on the respondents, for a total civil penalty of \$4,500.

## **DISCUSSION**

### **Agency Proof of Service**

The Agency filed a proof of service (Proof) with the Board on November 16, 2010. The Agency explains that the administrative citation was issued to the respondents on October 13, 2010. Proof at 1. The Agency provides a copy of the certified mail receipt, indicating that the citation was processed as outgoing certified mail through the U.S. Postal Service (USPS) in Springfield on October 14, 2010. *Id.* at 1, 2, Exh. A. The Agency, however, never received a signed return receipt from the USPS, and according to the Agency, no further information is available on the USPS website. *Id.* at 1.

The Agency nevertheless offers the affidavit of field inspector Mark Weber, verifying that during a November 9, 2010 telephone conversation, Mr. Quisenberry confirmed both that the citation had been received through USPS delivery and that the \$4,500 penalty payment would be submitted that day by USPS. Proof at 2, Exh. B. The Agency represents that payment of the \$4,500 penalty was received immediately after the telephone call. *Id.* at 2.

The Agency “made every attempt” to prove that the administrative citation was served on time, “from allowing eleven (11) days for mailing prior to the October 25, 2010 service deadline, to researching all possible avenues to determine the service date.” Proof at 2. The Agency further maintains that the “inability to prove conclusively the precise date of service is owing to the processes of the [USPS], and not to any fault of its own.” *Id.* The Agency’s attorney certifies that the statements made in the proof of service are true and correct.

According to the Agency, based on the “evidence of actual service and circumstantial evidence of timely service,” this citation is non-contested. Proof at 2. The Agency concludes that the Board should therefore issue a default order assessing the civil penalty and “noting that the assessed penalty has already been paid.” *Id.* at 2-3.

### **Board Analysis**

The Agency does not ask the Board to waive the Act’s 60-day service or 10-day filing requirement, both of which are jurisdictional prerequisites for the Board to hear or enter a default judgment on an administrative citation. See IEPA v. Upper Rock Island County Landfill, Inc. and Dave Geier, AC 08-31, slip op. at 1 (Sept. 4, 2008). Instead, the Agency offers proof of service other than a signed and dated certified mail, return receipt.

It is not the Act but rather the Board's procedural rules which call for administrative citations to be served "personally, by registered or certified mail, or by messenger service." 35 Ill. Adm. Code 101.304(c). Those rules further state that for service by registered mail, certified mail, or messenger service, "service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt." 35 Ill. Adm. Code 101.300(c); *see Upper Rock Island County Landfill*, AC 08-31, slip op. at 3 (Dec. 4, 2008) (service complete under rule on date certified mail, return receipt is signed); *West v. Nokomis Quarry Co.*, PCB 09-45, slip op. at 1 (Feb. 5, 2009) (same).

Here, the Agency initiated service of the administrative citation by the requisite certified mail, return receipt requested, but is unable to provide a signed and dated certified mail, return receipt. Nevertheless, the Agency field inspector's sworn affidavit and the respondents' payment of the \$4,500 civil penalty adequately substantiate that the citation was actually served. *See Upper Rock Island County Landfill*, AC 08-31, slip op. at 3 (Dec. 4, 2008) (accepting alternative proof of service of citation).

On August 24, 2010, the Agency inspected the Oran Township/Quisenberry site. On October 13, 2010, the Agency sent the administrative citation to the respondents by certified mail, return receipt requested, as indicated in the proof of service, as well as the certificate of service attached to the citation filed with the Board. On October 14, 2010, the citation was processed by the USPS as outgoing certified mail. The 60th day after the date of the site inspection was October 23, 2010, a Saturday. By rule, the 60-day deadline for Agency service of the citation on the respondents was the next business day, October 25, 2010. *See* 35 Ill. Adm. Code 101.300(a).

As the Agency notes (Proof at 1), the Board's procedural rules provide that service by U.S. Mail is presumed complete four days after mailing, a presumption which can be rebutted by proper proof (35 Ill. Adm. Code 101.300(c)). The respondents have made no filings with the Board in this proceeding. Because the fourth day after the date of the Agency's mailing of the citation was October 17, 2010, a Sunday, service is presumed complete the next business day, October 18, 2010. *See* 35 Ill. Adm. Code 101.300(a). With service completed on October 18, 2010, the 10-day deadline for filing the citation with the Board was October 28, 2010. The Agency filed the citation on October 22, 2010.

Under the particular circumstances of this case, the Board finds that the administrative citation was both timely served and timely filed. *See Upper Rock Island County Landfill*, AC 08-31, slip op. at 3 (Dec. 4, 2008) (accepting alternative proof that citation was timely served). The service date of October 18, 2010, precedes the service deadline of October 25, 2010, and the filing date of October 22, 2010, precedes the filing deadline of October 28, 2010. With the satisfaction of these jurisdictional prerequisites (415 ILCS 5/31(b), (c) (2008)), the Board will enter a default order against the respondents.

### **Default**

As discussed above, to contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the 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 108.204(b). Here, any petition to contest the citation was due no later than November 22, 2010. The respondents have filed no petition for review, which renders the citation “non-contested.” *See* 35 Ill. Adm. Code 108.406. Accordingly, the Board finds that the respondents violated Sections 21(p)(1), 21(p)(3), and 55(k)(1) of the Act, as alleged by the Agency. *See* 415 ILCS 5/31.1(d)(1) (2008).

The civil penalty for violating any provision of Section 21(p) or 55(k) 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). Because there are three violations and no indication in the record that any of these is a second or subsequent adjudicated violation, the total civil penalty is \$4,500. As noted above, the Agency has already received payment of the \$4,500 penalty. The Act requires, however, that when a respondent fails to timely file a petition for review, the Board “shall adopt a final order, which . . . shall impose the penalty specified in subdivision (b)(4) or (b)(4-5) of Section 42.” 415 ILCS 5/31.1(d)(1) (2008); *see* 35 Ill. Adm. Code 108.406, 108.500(a). The Agency’s proof of service similarly states that this case is non-contested and the Board should issue a default order assessing the penalty. Proof at 2-3.

The order below therefore imposes the \$4,500 civil penalty on the respondents. Of course, as reflected in the order, the respondents are not required to pay a civil penalty that has already been paid. *See County of Vermilion, Illinois v. Rex Greene*, AC 08-33, slip op. at 2 (July 21, 2008) (after representation that penalty had been paid, Board ordered respondent to pay “[u]nless the penalty has already been paid.”); *Upper Rock Island County Landfill*, AC 08-31, slip op. at 4 (Dec. 4, 2008) (same). 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 finds that the respondents violated Sections 21(p)(1), 21(p)(3), and 55(k)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1), 21(p)(3), 55(k)(1) (2008)).
2. Unless the civil penalty has already been paid, the respondents must pay a civil penalty of \$4,500 no later than January 3, 2011, which is the first business day following the 30th day after the date of this order.
  - a. The 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 the respondents’ respective social security numbers must be included on the certified check or money order.

- b. The 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

3. 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)).
4. 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 December 2, 2010, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board