

ILLINOIS POLLUTION CONTROL BOARD
December 16, 2010

COUNTY OF PERRY,)
)
Complainant,)
)
v.) AC 11-12
) (Administrative Citation)
MARTIN VUICHARD,)
)
Respondent.)

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

On October 25, 2010, the County of Perry (County) timely filed an administrative citation against Martin Vuichard (Vuichard). *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Vuichard’s facility located at latitude 38.02094 and longitude -89.18163 in Perry County. The property is commonly known to the Illinois Environmental Protection Agency (Agency) as the “Cutler/Martin Vuichard” site and is designated with Site Code No. 1450055008. For the reasons below, the Board finds that Vuichard violated the Environmental Protection Act (Act) (415 ILCS 5 (2008)) and orders him to pay \$3,000 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. *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.

In this case, the County alleges that on September 15, 2010, Vuichard 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 litter and the deposition of general or clean construction or demolition debris. The County asks the Board to impose the statutory \$1,500 civil penalty per violation on Vuichard, for a total civil penalty of \$3,000. As required, the County served the administrative citation on Vuichard 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 November 30, 2010. *See* 35 Ill. Adm. Code 101.300(a). Vuichard failed to timely file a petition. Accordingly, the Board finds that Vuichard violated Sections 21(p)(1) and (p)(7) of the Act.

The civil penalty for violating any provision of Section 21(p) 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 two violations of Section 21(p) and no indication in the record that any of these is a second or subsequent adjudicated violation, the total civil penalty is \$3,000. 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 finds that Vuichard violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(7) (2008)).
2. Vuichard must pay a civil penalty of \$3,000 no later than January 17, 2011, which is the first business day following the 30th day after the date of this order. Vuichard must pay the \$3,000 civil penalty as follows:
 - a. By certified check or money order in the amount of \$1,500 made payable to the County of Perry; and
 - b. By certified check or money order in the amount of \$1,500 made payable to the Illinois Environmental Protection Trust Fund.
3. Vuichard must send the certified check or money order made payable to the County of Perry, along with the applicable remittance form to:

County of Perry
 Perry County Treasurer
 Perry County Government Building
 3764 State Route 13/127
 Pinckneyville, Illinois 62274

4. Vuichard must send the certified check or money order made payable to the Illinois Environmental Protection Trust Fund, along with the applicable 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 December 16, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board