

ILLINOIS POLLUTION CONTROL BOARD
February 3, 2011

COUNTY OF PERRY,)
)
Complainant,)
)
v.) AC 11-17
) (Administrative Citation)
JOSEPH MELVIN,)
)
Respondent.)

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

On December 10, 2010, the County of Perry (County) timely filed an administrative citation against Joseph Melvin (Melvin). The administrative citation was timely filed because it was postmarked on or before the filing deadline. *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b)(2), 108.202(c). The administrative citation concerns Melvin’s property located at 1169 Old DuQuoin Road in DuQuoin, Perry County. The property is commonly known to the Illinois Environmental Protection Agency (Agency) as the “DuQuoin/Joseph Melvin” site and is designated with Site Code No. 1458335003. For the reasons below, the Board finds that Melvin violated the Environmental Protection Act (Act) (415 ILCS 5 (2008)) and orders Melvin 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), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2008); 35 Ill. Adm. Code 108.

In this case, the County alleges that on October 28, 2010, Melvin 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 at the property. The County asks the Board to impose the statutory \$1,500 civil penalty per violation on Melvin, for a total civil penalty of \$3,000. As required, the County served the administrative citation on Melvin 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 18, 2011. Melvin failed

to timely file a petition. Accordingly, the Board finds that Melvin 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 Melvin violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(7) (2008)).
2. Melvin must pay a civil penalty of \$3,000 no later than March 7, 2011, which is the first business day following the 30th day after the date of this order. Melvin must pay the \$3,000 civil penalty as follows:
 - a. By certified check or money order made payable to Perry County Solid Waste in the amount of \$1,500; and
 - b. By certified check or money order made payable to the Illinois Environmental Protection Trust Fund in the amount of \$1,500.
3. Melvin must send the certified check or money order made payable to Perry County Solid Waste, along with the applicable remittance form to:

Perry County Solid Waste
c/o Perry County Treasurer
Perry County Government Building
3764 State Route 13/127
Pinckneyville, Illinois 62274
4. Melvin 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 February 3, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board

1. The Respondent has caused or allowed litter at the facility in violation of 415 ILCS 5/21(p)(1).

2. The Respondent has caused or allowed the deposition of general construction or demolition debris; or clean construction debris at the facility in violation of 415 ILCS 5/21(p) (7).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5), Respondent is 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 Three Thousand Dollars (\$3,000.00). 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 February 28, 2011, 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 (2006), and if the Illinois Pollution Control Board issues a finding of violations(s) 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 Fifteen Hundred Dollars (\$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), 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 a finding of violation(s) as alleged herein, and shall impose the statutory civil penalty specified above.

When payment is made, checks shall be made payable in equal amounts (50% of total penalty each) to:

(1) Perry County Solid Waste, c/o Perry County Treasurer, Perry County Government Building, 3764 State Route 13/127, Pinckneyville, Illinois 62274; and,

(2) Illinois Environmental Protection Trust Fund and mailed to the attention of Fiscal Services, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, PO Box 19276, Springfield, Illinois 62794-9276.

Respondent shall complete and return the enclosed Remittance Forms with payments 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 Complainant may initiate proceedings against Respondent in Circuit Court or other debt collection actions 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 415 ILCS 5/31.1. If Respondent elects to contest this Administrative Citation, then Respondent shall file a Petition for Review with the Clerk of the Illinois Pollution Control Board. A copy of the Petition for Review shall also be filed with David Stanton, State's Attorney, Perry County Courthouse, Pinckneyville, Illinois 62274. **Your Petition for Review must be filed within thirty-five (35) days of the date of service of this Administrative Citation. Your petition must state the reason(s) you believe the present matter should not be issued. If you fail to file your petition and state the reasons the present matter should not be issued, a default order against you will be entered by the Illinois Pollution Control Board.**

Your original Petition must be filed with the Clerk of the Board at:

Clerk, Pollution Control Board, 100 West Randolph, Suite 11-500, Chicago, IL 60601-3218

A copy must also be sent to:

Office of the State's Attorney, David Stanton, State's Attorney, Perry County Courthouse,

Pinckneyville, IL 62274



David Stanton, State's Attorney
Perry County, Illinois

DATE: 12-10-10

Perry County State's Attorney's Office
Perry County Courthouse
1 Public Square
Pinckneyville, IL 62274
(618)357-6221

RECEIVED
CLERK'S OFFICE
DEC 29 2010
STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM TO THE COUNTY OF PERRY

COUNTY OF PERRY)
)
Complainant,)
)
vs.)
)
JOSEPH MELVIN,)
)
Respondent.)

AC 11 - 17

ORIGINAL

FACILITY: DuQuoin/Joseph Melvin

COUNTY: Perry

DATE OF INSPECTION: October 28, 2010

SITE CODE: 1458335003

DATE REMITTED: _____

SS/FEIN NUMBER: _____

SIGNATURE: _____

NOTE

Please include the information on the blank lines. Mail this form with your check to:

Perry County Solid Waste
c/o Perry County Treasurer
Perry County Government Building
3764 State Route 13/127
Pinckneyville, IL 62274

RECEIVED
CLERK'S OFFICE

DEC 29 2010

STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM TO THE ILLINOIS EPA

COUNTY OF PERRY)
)
 Complainant,)
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 vs.)
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 JOSEPH MELVIN,)
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 Respondent.)

AC 11 - 11

 ORIGINAL

FACILITY: DuQuoin/Joseph Melvin

COUNTY: Perry

DATE OF INSPECTION: October 28, 2010

SITE CODE: 1458335003

DATE REMITTED: _____

SS/FEIN NUMBER: _____

SIGNATURE: _____

NOTE

Please include the information on the blank lines. Mail this form with your check to:

Illinois Environmental Protection Agency
Attention: Fiscal Services
PO Box 19276
Springfield, IL 62794-9276