

ILLINOIS POLLUTION CONTROL BOARD
August 21, 2014

COUNTY OF JACKSON,)
)
Complainant,)
)
v.) AC 15-5
) (Administrative Citation)
DEANA ARDREY AND PAUL SMITH,)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by D. Glosser):

On July 16, 2014, the County of Jackson (County) timely filed an administrative citation against Deana Ardrey and Paul Smith (respondents). *See* 415 ILCS 5/31.1(c) (2012); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' facility located in Murphysboro, Jackson County. The property is commonly known to the Agency as the "Murphysboro/Deana Ardrey" site and is designated with Site Code No. 077 810 5089. For the reasons below, the Board finds that respondents violated the Environmental Protection Act (Act) (415 ILCS 5 (2012)) and orders them to pay \$4,500 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 Illinois Environmental Protection Agency (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) (2012); 35 Ill. Adm. Code 108.

In this case, the County alleges that on June 17, 2014, respondents violated Section 21(p)(1), 21(p)(3) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2012)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and deposition of general or clean construction debris. The County asks the Board to impose the statutory \$1,500 civil penalty per violation on respondents, for a total civil penalty of \$4,500. As required, the County served respondents with the administrative citation on July 9, 2014, which is within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2012); *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) (2012); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by August 14, 2014. Respondents failed to timely file a petition. Accordingly, the Board finds that respondents violated Section 21(p)(1), (p)(3) and 21(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) (2012); 35 Ill. Adm. Code 108.500(a). Because there are three violation of Section 21(p) and no indication in the record that this is a second or subsequent adjudicated violation, the total civil penalty is \$4,500. 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 Deana Ardrey and Paul Smith (respondents) violated Section 21(p)(l), (p)(3) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3) and (p)(7) (2012)).
2. Respondents must pay a total civil penalty of \$4,500 no later than September 22, 2014, 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 to: County of Jackson and the Illinois Environmental Protection Agency. Checks shall be made payable in equal amounts (50% of total penalty; \$2,250 each). The case number, case name, and respondents' social security numbers or federal employer identification numbers must be included on the certified check.
3. Respondents must send the certified checks and the remittance forms to:

Shirley Dillinger Booker
Jackson County Treasurer
Jackson County Courthouse
Murphysboro, Illinois 62274

Illinois Environmental Protection Agency
Fiscal Services Division
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) (2012)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2012)).
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) (2012); *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, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 21, 2014, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION**

RECEIVED
CLERK'S OFFICE
JUL 16 2014
STATE OF ILLINOIS
Pollution Control Board

COUNTY OF JACKSON,)
)
Complainant,)
)
v.)
)
DEANA ARDREY and)
PAUL SMITH,)
)
Respondents.)

AC 15 - 5
Site Code: 077 810 5089

JURISDICTION

This Administrative Citation is issued pursuant to authority vested in the Illinois Environmental Protection Agency by 415 ILCS 5/1 *et. seq.*, specifically 415 ILCS 5/31.1.

FACTS

1. The Respondent, Deana Ardrey, is the present owner, occupant and in control and possession of a facility located in the County of Jackson, State of Illinois.
2. The Respondent, Paul Smith, is in control and possession and an occupant of a facility located in the County of Jackson, Illinois.
3. The facility is an open dump, operating without an Illinois Environmental Protection Agency Operating Permit, and designated with the Site Code # 077 810 5089. The facility is known to the Agency as the Murphysboro/Deana Ardrey site.
4. The Respondents have owned, occupied, controlled and/or operated the facility at all relevant times hereto.
5. On June 17, 2014, Don Terry, Field Inspector, Jackson County Health Department, inspected the facility. A true and correct copy of the inspection report, along with Mr. Terry's affidavit, are attached and incorporated herein by reference as Exhibit A.

VIOLATIONS

On the basis of Field Inspector Don Terry's direct observation he has determined that the Respondents have caused or allowed open dumping at the above described facility in a manner that resulted in the following violations:

That on June 17, 2014, an inspection of the facility disclosed the following:

1. The Respondents have caused or allowed litter at the facility in violation of 415 ILCS 5/21(p)(1).
2. The Respondents have caused or allowed open burning at the facility in violation of 415 ILCS 5/21(p)(3).
3. The Respondents have caused or allowed the deposition of general or clean construction or demolition 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), Respondents are 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 FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00). If Respondents elect not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than August 15, 2014, unless otherwise provided by order of the Illinois Pollution Control Board.

If Respondents elect 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, and if the Illinois Pollution Control Board issues a finding of violation as alleged herein, after an adjudicatory hearing, Respondents 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 Respondents fail to petition or elect 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, checks shall be made payable in equal amounts (50% of total penalty each) to:

- (1) County of Jackson, c/o Jackson County Treasurer, Jackson County Courthouse, Murphysboro, Illinois 62966; and
- (2) 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.

Respondents 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 Respondents from the date payment is due up to and including the date that payment is received. The Complainant may either initiate proceedings against either or both Respondents in Circuit Court or other debt collection actions to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING ADMINISTRATIVE CITATION

You have the right to contest this Citation, pursuant to 415 ILCS 5/31.1. If you elect to contest this Citation, you must 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 Daniel Brenner, Assistant State's Attorney, Jackson County Courthouse, Third Floor, Murphysboro, Il 62966. **YOUR PETITION FOR REVIEW MUST BE FILED WITHIN 35 DAYS OF THE DATE OF SERVICE OF THE PRESENT CITATION ON YOU. 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 POLLUTION CONTROL BOARD.**

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

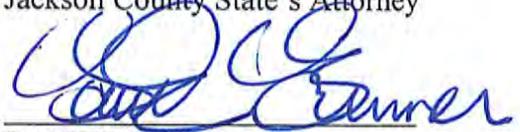
Clerk
Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

A copy must also be sent to:

Office of the State's Attorney
Daniel Brenner
Assistant State's Attorney
Jackson County Courthouse, 3rd Floor
Murphysboro, Il 62966

Dated: JUNE 27, 2014.

MICHAEL C. CARR
Jackson County State's Attorney



DANIEL BRENNER
Assistant State's Attorney
Jackson County, Illinois

REMITTANCE FORM TO COUNTY OF JACKSON

RECEIVED
CLERK'S OFFICE

JUL 16 2014

STATE OF ILLINOIS
Pollution Control Board

COUNTY OF JACKSON,)
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DEANA ARDREY and)
PAUL SMITH,)
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Respondents.)

AC15 - 5
Site Code: 077 810 5089

FACILITY: Murphysboro/Deana Ardrey Site
COUNTY: JACKSON
DATE OF INSPECTION: June 17, 2014
SITE CODE: 077 810 5089

Date Remitted: _____, 2014
SS or FEIN # _____
Signature _____

NOTE

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

Shirley Dillinger Booker
Jackson County Treasurer
Jackson County Courthouse
Murphysboro, Illinois, 62966