

ILLINOIS POLLUTION CONTROL BOARD
May 18, 2023

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 23-08
) (IEPA No. 36-23-AC)
CODY SMITH, an individual,) (Administrative Citation)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by B.F. Currie):

On March 23, 2023, the Illinois Environmental Protection Agency (IEPA or Agency) timely filed an administrative citation against Cody Smith. *See* 415 ILCS 5/31.1(c) (2020); 35 Ill. Adm. Code 101.300(b), 108.200(b)(3). The administrative citation concerns Cody Smith’s residential property located at 201 Massachusetts Street, Browning, Schuyler County. The property is commonly known to the Agency as the Cody Smith site and is designated with Site Code No. 1690055005. For the reasons below, the Board finds that Cody Smith violated the Environmental Protection Act (Act) (415 ILCS 5 (2020)) 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), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2020); 35 Ill. Adm. Code 108.

In this case, IEPA alleges that on February 14, 2023, Cody Smith violated Sections 21(p)(1) and (3) of the Act (415 ILCS 5/21(p)(1), (3) (2020)) by causing or allowing the open dumping of waste in a manner resulting in litter and causing or allowing the open dumping of waste in a manner resulting in open burning. IEPA asks the Board to impose the statutory \$1,500 civil penalty per violation on Cody Smith, for a total civil penalty of \$3,000. As required, IEPA served Cody Smith with the administrative citation on March 27, 2023, which is within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2020); *see also* 35 Ill. Adm. Code 101.300(c), 108.200(b)(1).

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) (2020); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by May 1, 2023. Cody Smith failed

to timely file a petition. Accordingly, the Board finds that Cody Smith violated Sections 21(p)(1) and (3) of the Act, 415 ILCS 5/21(p)(1), (3) (2020).

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) (2020); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(p), and there is no indication in the record that any of these are 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 Cody Smith violated Sections 21(p)(1) and (3) of the Illinois Environmental Protection Act (415 ILCS 5/21(p)(1), (3) (2020))
2. Cody Smith must pay a civil penalty of \$3,000 no later than June 19, 2023, which is the first business day following the 30th day after the date of this order. Cody Smith must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number and case name must appear on the certified check or money order.
3. Cody Smith must send the certified check or money order to:

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) (2020)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2020)).
5. Payment of this penalty does not prevent future prosecution if the violations 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) (2020); *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. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

| Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| Parties | Board |
| Illinois Environmental Protection Agency 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794 Michelle.ryan@illinois.gov | Illinois Pollution Control Board Attn: Don A. Brown, Clerk 60 E. Van Buren, Suite 630 Chicago, Illinois, 60605 |
| Cody Smith P.O. Box 54 Browning, Illinois 62624 | |

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 18, 2023, by a vote of 3-0.



Don A. Brown, Clerk
 Illinois Pollution Control Board