ILLINOIS POLLUTION CONTROL BOARD July 21, 2008

| COUNTY OF VERMILION, ILLINOIS, |) | |
|--------------------------------|-----|---|
| Complainant, |)) | |
| v. |) | AC 08-33 |
| REX GREENE, |) | (County No. 08-01) (Administrative Citation) |
| Respondent. |) | |

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

On June 10, 2008, the County of Vermilion (County) timely filed an administrative citation against Rex Greene (Greene). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns a property operated by Greene, located at 41660 N. Main Street in East Lynn, Vermilion County, and designated with Illinois Environmental Protection Agency (Agency) Site Code No. 1838015006. For the reasons below, the Board finds that Greene violated the Environmental Protection Act (Act) (415 ILCS 5 (2006)) and that the statutory civil penalty for the violations is \$3,000.

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 at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2006); 35 Ill. Adm. Code 108.

In this case, the County alleges that Greene violated Sections 21(p)(1) and (3) of the Act (415 ILCS 5/21(p)(1), (3) (2006)) by causing or allowing the open dumping of waste in a manner resulting in litter and open burning. In the administrative citation, the County asks the Board to impose the statutory civil penalty on Greene of \$3,000. As required, the County served the administrative citation on Greene within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 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 violation alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2006); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by July 7, 2008. Greene failed to timely file a petition. Accordingly, the Board finds that Greene violated Sections 21(p)(1) and (3) of the Act.

The civil penalty for violating any provision of Section 21(p) is \$1,500 for each violation, except that the penalty increases to \$3,000 for each second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2006); 35 III. Adm. Code 108.500(a)(2). Because there are two violations of Section 21(p) here and nothing in this record suggests that these are second or subsequent adjudicated violations for Greene, the total civil penalty is \$3,000. The cover letter to the County's administrative citation represents that Greene paid the \$3,000 civil penalty on June 3, 2008. Accordingly, as provided in the order below, Greene is not required to pay the \$3,000 civil penalty if it has already been paid. *See* IEPA v. Harold Graves, AC 06-23 (Sept. 6, 2007) (after representation that penalty had been paid, Board ordered respondent to pay the civil penalty "[u]nless the penalty has already been paid."); IEPA v. Olen G. Parkhill, AC 00-16 (Feb. 3, 2000) (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 Greene violated Sections 21(p)(1) and (3) of the Act (415 ILCS 5/21(p)(1), (3) (2006)).
- 2. Unless the civil penalty has already been paid, Greene must pay a civil penalty of \$3,000 no later than August 20, 2008, which is the 30th day after the date of this order.
 - a. Greene must pay the civil penalty by certified check or money order, made payable to the County of Vermilion, Illinois. The case number, case name, and Greene's social security number or federal employer identification number must be included on the certified check or money order.
 - b. Greene must send the certified check or money order and the remittance form to:

Vermilion County Health Department 200 South College Street Danville, Illinois 61832

- 3. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
- 4. Payment of the civil 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) (2006); *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 July 21, 2008, by a vote of 4-0.

In T. J

John Therriault, Assistant Clerk Illinois Pollution Control Board