

ILLINOIS POLLUTION CONTROL BOARD  
September 20, 2012

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 12-61  
 ) (IEPA No. 143-12-AC)  
JOE W. MCDERMOTT, JOE W. ) (Administrative Citation)  
MCDERMOTT d/b/a MCDERMOTT SALES )  
& SERVICE, and JOSEPH R. MCDERMOTT )  
d/b/a MCDERMOTT TOWING & )  
RECOVERY, )  
 )  
Respondents. )

OPINION AND ORDER OF THE BOARD (by T.A. Holbrook):

On June 25, 2012, the Illinois Environmental Protection Agency (Agency or Illinois EPA) timely filed an administrative citation (AC) against Joe W. McDermott, Joe W. McDermott d/b/a McDermott Sales & Service, and Joseph R. McDermott d/b/a McDermott Towing & Recovery (collectively, respondents). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a facility owned by Joe W. McDermott and operated by Joe W. McDermott d/b/a McDermott Sales & Service, and Joseph R. McDermott d/b/a McDermott Towing & Recovery located at 11188 East Webb Road, Mt. Vernon, Jefferson County.

On August 6, 2012, respondents file a motion to dismiss the administrative citation (Mot.). The Board has received no response to the motion from the Agency.

For the reasons stated below, the Board denies respondents' motion to dismiss and finds that respondents violated Sections 21(p)(1), 21(p)(5), 21(p)(6), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 21(p)(5), 21(p)(6), and 55(k)(1) (2010)) as alleged in the citation. *See* 415 ILCS 5/31.1(d)(1) (2010).

**ADMINISTRATIVE CITATION**

Under the Environmental Protection Act (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) (2010); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that, on May 23, 2012<sup>1</sup>, respondents violated Sections 21(p)(1), 21(p)(5), 21(p)(6), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 21(p)(5), 21(p)(6), and 55(k)(1) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter, the proliferation of disease vectors, and standing or flowing liquid discharge from the site, as well as causing or allowing water to accumulate in used or waste tires. The Agency asks the Board to impose the statutory \$1,500 civil penalty per violation on respondents, for a total civil penalty of \$6,000.

As required, the Agency served the administrative citation on respondents within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2010); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). The citation states “[t]hat on 6-20-12, Illinois EPA sent this Administrative Citation via Certified Mail No. 7009 2820 0001 7496 1343 (Joe W. McDermott) 7009 2820 0001 7496 1336 (d/b/a McDermott Sales & Service) 7009 2820 0001 7496 1329 (Joseph R. McDermott).” AC at 2.

On July 6, 2012, the Agency filed certified mail receipts. The first corresponds to article number 7009 2820 0001 7496 1336 and includes a signature indicating delivery on “6/23” to Joe W. McDermott d/b/a McDermott Sales & Service at P.O. Box 91 in Mt Vernon. The second corresponds to article number 7009 2820 0001 7496 1343 and includes a signature indicating delivery on “6-23” to Joe W. McDermott at P.O. Box 91 in Mt. Vernon. The third corresponds to article number 7009 2820 0001 7496 1329 and includes a signature indicating delivery on “6-23” to Joseph R. McDermott d/b/a McDermott Towing & Recovery at 11467 Ebenezer Road in Mt. Vernon.

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) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, a petition for review from any of the three respondents was due by July 30, 2012. Respondents failed to timely file a petition.

However, on August 6, 2012, the respondents filed a motion to dismiss the administrative citation (Mot.), which is summarized in the following section of this opinion and order.

### **MOTION TO DISMISS**

Respondents’ motion acknowledges that, “[o]n or about June 25, 2012,” the Agency filed this administrative citation alleging violations of four provisions of the Act. Mot. at 1. The motion argues that Joseph R. McDermott, the son of Joe W. McDermott who is known as

---

<sup>1</sup> The Board notes that the administrative citation refers to different inspection dates on pages 1 and 2. Page one refers to an inspection date of May 23, 2012, and page two refers to an inspection date of February 8, 2012. However, the affidavit by the inspector and inspection report both refer to May 23, 2012. The Board relies particularly on the affidavit to conclude that the inspection took place on May 23, 2012, and regards the reference to February 8, 2012, as inadvertent.

“Joey,” signed each of the three certified mail receipts. *Id.* at 1-2. The motion claims that the Board has jurisdiction only over “Joey,” who “is neither the owner of the land nor is he a principal in, or have any ownership in, the businesses named as Defendants.” *Id.* at 2. The motion concludes that “[s]ervice was not properly effectuated on any appropriate Defendants” and that the Board thus “lacks jurisdiction to issue a default order in this matter.” *Id.*, citing IEPA v. RCS, Inc. and Michael Duvall, AC 96-12 (Dec. 7, 1995).

### **DISCUSSION**

Section 100.500(d) of the Board’s procedural rules provides in pertinent part that, “[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in the disposition of the motion.” 35 Ill. Adm. Code 100.500(d). The Agency has filed no response to respondents’ August 6, 2012 motion to dismiss.

Section 31.1(d)(1) of the Act addresses administrative citations and provides in its entirety that, “[i]f the person named in the administrative citation fails to petition the Board for review within 35 days from the date of service, the Board shall adopt a final order, which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) or (b)(4-5) of Section 42.” 415 ILCS 5/31.1(d)(1) (2010); *see* 35 Ill. Adm. Code 108.204(b), 108.406. “[N]either the Act nor the Board’s regulations provide any exception to the requirement that the respondent must file a petition for review within 35 days of service.” County of Macon v. Tim Walker, AC 07-21, slip op. at 4 (May 3, 2007) (upholding finding of violation on reconsideration), citing 415 ILCS 5/31.1(d)(1) (2004), 35 Ill. Adm. Code 108.204(b). In this regard, the Board notes that it has found certified mail service on a person other than the named respondent to be adequate. County of Ogle v. George C. Heal, AC 06-52, slip op. at 2-3 (Oct. 5, 2006), citing 35 Ill. Adm. Code 101.304.

In addition, the Board notes a significant distinction between this case and IEPA v. RCS, Inc. and Michael Duvall, AC 96-12 (RCS & Duvall), cited in respondents’ motion to dismiss. *See* Mot. at 2. In that case, the Agency filed an administrative citation against the two respondents on September 13, 1995, and subsequently filed a certified mail receipt indicating service on Mr. Duvall on the same date. RCS & Duvall, slip op. at 1-2. On October 12, 1995, before the statutory 35-day deadline, “respondents filed a limited appearance challenging the Board’s jurisdiction to issue a default judgment in this administrative citation proceeding. Additionally, respondents filed a petition for review and dismissal.” *Id.* at 1; *see* 415 ILCS 31.1(d)(1) (1994) (35-day deadline).

In this case, respondents filed a motion to dismiss on August 6, 2012, beyond the statutory 35-day appeal period. Accordingly, the Board denies respondents’ motion to dismiss and finds that respondents violated Sections 21(p)(1), 21(p)(5), 21(p)(6), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 21(p)(5), 21(p)(6), and 55(k)(1) (2010)) as alleged in the citation. *See* 415 ILCS 5/31.1(d)(1) (2010).

The civil penalty for violating any provision of Section 21(p) or 55(k) 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) (2010); 35 Ill. Adm. Code 108.500(a). Because there are four violations of Sections 21(p) or 55(k) and there is no indication in the record that any of these are second or subsequent adjudicated violations, the total civil penalty is \$6,000. 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 respondents violated Sections 21(p)(1), 21(p)(5), 21(p)(6), and 55(k)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1), 21(p)(5), 21(p)(6), and 55(k)(1) (2010)).
2. Respondents must pay a civil penalty of \$6,000 no later than Monday, October 22, 2012, which is the first business day following the 30th day after the date of this order. Respondents must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and respondents' social security number or federal employer identification number must be included on the certified check or money order.
3. Respondents must send the certified check or money order and the remittance form 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) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
5. 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) (2010); *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, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 20, 2012 by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

---

John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board

RECEIVED  
CLERK'S OFFICE  
JUN 25 2012  
STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. )  
 )  
JOE W. MCDERMOTT, JOE W. )  
MCDERMOTT D/B/A MCDERMOTT SALES )  
& SERVICE and JOSEPH R. MCDERMOTT )  
D/B/A MCDERMOTT TOWING & )  
RECOVERY, )  
 )  
Respondents. )

AC 12-61  
(IEPA No. 143-12-AC)

JURISDICTION

This Administrative Citation is issued pursuant to the authority vested in the Illinois Environmental Protection Agency by Section 31.1 of the Illinois Environmental Protection Act, 415 ILCS 5/31.1 (2010).

FACTS

1. That Joe W. McDermott is the current owner and Joe W. McDermott d/b/a McDermott Sales & Service and Joseph R. McDermott d/b/a McDermott Towing & Recovery are the operators ("Respondents") of a facility located at 11188 East Webb Road, Mt. Vernon, Jefferson County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as McDermott Sales & Service.

2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No.0818125002.

3. That Respondents have owned and operated said facility at all times pertinent hereto.

4. That on May 23, 2012, Garrison Gross of the Illinois Environmental Protection Agency's ("Illinois EPA") Marion Regional Office inspected the above-described facility. A copy of

his inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

5. That on 6-20-12, Illinois EPA sent this Administrative Citation via Certified

Mail No. 7009 2820 0001 7496 1343 - (Joe W. McDermott)  
7009 2820 0001 7496 1336 - (D/b/a McDermott Sales & Service)  
7009 2820 0001 7496 1329 - (Joseph R. McDermott)  
VIOLATIONS

Based upon direct observations made by Garrison Gross during the course of his February 8, 2012 inspection of the above-named facility, the Illinois Environmental Protection Agency has determined that Respondents have violated the Illinois Environmental Protection Act (hereinafter, the "Act") as follows:

- (1) That Respondents caused or allowed the open dumping of waste in a manner resulting in litter, a violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2010).
- (2) That Respondents caused or allowed the open dumping of waste in a manner resulting in proliferation of disease vectors, a violation of Section 21(p)(5) of the Act, 415 ILCS 5/21(p)(5) (2010).
- (3) That Respondents caused or allowed the open dumping of waste in a manner resulting in standing or flowing liquid discharge from the dump site, a violation of Section 21(p)(6) of the Act, 415 ILCS 5/21(p)(6) (2010).
- (4) That Respondents caused or allowed water to accumulate in used or waste tires, a violation of Section 55(k)(1) of the Act, 415 ILCS 55(k)(1)(2010).

### CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2010), 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 Six Thousand Dollars (\$6,000.00). 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, 2012, 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 (2010), 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 One Thousand Five Hundred Dollar (\$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) (2010), if Respondents fail 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 findings of violation as alleged herein, and shall impose the statutory civil penalty specified above.

When payment is made, Respondents' check shall be made payable to the 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. Along with payment, Respondents shall complete and return the enclosed Remittance Form 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 Office of the Illinois Attorney General may be requested to initiate proceedings against Respondents in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING THIS  
ADMINISTRATIVE CITATION

Respondents have the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31/1 (2010). If Respondents elect to contest this Administrative Citation, then Respondents shall file a signed Petition for Review, including a Notice of Filing, Certificate of Service, and Notice of Appearance, with the Clerk of the Illinois Pollution Control Board, State of Illinois Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601. A copy of said Petition for Review shall be filed with the Illinois Environmental Protection Agency's Division of Legal Counsel at 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Section 31.1 of the Act provides that any Petition for Review shall be filed within thirty-five (35) days of the date of service of this Administrative Citation or the Illinois Pollution Control Board shall enter a default judgment against the Respondents.

  
\_\_\_\_\_  
John J. Kim, Interim Director  
Illinois Environmental Protection Agency

Date: 6/20/12

Prepared by: Susan E. Konzelmann, Legal Assistant  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

RECEIVED  
CLERK'S OFFICE  
JUN 25 2012  
STATE OF ILLINOIS  
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. )  
 )  
JOE W. MCDERMOTT, JOE W. )  
MCDERMOTT d/b/a MCDERMOTT SALES )  
& SERVICE and JOSEPH R. MCDERMOTT )  
D/B/A MCDERMOTT TOWING & )  
RECOVERY, )  
 )  
Respondents. )

AC 1261  
(IEPA No. 143-12-AC)

FACILITY: McDermott Sales & Service  
SITE CODE NO.: 0818125002  
COUNTY: Jefferson  
CIVIL PENALTY: \$6,000.00  
DATE OF INSPECTION: May 23, 2012

DATE REMITTED:

SS/FEIN NUMBER:

SIGNATURE:

NOTE

Please enter the date of your remittance, your Social Security number (SS) if an individual or Federal Employer Identification Number (FEIN) if a corporation, and sign this Remittance Form. Be sure your check is enclosed and mail, along with Remittance Form, to Illinois Environmental Protection Agency, Attn.: Fiscal Services, P.O. Box 19276, Springfield, Illinois 62794-9276.