ILLINOIS POLLUTION CONTROL BOARD November 15, 2012

COUNTY OF VERMILION, ILLINOIS,)	
Complainant,))	
v.))	AC 13-9
MARK JOHNSON,))	(Administrative Citation)
Respondent.)	

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

On August 3, 2012, the County of Vermilion, Illinois (County) timely filed an administrative citation against Mark Johnson (respondent). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent's property located at 2053 East Road, Ridge Farm, Vermilion County (site). For the reasons below, the Board finds that respondent violated the Environmental Protection Act (Act) (415 ILCS 5 (2010)) and orders respondent 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) (2010); 35 Ill. Adm. Code 108.

In this case, the County alleges that on June 1, 2012, respondent violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and 21(p)(7) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of general construction or demolition debris at the site. The County asks the Board to impose on respondent the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$3,000. As required, the County served the administrative citation on respondent 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).

Any petition to contest the administrative citation was due by September 3, 2012. On September 10, 2012, the Board received a letter from respondent's daughter, which the Board construed as a petition for review (petition). *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). The petition was timely filed because it was postmarked on or before the filing deadline. On September 20, 2012, the Board accepted the petition as timely, but directed respondent to file an amended petition curing specified deficiencies by October 22, 2012. <u>County of Vermilion v. Mark Johnson</u>, AC 13-9 (Sept. 20, 2012). *See, e.g.*, <u>County of Jackson v. Dan Kimmel</u>, AC 06-21 (Feb. 16, 2006) (accepting as timely filed a petition that failed to include grounds for appeal but requiring an amended petition to cure the deficiency).

Respondent failed to timely file an amended petition as directed. Accordingly, the Board finds that respondent violated Sections 21(p)(1) and 21(p)(7) of the Act.

The civil penalty for violating any provision of Section 21(p) of the Act 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 two violations of Section 21(p) and no indication in the record that either 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.

<u>ORDER</u>

- 1. The Board finds that Mark Johnson (respondent) violated Sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and 21(p)(7) (2010)).
- 2. Respondent must pay a civil penalty of \$3,000 no later than Monday, December 17, 2012, 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, made payable to the County of Vermilion, Illinois. The case number, case name, and respondent's social security number or federal employer identification number must be included on the certified check or money order.
- 3. Respondent must send the certified check and the remittance form to:

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

- 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.

Member J. O'Leary Abstained

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 November 15, 2012 by a vote of 4-0.

In T. Therrian

John T. Therriault, Assistant Clerk Illinois Pollution Control Board

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2	BEFORE THE ILLINOIS POLLUTION CONTROL BOARD		
3	ADMINISTRATIVE CITATION		
4 5	COUNTY OF VERMILION, ILLINOIS,) Case No.: AC: 3-9		
6	Complainant,) LPC# 1838095004		
7	vs.		
8	Mark Johnson,		
9	Respondent		
10	RETURN IN CLERK'S OFFICE		
11 12	JURISDICTION		
13	The Administrative Citation is issued pursuant to the statutory authority vested in		
14	the Illinois Environmental Protection Agency by section 4(e) and 31.1 of the Illinois		
15	Environmental Protection Act ("Act") 415 ILCS 5/4(e), 5/31.1, and delegated to		
16	Vermilion County Pursuant to section 4(r) of the Act, 415 ILCS 5/4(r). PACTS		
17	1. That Respondent, Mark Johnson, is, and was at all times relevant to this		
18	Administrative Citation, the owner of property located in the area of 2053 East		
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20	Longitude -87.547.		
21	2. That said property is in the Humrick area of rural Ridge Farm and vacant land		
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23	3. That on June 1, 2012 Douglas Toole and Adrianna Krzywicka of the Vermilion		
24	County Health Department inspected the above-described property. Douglas		
25	Toole's Affidavit and a copy of his inspection report are attached hereto and		
26	incorporated herein by reference.		
27	VIOLATIONS		
28	1. On the basis of direct observations personally made by Douglas Toole, the		
29	County of Vermilion has determined that on June 1, 2012:		
30	A. The Respondent was allowing the open dumping of waste which resulted in		
31	litter in violation of Section 21(p)(1).		
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ADMINISTRATIVE CITATION - 1

B. The Respondent caused or allowed the open dumping of any waste which results in the deposition of general construction or demolition debris and clean construction and demolition debris in violation of Section 21(p)(7).

CIVIL PENALTY

6 Pursuant to Section 42(b)(4) of the Act, 415 ILCS 5/42(b)(4), Respondent herein is subject to a civil penalty of \$1,500.00 for each violation of each provision under 7 subsection p of Section 21, plus any hearing costs incurred by the Board should the 8 Respondent elect to petition the Illinois Pollution Control Board under the review process described herein below.

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PROCEDURE FOR CONTESTING THIS ADMINISTRATIVE CITATION

You have the right to contest this Administrative Citation under Section 31.1(d) of 13 the Act, 415 ILCS 5/31.1(d). If you elect to contest this Administrative Citation, you 14 must file a petition for Review with the Clerk of the Illinois Pollution Control, at 15 the State of Illinois Center, 100 West Randolph Street, Suite 11-500, Chicago, 16 Illinois 60601. Such Petition for Review must be filed with thirty-five (35) days of 17 18 the date of service of this Administrative Citation, or a default judgment will be issued by the Illinois Pollution Control Board. A copy of the Petition for Review 19 should be filed with the Vermilion County State's Attorney's Office, Courthouse, 2nd 20 21 Floor, 7 N Vermilion Street, Danville, Illinois, 61832.

If you acknowledge the violation herein, the civil penalty specified above shall be 22 due and payable no later than 2-8-2010. If you do not petition the Illinois Pollution 23 24 Control Board for review of the Administrative Citation within thirty-five (35) days of the service hereof and have not paid the civil penalty by the due date stated 25 above, or if you elect to contest this Administrative Citation, any judgment rendered 26 27 shall specify the due date of the statutory civil penalty and any costs assessed against you, 28

When payment is made, your check should be made payable to the County of Vermilion, 29 Illinois and mailed to the Vermilion County Health Department, 200 South College 30 Street, Danville, Illinois, 61832, together with a completed copy of the remittance 31 form attached hereto. 32

ADMINISTRATIVE CITATION - 2

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2	If any civil penalty, by reason of acknowledgment, default or finding after hearing,		
3	is not paid when due, the Vermilion County State's Attorney may initiate proceedings		
4	in the Circuit Court to collect said civil penalty. In addition to the previously		
5	assessed civil penalty and any hearing costs of the Illinois Pollution Control Board,		
6	the State's Attorney's Office will seek to recover its costs of litigation		
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8	Dated this July 23, 2012		
9	Randall J Bungar		
10	Randall J. Brinegar,		
11	State's Attorney for Vermilion County, Illimpis		
12	By the day		
13	William T. Donahue Assistant State's Attorney		
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	ADMINISTRATIVE CITATION - 3		