ILLINOIS POLLUTION CONTROL BOARD October 2, 2014

COUNTY OF VERMILION, ILLINOIS,)	
)	
Complainant,)	
)	
V.)	AC 2015-007
)	(County No. 14-01)
JERRY NUSS,)	(Administrative Citation)
)	
Respondent.)	

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

On August, 14, 2014, the County of Vermilion (Vermilion County) timely filed an administrative citation against Jerry Nuss (respondent). *See* 415 ILCS 5/31.1(c) (2012); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent's property located in the area of 34336 North 1700 East Road, in Rossville, Vermilion County. For the reasons below, the Board finds that respondent violated the Environmental Protection Act (Act) (415 ILCS 5 (2012)) 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 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, Vermilion County alleges that on July 24, 2014, respondent violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and (p)(7)(2012)) by allowing open dumping of waste resulting in litter and deposition of general construction or demolition debris and clean construction and demolition debris. Vermilion County asks the Board to impose the statutory \$1,500 civil penalty per violation on respondent, for a total civil penalty of \$3,000. As required, Vermilion County served respondent with the administrative citation on August 11, 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 September 15, 2014. Respondent failed to timely file a petition. 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) 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) or (4-5)] (2012); 35 III. Adm. Code 108.500(a). Because there are two violations of Section 21(p) and no indication in the record that either of these is 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 Jerry Nuss violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (p)(7)(2012)).
- 2. Jerry Nuss must pay a civil penalty of \$3,000 no later than November 3, 2014, which is the first business day following the 30th day after the date of this order. Jerry Nuss must pay the civil penalty by certified check or money order, made payable to the County of Vermilion. The case number, case name, and Jerry Nuss' social security number or federal employer identification number must be included on the certified check or money order.
- 3. Jerry Nuss must send the certified check or money order and the remittance form to:

County of Vermilion Illinois 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) (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 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) (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 October 2, 2014, by a vote of 4-0.

In T. J man

John T. Therriault, Clerk Illinois Pollution Control Board

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2	BEFORE THE ILLINOIS POLLUTION CONTROL BOARD ADMINISTRATIVE CITATION			
3				
4 5) Case No.: AC: COUNTY OF VERMILION, ILLINOIS,			
6	County File No.: 14-01 Complainant,			
7	vs.			
8	Jerry Nuss,			
9	Respondent			
10				
11	JURISDICTION			
12	2 The Administrative Citation is issued pursuant to the statutory authority vested in the Illinois			
13	Environmental Protection Agency by section 4(e) and 31.1 of the Illinois Environmental Protection Act			
14	4 ("act") 415 ILCS 5/4(e), 5/31.1, and delegated to Vermilion County Pursuant to section 4(r) of the Act,			
15	5 415 ILCS 5/4(r).			
16	FACTS			
17				
18	owner of property located at the area of 34336 North 1700 East Road, in east rural Rossville,			
19	more particularly Latitude 40.373, Longitude			
20				
21	2. That said property is land which is not permitted as a sanitary landfill or dump area.			
22	3. That on 07/24/2014 Douglas Toole of the Vermilion County Health Department inspected the			
23 24	above-described property. Douglas Toole's Affidavit and a copy of his inspection report are attached hereto and incorporated herein by reference.			
25				
26	1. On the basis of direct observations personally made by Douglas Toole, the County of Vermilion			
27	has determined that on 07/24/2014:			
28	A. The Respondent was allowing the open dumping of waste which resulted in litter in violation			
29	of Section 21(p) (1).			
30	B. The Respondent caused or allowed the open dumping of any waste which results in the			
31	deposition of general construction or demolition debris and clean construction and demolition			
32	debris in violation of Section 21(p)(7).			

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CIVIL PENALTY

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 subsection p of Section 21, plus any hearing costs incurred by the Board should the Respondent elect to petition the Illinois Pollution Control Board under the review process described herein below.

PROCEDURE FOR CONTESTING THIS ADMINISTRATIVE CITATION

You have the right to contest this Administrative Citation under Section 31.1(d) of the Act, 415 ILCS 5/31.1(d). If you elect to contest this Administrative Citation, you must file a petition for Review with the Clerk of the Illinois Pollution Control, at the State of Illinois Center, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601. Such Petition for Review must be filed with thirty-five (35) days of 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 should be filed with the Vermilion County State's Attorney's Office, Courthouse, 2nd Floor, 7 N Vermilion Street, Danville, Illinois, 61832. If you acknowledge the violation herein, the civil penalty specified above shall be due and payable no later than September 30, 2014. If you do not petition the Illinois Pollution 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 above, or if you elect to contest this Administrative Citation, any judgment rendered shall specify the due date of the statutory civil penalty and any costs assessed against you. When payment is made, your check should be made payable to the County of Vermilion, Illinois, 61832, together with a completed copy of the remittance form attached hereto.

If any civil penalty, by reason of acknowledgment, default or finding after hearing, is not paid when due, the Vermilion County State's Attorney may initiate proceedings in the Circuit Court to collect said civil penalty. In addition to the previously assessed civil penalty and any hearing costs of the Illinois Pollution Control Board, the State's Attorney's Office will seek to recover its costs of litigation Dated this August 6, 2014

> Randall J. Brinegar State's Attorney for Vermilion County, Illinois

William T. Donahue Assistant State's Attorney