

ILLINOIS POLLUTION CONTROL BOARD
January 21, 2016

COUNTY OF DuPAGE,)
)
Complainant,)
)
v.) AC 16-6
) (Site Code: 0438045020)
THOMAS SCHMEROLD,) (Administrative Citation)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On November 19, 2015, County of DuPage (County) timely filed an administrative citation against Thomas Schmerold (Schmerold). *See* 415 ILCS 5/31.1(c) (2014); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Schmerold’s open dump facility located at 26W080 Roosevelt Road, Wheaton, DuPage County. The property is commonly known to the County as the “Schmerold” site and is designated with Site Code No. 0438045020. For the reasons below, the Board finds that Schmerold violated the Environmental Protection Act (Act) (415 ILCS 5 (2014)) and orders Schmerold 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 by a unit of local government, if the Illinois Environmental Protection Agency has delegated the authority, 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) (2014); 35 Ill. Adm. Code 108.

In this case, the County alleges that on October 15, 2015, Schmerold violated Sections 21(p)(1) and (p)(3) of the Act (415 ILCS 5/21 (p)(1), (p)(3) (2014)) by causing or allowing open dumping that lead to litter and open burning at the facility. The County asks the Board to impose the statutory \$1,500 civil penalty per violation on Schmerold, for a total civil penalty of \$3,000. As required, the County served respondent with the administrative citation on December 8, 2015, which is within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2014); *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) (2014); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by January 12, 2016. Schmerold failed to timely file a petition. Accordingly, the Board finds that respondent violated Sections 21(p)(1) and (p)(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 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) (2014); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Sections 21(p) and no indication in the record that either is Schmerold's 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 Thomas Schmerold (Schmerold) violated Sections 21(p)(1) and 21(p)(3) of the Environmental Protection Act (Act) (415 ILCS 5/21 (p)(1), (p)(3) (2014)).
2. Schmerold must pay a civil penalty of \$3,000 no later than February 22, 2016, which is the first business day following the 30th day after the date of this order. Schmerold must pay the civil penalty by two checks or money orders (50% of total penalty each), one made payable to the County of DuPage, c/o DuPage County Treasurer and the second made payable to Illinois Environmental Protection Trust Fund. The case number, case name, and Schmerold's social security number or federal employer identification number must be included on the checks.
3. Respondent must send checks made payable in equal amounts and the remittance form to:

DuPage County
Office of the State's Attorney, Civil Division
Attn. Lisa Smith
503 N. County Farm Road
Wheaton IL 60187

Fiscal Services Division
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2014)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2014)).
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) (2014); *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 January 21, 2016, by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

County of DuPage,)
Complainant,)
v.) AC 16-6
Thomas Schmerold) DP-15-01
Respondent.)

RECEIVED
CLERK
NOV 19 2015
STATE OF IL
Pollution Control

ADMINISTRATIVE CITATION

Table with 2 columns: Violation and Civil Penalty. Rows include 415 ILCS 5/21(p)(1) for \$1,500.00, 415 ILCS 5/21(p)(7)(i) for \$1,500.00, and a TOTAL of \$3,000.00.

JURISDICTION

This Administrative Citation is issued pursuant to authority vested in the Illinois Environmental Protection Agency by 415 ILCS 5/1 et. seq. (1996), specifically 415 ILCS 5/31.1.

FACTS

1. Complainant, County of DuPage, is a unit of local government to which the Illinois Environmental Protection Agency has delegated authority to issue administrative citations pursuant to Section 4(r) of the Illinois Environmental Protection Act, ("Act"), 415 ILCS 5/4(r) (2007). DuPage County is thus a "delegated unit" and may issue administrative citations under 35 Ill. Adm. Code 108.200.

2. The Respondent, Thomas Schmerold, is the present owner and is in control of the property at 26W080 Roosevelt Road, Wheaton, located in the County of DuPage, State of Illinois.

3. The property is an open dump, operating without an Illinois Environmental Protection Agency Operating Permit, and designated with the Site Code #0438045020. The facility is known to the County as the Schmerold site.

4. The Respondents have occupied, controlled and/or operated the facility at all relevant times hereto.

5. On October 15, 2015, Andi Dierich, Field Inspector for DuPage County as delegated by the Illinois Environmental Protection Agency, inspected the property. A true and correct copy of the inspection report, along with Ms. Dierich's affidavit, are attached hereto and made a part hereof.

6. Based upon direct observations made by Ms. Dierich during the course of her inspection, DuPage County has determined that Respondent violated the Act as follows:

- a. Respondent caused or allowed the open dumping of waste in a manner resulting in litter, in violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1);
- b. Respondent caused or allowed the open dumping of waste in a manner resulting the open burning of waste, in violation of Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3).

Based upon the foregoing facts, under Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5), Respondent is subject to a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each of the violations identified above, for a total civil penalty of Three Thousand Dollars (\$3,000.00).

Notices and Instructions to Respondent

1. **You must pay the civil penalty set forth above unless you contest this Administrative Citation.** The following paragraphs contain payment instructions and more information about contesting this Administrative Citation.
2. To pay the civil penalty (and any other amounts due) send two (2) checks or money orders with the attached Remittance Form, one check in the amount of One Thousand Five Hundred Dollars payable to DuPage County and the second check or money order in the amount of One Thousand Five Hundred Dollars payable to the Illinois Environmental Protection Agency to:

DuPage County
Office of the State's Attorney, Civil Division
Attn. Lisa Smith
503 N. County Farm Rd.
Wheaton, IL 60187

To ensure that you receive timely and proper credit for your payment, complete the attached Remittance Form and include it with your payment.

3. You may contest this Administrative Citation by filing a Petition for Review, including a Notice of Filing, Certificate of Service, and Appearance with the Illinois Pollution Control Board ("Board").
4. **Any Petition for Review must be filed within thirty-five (35) days of the date of service of this Administrative Citation on you. The Board will not review the Administrative Citation if the Petition for Review is not filed within this time.**
5. The Petition for Review must be filed with:

Clerk of the Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

A copy of the Petition for Review must be served on the County of DuPage at the following address:

County of DuPage
Office of the State's Attorney, Civil Division
503 North County Farm Road
Wheaton, IL 60187

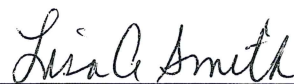
6. The contents of a Petition for Review and the procedures to be followed are governed by the Board's procedural rules. Copies may be obtained from the Clerk of the Board at the address above, by calling the Board at (312) 814-3620, or from the Board's website at:

<http://www.ipcb.state.il.us/rules/procedural/procedural.htm>

7. If you do not contest this Administrative Citation by filing a petition for review with the Board within the allotted time, the Board will enter an order finding that you committed the violations alleged above imposing the statutory civil penalty set forth above. See Section 31.1(d) of the Act, 415 ILCS 5/31.1(d) and 35 Ill. Adm. Code 108.500(a).
8. If you contest this Administrative Citation by filing a timely petition for review with the Board, the Board will hold a hearing. The Board's procedural rules have more information on hearings; see 35 Ill. Adm. Code Parts 101 and 108.
9. If the Board finds after the hearing that you committed a violation as alleged above, you will be assessed the hearing costs incurred by the County of DuPage and the Board. Hearing costs are assessed in addition to the statutory civil penalty for the violations. If the Board finds after the hearing that you did not commit a violation as alleged above, or that the violation resulted from uncontrollable circumstances, you will not be assessed hearing costs and you will not have to pay a civil penalty.
10. If any civil penalty and/or hearing costs are not paid within the time set by the Board in its final order, interest on the amount due will be assessed against you from the date payment is due and including the date that payment is received.
11. If any civil penalty and/or hearing costs are not paid within the time set by the Board in its final order, the Office of the Illinois Attorney General and/or the City of Chicago Department of Law may initiate court proceedings against you to collect the amount due, plus any interest accrued. In that event, you may also be liable for court costs.

DATE: November 17, 2015

County of DuPage
Office of the State's Attorney



Lisa A. Smith
Assistant State's Attorney

REMITTANCE FORM

County of DuPage,)	
)	
Complainant,)	
)	
v.)	AC 16-6
)	DP-15-01
Thomas Schmerold)	
)	
Respondent.)	

FACILITY: Schmerold Site

COUNTY: DuPage

DATE OF INSPECTION: October 15, 2015

SITE CODE: 0438045020

CIVIL PENALTY: \$3,000.00

Date Remitted _____

SS/FEIN # _____

Signature _____

REMITTANCE FORM

County of DuPage,)
)
 Complainant,)
)
 v.) AC 16-6
) DP-15-01
 Thomas Schmerold)
)
 Respondent.)

FACILITY: Schmerold Site

COUNTY: DuPage

DATE OF INSPECTION: October 15, 2015

SITE CODE: 0438045020

CIVIL PENALTY: \$3,000.00

Date Remitted _____

SS/FEIN # _____

Signature _____