

ILLINOIS POLLUTION CONTROL BOARD
June 21, 2007

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 07-50
) (IEPA No. 56-07-AC)
DOUG HENSLEY and ERIC and) (Administrative Citation)
CHARMIN JOSEPH,)
)
Respondent.)

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

On March 23, 2007, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Doug Hensley and Eric Joseph and Charmin Savage f/k/a Charmin Joseph (respondents). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns respondents' facility located at 204 South Trenton, Raritan, Henderson County. The facility is designated with Site Code No. 0710355002. For the reasons below, the Board: (1) grants the Agency's motion to dismiss the administrative citation as to Doug Hensley and Eric Joseph; and (2) finds that Charmin Savage f/k/a Charmin Joseph violated the Environmental Protection Act (Act) (415 ILCS 5 (2006)) and orders Charmin Savage f/k/a Charmin Joseph 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 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 Agency alleges that respondents violated Sections 21(p)(1) and (7) of the Act (415 ILCS 5/21(p)(1), (7) (2006)) by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of general or clean construction or demolition debris. The administrative citation asks the Board to impose a \$1,500 civil penalty on respondents for each of the two alleged violations, for a total civil penalty of \$3,000. According to the administrative citation, respondents are the present owners and current operators of the Henderson County facility.

However, on May 22, 2007, the Agency filed a motion to dismiss this administrative citation as to Doug Hensley and Eric Joseph. In the motion, the Agency states that it failed to serve the administrative citation on Doug Hensley and Eric Joseph within 60 days of the observed violation as required by the Act. *See* 415 ILCS 5/31.1(b) (2006). The Board grants the

Agency's motion and dismisses the administrative citation as to Doug Hensley and Eric Joseph. *See* 35 Ill. Adm. Code 108.402.

As required, the Agency did serve the administrative citation on Charmin Savage f/k/a Charmin Joseph 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 a 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) (2006); 35 Ill. Adm. Code 108.204(b), 108.406. Here, any petition for review was due on June 5, 2007. Charmin Savage f/k/a Charmin Joseph failed to timely file a petition. Accordingly, the Board finds that Charmin Savage f/k/a Charmin Joseph violated Sections 21(p)(1) and (7) of the Act.

The civil penalty for violating any provision of subsection (p) of Section 21 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) (2006); 35 Ill. Adm. Code 108.500(a). Because there are two violations and no indication in the record that these are second or subsequent adjudicated violations, 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 dismisses the administrative citation as to Doug Hensley and Eric Joseph.
2. Charmin Savage f/k/a Charmin Joseph must pay a civil penalty of \$3,000 no later than July 23, 2007, which is the first business day following the 30th day after the date of this order.
3. Charmin Savage f/k/a Charmin Joseph 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 Charmin Savage f/k/a Charmin Joseph's social security numbers must be included on the certified check or money order.
4. Charmin Savage f/k/a Charmin Joseph 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

5. 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)).
6. 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) (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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 21, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board