

ILLINOIS POLLUTION CONTROL BOARD
September 6, 2007

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 06-23
)	(IEPA No. 4-06-AC)
HAROLD GRAVES (Tower Hill/Eilers-)	(Administrative Citation)
Graves),)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On February 2, 2006, complainant, the Illinois Environmental Protection Agency (Agency), timely filed an administrative citation against respondent, Harold Graves (Graves). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns a property allegedly operated by Graves, located approximately three miles south of Illinois 16 and one mile from the Christian County Line in Tower Hill Township, Section 32, Shelby County, designated with Site Code No. 1738220004, and commonly known to the Agency as “Tower Hill/Eilers-Graves.” For the reasons below, the Board grants Graves’ motion to withdraw his petition, finds that Graves violated the Environmental Protection Act (Act) (415 ILCS 5 (2006)), and finds that the statutory civil penalty for the violations is \$4,500.

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 Graves violated Sections 21(p)(1), (4), and (7) of the Act (415 ILCS 5/21(p)(1), (4), (7) (2006)) by causing or allowing the open dumping of waste resulting in litter, the deposition of waste in standing or flowing waters, and the deposition of general or clean construction or demolition debris at the property described above. The Agency asks the Board to impose a \$4,500 civil penalty on Graves for the alleged violations. As required, the Agency served the administrative citation on Graves 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). On March 16, 2006, the Board accepted for hearing Graves’ timely-filed petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2006); 35 Ill. Adm. Code 101.300(b)(2), 108.204(b). The case has not yet been to hearing.

On August 6, 2007, Graves filed a motion to withdraw his petition to contest. *See* 35 Ill. Adm. Code 108.208. The Board grants the motion and dismisses his petition. The administrative citation is therefore “non-contested” (35 Ill. Adm. Code 108.406) and the Board must find that Graves committed the violations alleged and impose the corresponding civil penalty (415 ILCS 31.1(d)(1) (2006); 35 Ill. Adm. Code 108.500(a)). *See IEPA v. Lester Smith*, AC 05-2 (Oct. 6, 2005) (finding violations and imposing statutory civil penalty after respondent’s withdrawal of petition). Accordingly, the Board finds that Graves violated Sections 21(p)(1), (4), and (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 increases to \$3,000 for each second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2006); 35 Ill. Adm. Code 108.500(a)(2). Because there are three violations of Section 21(p) and nothing in this record suggests that these are second or subsequent adjudicated violations for Graves, the total civil penalty is \$4,500. Graves’ motion to withdraw states that he “has paid the fines associated with this Administrative Citation, pursuant to 35 Ill. Admin. Code 500.” Motion at 2. Accordingly, as provided in the order below, Graves is not required to pay the \$4,500 civil penalty if it has already been paid. *See IEPA v. Olen G. Parkhill*, AC 00-16 (Feb. 3, 2000) (after withdrawal of petition by respondent and representations that the penalty had been paid, the Board ordered respondent to pay the civil penalty “unless the penalty has already been paid.”). 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 grants Graves’ motion to withdraw and dismisses his petition to contest the administrative citation.
2. The Board finds that Graves violated Sections 21(p)(1), (4), and (7) of the Act (415 ILCS 5/21(p)(1), (4), (7) (2006)).
3. Unless the civil penalty has already been paid, Graves must pay a civil penalty of \$4,500 no later than October 9, 2007, which is the first business day following the 30th day after the date of this order.
 - a. Graves 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 Graves’ social security number or federal employer identification number must be included on the certified check or money order.
 - b. Graves 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) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
5. Payment of the civil 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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 6, 2007, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board

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

VIOLATIONS

Based upon direct observations made by Dustin Burger during the course of his December 15, 2005 inspection of the above-named facility, the Illinois Environmental Protection Agency has determined that Respondent has violated the Illinois Environmental Protection Act (hereinafter, the "Act") as follows:

- (1) That Respondent 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) (2004).
- (2) That Respondent caused or allowed the open dumping of waste in a manner resulting in the deposition of waste in standing or flowing waters, a violation of Section 21(p)(4) of the Act, 415 ILCS 5/21(p)(4) (2004).
- (3) That Respondent caused or allowed the open dumping of waste in a manner resulting in the deposition of general construction or demolition debris; or clean construction or demolition debris, a violation of Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2004).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2004), 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 of Four Thousand Five Hundred Dollars (\$4,500.00). If Respondent elects not to petition the Illinois Pollution Control Board, the statutory civil penalty

specified above shall be due and payable no later than February 28, 2006, unless otherwise provided by order of the Illinois Pollution Control Board.

If Respondent elects 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 (2004), and if the Illinois Pollution Control Board issues a finding of violation as alleged herein, after an adjudicatory hearing, Respondent 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) (2004), if Respondent fails 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, Respondent's 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, Respondent 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 Respondent 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 Respondent in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING THIS
ADMINISTRATIVE CITATION

Respondent has the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31/1 (2004). If Respondent elects to contest this Administrative Citation, then Respondent 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 Respondent.

Douglas P. Scott
Douglas P. Scott, Director *by wsc*
Illinois Environmental Protection Agency

Date: 1/27/06

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

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STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

v.

HAROLD GRAVES,

Respondent.

AC 06-23

(IEPA No. 4-06-AC)

FACILITY: Tower Hill/Eilers-Graves

SITE CODE NO.: 1738220004

COUNTY: Shelby

CIVIL PENALTY: \$4,500.00

DATE OF INSPECTION: December 15, 2006

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.