

ILLINOIS POLLUTION CONTROL BOARD
February 22, 2018

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 18-7
) (IEPA No. 210-17-AC)
DALE OBERMARK,) (Administrative Citation)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by B.K. Carter):

On December 12, 2017, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Dale Obermark. *See* 415 ILCS 5/31.1(c) (2016); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns property located at 6843 Midway Road in Metropolis, Massac County. The property is commonly known to the Agency as the “Obermark Dale” site and is designated with Site Code No. 1270155037. For the reasons below, the Board finds that Mr. Obermark violated the Environmental Protection Act (Act) (415 ILCS 5 (2016)) and orders him 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) (2016); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on October 18, 2017, Mr. Obermark violated Sections 21(p)(1) and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 55(k)(1) (2016)) by causing or allowing the open dumping of waste in a manner resulting in litter and causing or allowing water to accumulate in used or waste tires. The Agency asks the Board to impose the statutory \$1,500 civil penalty per violation on Mr. Obermark, for a total civil penalty of \$3,000. As required, the Agency served Mr. Obermark with the administrative citation on December 11, 2017, which is within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2016); *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) (2016); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by January 16, 2018. *See* 35 Ill. Adm. Code 101.300(b) (first business day after a legal holiday). Mr. Obermark failed to timely

file a petition. Accordingly, the Board finds that Mr. Obermark violated Sections 21(p)(1) and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 55(k)(1) (2016)).

The civil penalty for violating any provision of Sections 21(p) and 55(k) 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) (2016); 35 Ill. Adm. Code 108.500(a). Because there are two violations, one of Section 21(p)(1) and the other of Section 55(k)(1), 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.

ORDER

1. The Board finds that Mr. Obermark violated Sections 21(p)(1) and 55(k)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1), 55(k)(1) (2016)).
2. Mr. Obermark must pay a civil penalty of \$3,000 no later than March 26, 2018, which is the first business day following the 30th day after the date of this order. Mr. Obermark 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 Mr. Obermark's social security number must be included on the certified check or money order.
3. Mr. Obermark 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) (2016)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2016)).
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) (2016); *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. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board
Illinois Environmental Protection Agency Attn: Michelle M. Ryan 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601
Dale Obermark 6843 Midway Road Metropolis, Illinois 62960	
Richard Kruger Kruger, Henry & Hunter, Attorneys at Law P.O. Box 568 110 West 5th Street Metropolis, Illinois 62960	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 22, 2018, by a vote of 5-0.



Don A. Brown, Clerk
 Illinois Pollution Control Board