

ILLINOIS POLLUTION CONTROL BOARD
November 7, 2013

COUNTY OF VERMILION,)
)
Complainant,)
)
v.) AC 14-17
) (Administrative Citation)
MARIAN AND RUSSELL HERBOLD,)
)
Respondent.)

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

On September 16, 2013, the County of Vermilion (County) timely filed an administrative citation against Marian and Russell Herbold (respondents). *See* 415 ILCS 5/31.1(c) (2012); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' vacant lot located at 614 Poland Road, in Danville, Vermilion County. For the reasons below, the Board finds that respondents violated the Environmental Protection Act (Act) (415 ILCS 5 (2012)) and orders respondents 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, the County alleges that on August 5, 2013, respondents violated Section 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1) and (7) (2012)) by open dumping of waste resulting in litter and the deposition of general construction or demolition debris and clean construction and demolition debris. The County asks the Board to impose the statutory \$1,500 civil penalty per violation on respondents, for a total civil penalty of \$3,000. As required, the County served respondents with the administrative citation on September 7, 2013, 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 October 15, 2013. Respondents failed to timely file a petition. Accordingly, the Board finds that respondents violated Section 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1) and (7) (2012)).

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) (2012); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(p) and no indication in the record that any 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 Marian and Russell Herbold (respondents) violated Section 21(p)(1) and (p)(7) of Environmental Protection Act (415 ILCS 5/21(p)(1) and (7) (2012)).
2. Respondents must pay a civil penalty of \$3,000 no later than December 9, 2013, which is the first business day following the 30th day after the date of this order. Respondent must pay the civil penalty by certified check or money order, made payable to the County of Vermilion, Illinois. The case number, case name, and respondents' social security number or federal employer identification number must be included on the certified check or money order.
3. Respondents must send the certified check or money order and the remittance form to:

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 November 7, 2013, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION**

COUNTY OF VERMILION, ILLINOIS,

Complainant,

vs.

Marian and Russell Herbold,

Respondent

Case No.: AC:

JURISDICTION

The Administrative Citation is issued pursuant to the statutory authority vested in the Illinois Environmental Protection Agency by section 4(e) and 31.1 of the Illinois Environmental Protection Act ("act") 415 ILCS 5/4(e), 5/31.1, and delegated to Vermilion County Pursuant to section 4(r) of the Act, 415 ILCS 5/4(r).

FACTS

1. That Respondents, Marian and Russell Herbold, are, and were at all times relevant to this Administrative Citation, the owner of property located at the area of 614 Poland Road, Danville, more particularly Latitude 40.1850, Longitude -87.6155.
2. That said property is vacant land which is not permitted as a sanitary landfill or dump area.
3. That on 8/05/2013 Douglas Toole of the Vermilion County Health Department inspected the above-described property. Douglas Toole's Affidavit and a copy of his inspection report are attached hereto and incorporated herein by reference.

VIOLATIONS

1. On the basis of direct observations personally made by Douglas Toole, the County of Vermilion has determined that on 8/05/13 :
 - A. The Respondent was allowing the open dumping of waste which resulted in litter in violation of Section 21(p)(1).

1 B. The Respondent caused or allowed the open dumping of any waste
2 which results in the deposition of general construction or demolition
3 debris and clean construction and demolition debris in violation of
4 Section 21(p)(7).

5
6 **CIVIL PENALTY**

7 Pursuant to Section 42(b)(4) of the Act, 415 ILCS 5/42(b)(4), Respondent herein
8 is subject to a civil penalty of \$1,500.00 for each violation of each provision
9 under subsection p of Section 21, plus any hearing costs incurred by the Board
10 should the Respondent elect to petition the Illinois Pollution Control Board
11 under the review process described herein below.

12
13 **PROCEDURE FOR CONTESTING THIS ADMINISTRATIVE CITATION**

14 You have the right to contest this Administrative Citation under Section 31.1(d)
15 of the Act, 415 ILCS 5/31.1(d). If you elect to contest this Administrative
16 Citation, you must file a petition for Review with the Clerk of the Illinois
17 Pollution Control, at the State of Illinois Center, 100 West Randolph Street,
18 Suite 11-500, Chicago, Illinois 60601. Such Petition for Review must be filed
19 with thirty-five (35) days of the date of service of this Administrative Citation, or
20 a default judgment will be issued by the Illinois Pollution Control Board. A copy
21 of the Petition for Review should be filed with the Vermilion County State's
22 Attorney's Office, Courthouse, 2nd Floor, 7 N Vermilion Street, Danville, Illinois,
23 61832.


24 If you acknowledge the violation herein, the civil penalty specified above shall
25 be due and payable no later than 2-8-2010. If you do not petition the Illinois
26 Pollution Control Board for review of the Administrative Citation within thirty-
27 five (35) days of the service hereof and have not paid the civil penalty by the
28 due date stated above, or if you elect to contest this Administrative Citation,
29 any judgment rendered shall specify the due date of the statutory civil penalty
30 and any costs assessed against you.

31 When payment is made, your check should be made payable to the County of
32 Vermilion, Illinois and mailed to the Vermilion County Health Department, 200

1 South College Street, Danville, Illinois, 61832, together with a completed copy
2 of the remittance form attached hereto.

3
4 If any civil penalty, by reason of acknowledgment, default or finding after
5 hearing, is not paid when due, the Vermilion County State's Attorney may
6 initiate proceedings in the Circuit Court to collect said civil penalty. In addition
7 to the previously assessed civil penalty and any hearing costs of the Illinois
8 Pollution Control Board, the State's Attorney's Office will seek to recover its
9 costs of litigation

10 Dated this September 4, 2013

11
12 By: 
13 William T. Donahue
14 Assistant State's Attorney
15 Vermilion County, Illinois
16 Courthouse Annex 3rd floor
17 6 N. Vermilion Street
18 Danville, IL. 61832