

ILLINOIS POLLUTION CONTROL BOARD
January 9, 2014

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

ORDER OF THE BOARD (by D. Glosser):

On December 9, 2013, Marian and Russell Herbold (respondents) filed a motion (Mot.) seeking to vacate the Board’s November 7, 2013 opinion and order. The Board found respondents violated the Environmental Protection Act (Act) (415 ILCS 5 (2012)) and ordered respondents to pay \$3,000 in civil penalties. The County of Vermilion (County) has not responded to the motion.

BACKGROUND

On September 16, 2013, the County timely filed an administrative citation against 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.

The County alleged 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 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. Any petition for review was due by October 15, 2013.

As the Board did not receive a petition for review, the Board entered an order on November 7, 2013 finding that respondents violated Section 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1) and (7) (2012)). The Board ordered the respondent to pay a total civil penalty of \$3,000.

MOTION

Respondents ask that the Board vacate its November 7, 2013 order arguing that respondents filed “an Answer to the Administrative Citation on November 11, 2013” after informing the County that an answer would be forthcoming. Mot. at 1. Respondents indicate that the County did not object. *Id.* Respondents argue that the County would not be prejudiced if the Board’s order is vacated; however, respondents would be denied justice and face a great hardship.

DISCUSSION

Section 31.1(d)(1) of the Act addresses administrative citations and provides in its entirety that, “[i]f the person named in the administrative citation fails to petition the Board for review within 35 days from the date of service, the Board shall adopt a final order, which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) or (b)(4-5) of Section 42.” 415 ILCS 5/31.1(d)(1) (2012); *see* 35 Ill. Adm. Code 108.204(b), 108.406. “[N]either the Act nor the Board’s regulations provide any exception to the requirement that the respondent must file a petition for review within 35 days of service.” County of Macon v. Tim Walker, AC 07-21, slip op. at 4 (May 3, 2007) (upholding dismissal of untimely petition upon reconsideration), citing 415 ILCS 5/31.1(d)(1) (2004), 35 Ill. Adm. Code 108.204(b). If the respondents fail to timely file within the statutory 35-day period, the Board lacks jurisdiction to hear the petition. *See* IEPA v. Stanley Mouser, AC 09-45 (July 23, 2009), *see also*, IEPA v. Jack Busby, AC 01-6, slip op. at 1 (Dec. 7, 2000) (“Section 31.1(d)(1) neither grants the Board nor the Agency the authority to waive the 35-day jurisdictional deadline”); County of Macon v. Tim Walker, AC 07- 21 slip op. at 1-2 (May 3, 2007) (upholding dismissal of untimely petition upon reconsideration).

The Busby case is similar to the circumstances in this case. In Busby, the respondent allegedly attempted to timely file the petition, but sent the petition to the wrong address. Busby, AC 06, slip op at 1 (Dec. 7, 2000). The Illinois Environmental Protection Agency (IEPA), the petitioner, did not object to the Board vacating the default order against respondent. However, the Board stated:

Section 31.1(d)(1) of the Act specifically provides that if the person named in an administrative citation fails to petition the Board for review within 35 days from the date of service the Board shall issue an order finding violation and assessing a penalty. Section 31.1(d)(1) neither grants the Board nor the Agency the authority to waive the 35-day jurisdictional deadline. *See* 415 ILCS 5/31.1(d)(1) (1998). The Board can not expand its authority beyond that which the legislature expressly granted to it. *See* Landfill, Inc. v. Pollution Control Board, 74 Ill. 2d 541, 557-58 (1978). According to the long-standing principal of administrative review law, the 35-day filing period for a petition for review is jurisdictional, and the failure to file a timely petition deprives the Board of subject matter jurisdiction. *See e.g.* Siciliano v. Illinois Racing Board, 264 Ill. App. 3d 1085, 637 N.E.3d 612 (1st Dist. 1994).

The statutory language is clear and unambiguous. The Board must enter an order finding violations if a timely petition for review is not filed. In this case, the Board did not receive a petition for review within 35-days of the date the administrative citation was served. Therefore, the Board denies the motion to vacate and affirms its November 7, 2013 opinion and order. The Board repeats the order here, as the November 7, 2013 order included a due date for payment of the penalty which has not passed, the Board's order below adjusts the due date.

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 February 10, 2014, 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 January 9, 2014, 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