

ILLINOIS POLLUTION CONTROL BOARD
October 17, 2013

COUNTY OF JACKSON,)
)
 Complainant,)
)
 v.) AC 14-18
) (Administrative Citation)
 JOHN KENNETH LEWIS,)
)
 Respondent.)

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

On September 16, 2013, the County of Jackson (County) timely filed an administrative citation against John Kenneth Lewis (respondent). *See* 415 ILCS 5/31.1(c) (2012); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns litter on property owned by the State of Illinois located along Lower Cobden Road, southeast of Makanda, Jackson County. The inspector was responding to information that respondent was the person responsible for deposition of the litter, waste and debris. In addition on September 18, 2013, the County filed a motion to supplement the administrative citation. The supplement is the affidavit by the inspector. No response to the motion was filed and any objection to granting the motion is waived. *See* 35 Ill. Adm. Code 101.500(d). For the reasons below, the Board finds that respondent violated the Environmental Protection Act (Act) (415 ILCS 5 (2012)) and orders respondent to pay \$4,500 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 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 8, 2013, respondent violated Sections 21(p)(1), (p)(4), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(4), and (p)(7) (2012)) by open dumping resulting in litter, deposition of waste in standing or flowing waters, and deposition of general or clean construction or demolition debris. The County asks the Board to impose the statutory \$1,500 civil penalty per violation on respondent, for a total civil penalty of \$4,500. As required, the County served respondent with the administrative citation on September 6, 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 11, 2013. Respondent failed to timely file a petition. Accordingly, the Board finds that respondent violated Sections 21(p)(1), (p)(4), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(4), and (p)(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 three violation(s) of Section 21(p) and none of them are second or subsequent adjudicated violations, the total civil penalty is \$4,500. 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 John Kenneth Lewis (respondent) violated Sections 21(p)(1), (p)(4), and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(4), and (p)(7) (2012).
2. Respondent must pay a total civil penalty of \$4,500 no later than November 18, 2013, which is the first business day following the 30th day after the date of this order. Respondent must pay a civil penalty of \$2,250 by certified check or money order, made payable to the County of Jackson and a civil penalty of \$2,250 made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and respondent's social security number or federal employer identification number must be included on the certified check or money order.
3. Respondent must send the certified check or money order and the remittance form payable to the County of Jackson to:

County of Jackson
c/o Jackson County Treasurer
Jackson County Courthouse
Murphysboro, IL 62966

Respondent must send the certified check or money order and the remittance form payable to the Illinois Environmental Protection Trust Fund 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) (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 October 17, 2013, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board

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

RECEIVED
CLERK'S OFFICE
SEP 16 2013
STATE OF ILLINOIS
Pollution Control Board

COUNTY OF JACKSON,)
)
 Complainant,)
)
 v.)
)
 JOHN KENNETH LEWIS,)
)
 Respondent.)

AC14 - 18
Site Code: 077 809 5057

JURISDICTION

This Administrative Citation is issued pursuant to authority vested in the Illinois Environmental Protection Agency by 415 ILCS 5/1 *et. seq.*, specifically 415 ILCS 5/31.1.

FACTS

1. The Respondent, John Kenneth Lewis, is a resident of Wabash County, Illinois.
2. On August 8, 2013, Don Terry, Environmental Compliance Inspector, employed by the Jackson County Health Department, inspected a small intermittent creek bed along Old Lower Cobden Road (approximately one (1) mile south-southeast of the Village of Makanda) located in rural Makanda Township, Jackson County, Illinois where litter had been deposited. A copy of his report and affidavit is attached hereto and made a part hereto.
3. The site in question is owned by the State of Illinois.
4. Mr. Terry was responding to information identifying the Respondent as the person responsible for deposition of the litter, waste and debris.

VIOLATIONS

On the basis of his direct observation on August 8, 2013, he determined that the Respondent has caused or allowed open dumping; and resulted in the following violation:

1. The Respondent has caused or allowed litter in violation of 415 ILCS 5/21(p)(1); and
2. The Respondent has caused or allowed the deposition of waste in standing or flowing waters in violation of 415 ILCS 5/21(p)(4); and
3. The Respondent has caused or allowed the deposition of general or clean construction or demolition debris in violation of 415 ILCS 21(p)(7).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5), 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 November 15, 2013, 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, 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 Forty Five Hundred Dollars (\$4,500.00) statutory civil penalty for each violation.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1), if Respondent fails to petition or elect 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, checks shall be made payable in equal amounts (50% of total penalty each) to:

- (1) County of Jackson, c/o Jackson County Treasurer, Jackson County Courthouse, Murphysboro, Illinois 62966; and
- (2) 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.

Respondent shall complete and return the enclosed Remittance Forms with payments 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 Complainant may either initiate proceedings against Respondent in Circuit Court or other debt collection actions to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING ADMINISTRATIVE CITATION

You have the right to contest this Citation, pursuant to 415 ILCS 5/31.1. If you elect to contest this Citation, you must file a Petition For Review with the Clerk of the Illinois Pollution Control Board. A copy of the Petition For Review shall also be filed with Daniel Brenner, Assistant State's Attorney, Jackson County Courthouse, Third Floor, Murphysboro, Il 62966.

YOUR PETITION FOR REVIEW MUST BE FILED WITHIN 35 DAYS OF THE DATE OF SERVICE OF THE PRESENT CITATION ON YOU. YOUR PETITION MUST STATE THE REASON(S) YOU BELIEVE THE PRESENT MATTER SHOULD NOT BE ISSUED. IF YOU FAIL TO FILE YOUR PETITION AND STATE THE REASONS THE PRESENT MATTER SHOULD NOT BE ISSUED, A DEFAULT ORDER AGAINST YOU WILL BE ENTERED BY THE POLLUTION CONTROL BOARD.

Your original Petition must be filed with the Clerk of the Board at:

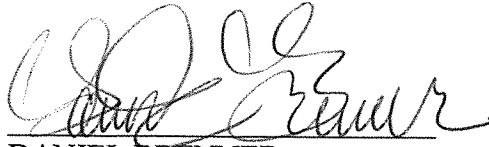
Clerk
Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

A copy must also be sent to:

Office of the State's Attorney
Daniel Brenner
Assistant State's Attorney
Jackson County Courthouse, 3rd Floor
Murphysboro, Il 62966

DATED: Sept. 4, 2013

MICHAEL C. CARR
Jackson County State's Attorney

A handwritten signature in black ink, appearing to read "Daniel Brenner", written over a horizontal line.

DANIEL BRENNER
Assistant State's Attorney
Jackson County, Illinois

REMITTANCE FORM TO COUNTY OF JACKSON

RECEIVED
CLERK'S OFFICE
SEP 16 2013
STATE OF ILLINOIS
Pollution Control Board

COUNTY OF JACKSON,)
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 Complainant,)
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 v.)
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 JOHN KENNETH LEWIS,)
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 Respondent.)

AC14 - 18
Site Code: 077 809 5057

FACILITY: Makanda/IDNR
COUNTY: JACKSON
DATE OF INSPECTION: August 8, 2013
SITE CODE: 077 809 5057

Date Remitted: _____, 2013

SS/FEIN # _____

Signature _____

NOTE

Please include the information on the blank lines. Mail this form with your check to:

Shirley Dillinger Booker
Jackson County Treasurer
Jackson County Courthouse
Murphysboro, Illinois, 62966

REMITTANCE FORM TO ILLINOIS EPA

COUNTY OF JACKSON,)
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SEP 16 2013
STATE OF ILLINOIS
Pollution Control Board

FACILITY: Makanda/IDNR
COUNTY: JACKSON
DATE OF INSPECTION: August 8, 2013
SITE CODE: 077 809 5057

Date Remitted: _____, 2013

SS/FEIN # _____

Signature _____

NOTE

Please enter the date of your remittance, social security number, if an individual, or Federal Employer Identification Number (FEIN) if a corporation, and sign the remittance form. Be sure the appropriate check is enclosed and mail, along with this remittance form, to Illinois Environmental Protection Agency, Attn: Fiscal Services, P.O. Box 19276, Springfield, Illinois 62794-9276.