

ILLINOIS POLLUTION CONTROL BOARD
March 19, 2015

COUNTY OF JACKSON,)
)
Complainant,)
)
v.) AC 15-20
) (Administrative Citation)
CHRISTOPHER WILL,)
)
Respondent.)

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

On February 26, 2015, Christopher Will (respondent) filed a letter, which the Board construes as a motion (Mot.) asking the Board to reconsider the Board’s December 18, 2014 opinion and order finding that respondent violated the Environmental Protection Act (Act) (415 ILCS 5 (2012)) and ordering respondent to pay \$10,500 in civil penalties. As explained below, the Board denies the motion to reconsider.

The Board briefly summarizes its December 18, 2014 opinion and order and then summarizes the respondent’s arguments. The Board will then discuss its conclusion.

BOARD OPINION AND ORDER OF DECEMBER 18, 2014

On October 31, 2014, the County of Jackson (County) timely filed an administrative citation against respondent. *See* 415 ILCS 5/31.1(c) (2012); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent’s facility located at 6168 Hickory Ridge Road, Pomona, Jackson County. The property is commonly known to the Agency as the “Pomona/Christopher Will” site and is designated with Site Code No. 077 812 5014.

In this case, the County alleged that on September 11, 2014, respondent violated Sections 21(p)(1), 21(p)(3), 21(p)(5), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), 21(p)(5), and (p)(7) (2012)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, proliferation of disease vectors, and deposition of general or clean construction debris. The County asked the Board to impose the statutory \$1,500 civil penalty per violation for the violations of Section 21(p)(5) and \$3,000 per violation for the other three violations on respondent, for a total civil penalty of \$10,500. As required, the County served respondent with the administrative citation on October 24, 2014, 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 November 28, 2014. Respondent failed to timely file a petition.

Accordingly, the Board found that respondent violated Section 21(p)(1), 21(p)(3), 21(p)(5), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), 21(p)(5), and (p)(7) (2012)) and ordered respondent to pay a total civil penalty of \$10,500 no later than January 20, 2015, which is the first business day following the 30th day of the order. The order also directed the respondent to pay the civil penalty by certified check with \$5,250 to County of Jackson and \$5,250 to the Illinois Environmental Protection Agency.

MOTION TO RECONSIDER

Respondent filed a three page letter addressed “To Whom It May Concern,” received by the Board on February 26, 2015. The filing was not served on the County and is dated “2-23-15”. Respondent argues that he does not see a cause of action, after spending time reviewing the photographs and letters. Mot. at 2. Respondent asserts that he is very busy with work and has been involved with various building and construction projects in his community. *Id.* Respondent explains that his girlfriend broke her leg on December 16, 2014, and it took six weeks for her to have surgery in St. Louis. *Id.* Respondent asserts that he has cleaned up some of the areas of his property, but requests additional time to clean up the rest. *Id.* at 3.

As to photograph 1¹, respondent argues that due to rain the night before, the tire on his property was filled with water and had “rotted [his] ditch in front of house”. *Id.* at 1. As to photograph 4, respondent explains that materials stocked on his property are used to build roof structures over scrap bins. *Id.* As to photographs 6 and 7, respondent explains he did not clean up the spot because he “missed it in the weeds”, but it has now been disposed of. *Id.* As to photograph 8, respondent asserts that he has now cleaned up the bucket. *Id.* As to photograph 9, respondent asserts that the tire on his property is thirty-three years old, which is longer than he has had his property. *Id.* As to photograph 10, respondent asserts he will have it cleaned up. *Id.* As to photograph 11, respondent explains that it is a camp fire next to a campsite where his friend has stayed. *Id.* at 2.

DISCUSSION

The Board’s rules require a motion for reconsideration be filed within 35 days of the date of service of its final order. On December 18, 2014, the Board found that respondent violated Section 21(p)(1), 21(p)(3), 21(p)(5), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), 21(p)(5), (p)(7) (2012)) and ordered respondent to pay a total civil penalty of \$10,500. Pursuant to the Board’s procedural rules any motion for reconsideration of a final Board order must be filed within 35 days after the receipt of the order. 35 Ill. Adm. Code 101.520. While the certified mail receipt of the Board’s final order indicates that the order was “unclaimed”, the Board received that receipt on February 9, 2015. Therefore, the Board construes the letter as a motion to reconsider, that was timely filed.

¹ The February 26, 2015 letter refers to the numbered photographs included in the County’s administrative citation.

The Board has reviewed respondent's arguments in his motion to reconsider. However, the Board is unconvinced that it should reconsider the December 18, 2014 opinion and order. The Board notes that the original administrative citation was hand delivered to respondent on October 24, 2014. The administrative citation includes specific directions on how to appeal the administrative citation. 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. If a petition is filed after the 35 days, the Board lacks jurisdiction to hear the petition. *See County of Jackson v. Rocky Lee Morse*, AC 6-14 (Jan. 5, 2006). Thus, the Board cannot consider Mr. Will's letter as a petition for review.

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902. In *Citizens Against Regional Landfill v. County Board of Whiteside*, PCB 93-156 (Mar. 11, 1993), the Board observed that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." *Korogluyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992).

While the letter filed with the Board may have been a proper petition for review, the receipt of the letter, well beyond the appeal period, deprives the Board of jurisdiction. Further, the Board finds that respondents provided no new evidence or a change in the law that would indicate the Board's December 18, 2014 decision was in error. Therefore, the motion to reconsider is denied.

However, to the extent that the Board's December 18, 2014 decision included deadlines for payment of the civil penalty, the Board will reissue the order with new deadlines for payment of penalties.

ORDER

1. The Board finds that Christopher Will (respondent) violated Section 21(p)(1), 21(p)(3), 21(p)(5), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), 21(p)(5), (p)(7) (2012)).
2. Respondent must pay a total civil penalty of \$10,500 no later than April 20, 2015, which is the first business day following the 30th day after the date of this order. Respondent must pay the civil penalty by certified checks with \$5,250 to: County of Jackson and \$5,250 to the Illinois Environmental Protection Agency. The case number, case name, and respondent's social security numbers or federal employer identification numbers must be included on the certified checks.
3. Respondent must send the certified checks and the remittance forms to:

Shirley Dillinger Booker
Jackson County Treasurer
Jackson County Courthouse
Murphysboro, Illinois 62274

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 violation continues.

IT IS SO ORDERED.

Board Member G.M. Keenan voted present.

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 order on March 19, 2015, 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

OCT 8 1 2014

STATE OF ILLINOIS
Pollution Control Board

COUNTY OF JACKSON,)
)
 Complainant,)
)
v.)
)
CHRISTOPHER WILL,)
)
)
 Respondent.)

AC 15 - 20
Site Code: 077 812 5014

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, Christopher Will, is the present owner, occupant and in control and possession of a facility located in the County of Jackson, State of Illinois.
2. The facility is an open dump, operating without an Illinois Environmental Protection Agency Operating Permit, and designated with the Site Code # 077 812 5014. The facility is known to the agency as the Pomona/Christopher Will site.
3. The Respondent has owned, occupied, controlled and/or operated the facility at all material times hereto.
4. On September 11, 2014, Don Terry, Field Inspector, Jackson County Health Department, and Phillip Pierce-Savoie, Environmental Protection Specialist, Illinois Environmental Protection Agency, inspected the facility. A true and correct copy of the inspection report, along with Mr. Terry's affidavit, are attached and incorporated herein by reference as Exhibit A.

5. On July 25, 2013 this Board adopted its final opinion and order in Docket No. AC 13-31 in a case involving this Respondent and this site.

6. In Docket No. AC 13-31 the Respondent was found to have violated Sections 21(p)(1), (p)(2), (p)(3) and (p)(7).

VIOLATIONS

On the basis of Field Inspector Don Terry's direct observation he has determined that the Respondent has caused or allowed open dumping at the above described facility in a manner that resulted in the following violations:

That on September 11, 2014, an inspection of the facility disclosed the following:

1. The Respondent has caused or allowed litter at the facility in violation of 415 ILCS 5/21(p)(1).

2. The Respondent has caused or allowed open burning at the facility in violation of 415 ILCS 5/21(p)(3).

3. The Respondent has caused or allowed the proliferation of disease vectors at the facility in violation of 415 ILCS 5/21(p)(5).

4. The Respondent has caused or allowed the deposition of general or clean construction or demolition debris at the facility in violation of 415 ILCS 5/21(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 the Section 5/21(p)(5) violation; and Three Thousand Dollars (\$3,000.00) each for the other three violations identified above (being second, subsequent violations), for a total of TEN THOUSAND FIVE HUNDERD DOLLARS (\$10,500.00). If the Respondent elects not to petition the Illinois Pollution Control

Board, the statutory civil penalty specified above shall be due and payable no later than December 15, 2014, unless otherwise provided by order of the Illinois Pollution Control Board.

If the 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. The hearing costs shall be assessed in addition to the statutory civil penalties for each violation.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1), if the 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 penalties 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 the 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 MATER 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:

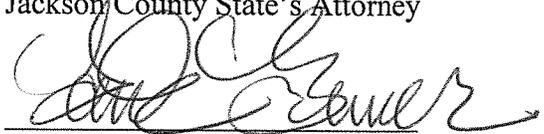
Clerk
Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

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: Oct. 7, 2014.

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

OCT 31 2014

STATE OF ILLINOIS
Pollution Control Board

COUNTY OF JACKSON,)
)
Complainant,)
)
v.)
)
CHRISTOPHER WILL,)
)
Respondent.)

AC15 - 20
Site Code: 077 812 5014

FACILITY: Pomona/Christopher Will Site

COUNTY: JACKSON

DATE OF INSPECTION: September 11, 2014

SITE CODE: 077 812 5014

Date Remitted: _____, 2014

SS or FEIN # _____

Signature _____

NOTE

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

Jackson County Treasurer
Jackson County Courthouse
Murphysboro, Illinois, 62966

REMITTANCE FORM TO ILLINOIS EPA

RECEIVED
CLERK'S OFFICE

OCT 31 2014

STATE OF ILLINOIS
Pollution Control Board

COUNTY OF JACKSON,)
)
 Complainant,)
)
 v.)
)
 CHRISTOPHER WILL,)
)
 Respondents.)

AC15 - 20
Site Code: 077 812 5014

FACILITY: Pomona/Christopher Will Site

COUNTY: JACKSON

DATE OF INSPECTION: September 11, 2014

SITE CODE: 077 812 5014

Date Remitted: _____, 2014

SS or 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.