

ILLINOIS POLLUTION CONTROL BOARD

November 21, 2013

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 12-20
	)	(IEPA No. 386-11-AC)
SHELBY AND SONS, INC.,	)	(Administrative Citation)
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

For the reasons below, the Board accepts the proposed settlement and dismissal of this administrative citation enforcement action. The Illinois Environmental Protection Agency (Agency) timely filed an administrative citation on December 21, 2011 against Shelby and Sons, Inc., (respondent). The Agency alleged that on October 25, 2011, respondent violated Sections 21(p)(1), (4),(7), and Section 55(k)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (4), (7) and 55(k)(1) (2012)) by allowing open dumping in a manner resulting in litter, deposition of waste in standing or flowing water, deposition of construction or demolition debris, and used tires containing water. The violations allegedly took place at respondent’s facility located one mile north of West Frankfort on the east and west sides of Route 37 in Franklin County. The property is commonly known to the Agency as the “West Frankfort/Shelby and Sons, Inc.” site and is designated with Site Code No. 0550705030.

Respondents timely filed a petition to contest the administrative citation, which the Board accepted on February 2, 2012. On November 8, 2013, the parties filed a “stipulation of settlement and dismissal of respondent’s petition for administrative review” (Stipulation). Under its terms, respondent admits that it violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2012)) by causing or allowing open dumping resulting in litter and agrees to pay the statutory civil penalty of \$1,500 for this violation. Stipulation at 2. Respondent also agrees to the dismissal of its petition contesting the administrative citation. *Id.* at 3. The stipulation further states that the waste that was the subject of the administrative citation has been removed and properly disposed. *Id.* In addition, the Agency agrees not to refer the violations that are the subject of the administrative citation to the Office of the Illinois Attorney General or any other prosecuting authority to initiate a civil enforcement action. *Id.*

The Board accepts the stipulation and proposal for settlement. Under Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (2012)), the Board therefore finds that respondent violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2012)). Section 42(b)(4-5) of the Act (415 ILCS 5/42(b) (4-5) (2012)) establishes a civil penalty of \$1500 for this violation. The Board accordingly assesses a civil penalty of \$1,500. To effectuate the parties’ intent that respondents

pay a total civil penalty of \$1,500, the Board dismisses the remaining violations of Sections 21(p)(4), (7) and 55(k)(1) of the Act (415 ILCS 5/21(p)(4), (7) and 55(k)(1) (2012)).

This opinion constitutes the Board's findings of fact and conclusions of law.

### **ORDER**

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. The Board finds that respondent violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2012)).
3. Respondent must pay a civil penalty of \$1,500 no later than December 23, 2013 which is the first business day after 30th day following the date of this order. Respondent 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 respondent's social security number or federal employer identification number must be included on the certified check or money order.
4. Respondent must send the certified check or money order to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276
5. 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)).
6. The Board dismisses the alleged violations of Section 21 and Section 55 of the Environmental Protection Act (415 ILCS 5/21, 55 (2012)) and respondent's petition to contest the administrative citation.

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, Don A. Brown, Acting Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 21, 2013, by a vote of 4-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive, flowing style.

Don A. Brown, Acting Clerk  
Illinois Pollution Control Board