

ILLINOIS POLLUTION CONTROL BOARD
July 25, 2013

COUNTY OF JACKSON,)
)
Complainant,)
)
v.) AC 13-39
) (Administrative Citation)
ELMER and GREG ROWE,)
)
Respondent.)

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

On March 8, 2013, the County of Jackson (County) timely filed an administrative citation against Elmer and Greg Rowe (Rowe's). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Rowe's facility located in Jackson County. The property is commonly known to the Illinois Environmental Protection Agency (Agency) as the "Pomona/Elmer Rowe" site and is designated with Site Code No. 0778125011. For the reasons below, the Board finds that the Rowe's violated the Environmental Protection Act (Act) (415 ILCS 5 (2010)) and orders the Rowe's to pay \$6,000 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 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) (2010); 35 Ill. Adm. Code 108.

In this case, the County alleges that on January 25, 2013, respondents violated Section 21(p)(1), 21(p)(2), 21(p)(3) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(2), (p)(3) and (p)(7) (2010)) by causing or allowing open dumping resulting in litter, scavenging, open burning, and the deposition of general or clean construction or demolition debris at the site. The County asks the Board to impose on respondents the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$6,000. As required, the County served the administrative citation on respondents within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2010); *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) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by April 4, 2013. On April 5, 2013 the Board received a letter from Elmer Rowe, which the Board construed as a petition for review. The petition was timely filed because it was postmarked on or before the filing date. *See* 415 ILCS 5/31.1(d) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b). In an order dated April 18,

2013, however, the Board found that the April 5, 2013 petition did not satisfy the content requirements of the Board's procedural rules because it failed to include necessary information. *See* 35 Ill. Adm. Code 101.302(g), 101.504.

On May 20, 2013, the Rowes filed an amended petition (Am. Pet.). The Rowes' amended petition contained the signatures of both Elmer Rowe and Greg Rowe and the relevant proceeding caption as required by 35 Ill. Adm. Code 101.302(g). Am. Pet. At 1-2. In addition, the Rowe's included a concise statement of the position or relief sought as required by Board regulations. *See* 35 Ill. Adm. Code 101.504; Am. Pet. at 2. The Rowe's denied that an open dumping site has ever been operated at the Pomona/Elmer Rowe Site and requested the dismissal of all violations and fines. *See* 35 Ill. Adm. Code 108.206. Additionally, the Rowe's stated that Greg Rowe did not own or operate the Pomona/Elmer Rowe Site. Am. Pet. at 1.

The Board accepted the amended petition. However, the Rowe's did not file proof of service on the County as directed in a Board order dated June 6, 2013, or face dismissal of the amended petition and a default order. County of Jackson v. Elmer and Greg Rowe, AC 13-39, slip op. at 2 (June 6, 2013). Because the Rowe's did not file the appropriate proof of service, the Board dismisses the Rowe's petition.

The civil penalty for violating any provision of Section 21(p), or 55(k) 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)(2010); 35 Ill. Adm. Code 108.500(a). Because there are four violation(s) of Section 21(p) and no indication in the record that any of these are second or subsequent adjudicated violations, the total civil penalty is \$6,000. 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 the Rowe's violated Sections 21(p)(1), (p)(2), (p)(3) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(2), (p)(3), (p)(7) (2010)).
2. The Rowes must pay a civil penalty of \$6,000 no later than August 26, 2013, which is the first business day following the 30th day after the date of this order. The Rowe's must pay the civil penalty by certified check or money order, made payable to Jackson County. The case number, case name, and the Rowe's social security number must be included on the certified check or money order.

3. The Rowes must send the certified check or money order and the remittance form to:

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

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
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) (2010); *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 Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 25, 2013, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board