

ILLINOIS POLLUTION CONTROL BOARD

June 21, 2018

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| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | AC 18-13 |
| |) | (IEPA No. 56-18-AC) |
| THE ESTATE OF CRAIG S. WALKER and |) | (Administrative Citation) |
| WALKER & SONS ENTERPRISES, LTD., |) | |
| |) | |
| Respondent. |) | |

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

On April 30, 2018, the Illinois Environmental Protection Agency (Agency) filed an administrative citation against the Estate of Craig S. Walker (Walker Estate) and Walker & Sons Enterprises, Ltd. (Walker & Sons Ent.). *See* 415 ILCS 5/31.1 (2016); 35 Ill. Adm. Code 108. The administrative citation concerns a property located at 421 East Monetta Avenue in Peoria Heights, Peoria County. The property is commonly known to the Agency as the “Walker & Sons” site and is designated with Site Code No. 1430703003. On May 17, 2018, the Agency filed a motion to dismiss the administrative citation against the Walker Estate.

The Board first addresses the motion to dismiss, then discusses the remaining administrative citation against Walker & Sons Ent. For the reasons explained below, the Board dismisses the administrative citation against the Walker Estate, finds that Walker & Sons Ent. violated the Environmental Protection Act (Act) (415 ILCS 5 (2016)), and orders Walker & Sons Ent. to pay \$3,000 in civil penalties.

MOTION TO DISMISS

The Agency states in its motion that it attempted to serve the Walker Estate on April 30, 2018. The Agency, however, cannot demonstrate that the citation was served on the Walker Estate within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2016); *see also* 35 Ill. Adm. Code 108.200(b)(1). The Board therefore grants the Agency’s motion to dismiss the administrative citation against the Walker Estate. *See* 35 Ill. Adm. Code 108.402.

ADMINISTRATIVE CITATION

An administrative citation is an expedited enforcement action under the Act that seeks civil penalties, set in statute, for specific alleged violations. Administrative citations are brought before the Board, and may be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government. *See* 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), and 55(k) (2016); 35 Ill. Adm. Code 108.

In this case, the remaining Agency administrative citation alleges that on March 6, 2018, Walker & Sons Ent. violated Sections 21(p)(1) and 55(k)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and 55(k)(1) (2016)) by causing or allowing the open dumping of waste and accumulation of water in used or waste tires. The Agency asks the Board to impose the statutory \$1,500 civil penalty per violation on Walker & Sons Ent., for a total civil penalty of \$3,000. As required, the Agency served Walker & Sons Ent. with the administrative citation on May 2, 2018, which is within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2016); *see also* 35 Ill. Adm. Code 108.200(b)(1). In addition, as required, the Agency filed the administrative citation with the Board “no later than 10 days after the date of service.” 415 ILCS 5/31.1(c) (2016); *see also* 35 Ill. Adm. Code 108.200(b)(3).

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) (2016); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by June 6, 2018. Walker & Sons Ent. failed to timely file a petition. The Board therefore finds that Walker & Sons Ent. violated Sections 21(p)(1) and 55(k)(1) of the Act.

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) (2016); 35 Ill. Adm. Code 108.500(a). Because there are two violations and there is no indication in the record that either violation is a second or subsequent adjudicated violation, the total civil penalty is \$3,000. 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 Estate of Craig S. Walker was not served within the statutory period and therefore grants the Agency’s motion to dismiss and dismisses the administrative citation filed against the Estate of Craig E. Walker.
2. The Board finds that Walker & Sons Enterprises, Ltd. violated Sections 22(p)(1) and 55(k)(1) of the Environmental Protection Act (415 ILCS 5/22(p)(1) and 55(k)(1) (2016)).
3. Walker & Sons Enterprises Ltd. must pay a civil penalty of \$3,000 no later than July 23, 2018, which is the first business day following the 30th day after the date of this order. Walker & Sons Enterprises, Ltd. 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 Walker & Sons

Enterprises Ltd.'s federal employer identification number must be included on the certified check or money order.

4. Walker & Sons Enterprises, Ltd. must send the certified check or money order and the remittance form 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) (2016)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2016)).
6. 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) (2016); *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. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

| Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court | |
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| Parties | Board |
| Illinois Environmental Protection Agency Attn: Michelle M. Ryan 1021 North Grand Avenue East Springfield, Illinois 62794 Michelle.Ryan@Illinois.Gov | Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601 |
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| Walker & Sons Enterprises, Ltd. Attn: Brandon R. Walker 421 E. Monetta Avenue Peoria Heights, Illinois 61614 | |
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I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 21, 2018, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board