

ILLINOIS POLLUTION CONTROL BOARD
August 23, 2018

MACON COUNTY ENVIRONMENTAL)
MANAGEMENT DEPARTMENT,)
)
Complainant,)
)
v.) AC 18-16
) (MCEMD No. 2018-003)
GARY MILLER,) (Administrative Citation)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by C.M. Santos):

On May 25, 2018, the Macon County Environmental Management Department (Macon County) timely filed an administrative citation against Gary Miller (respondent). *See* 415 ILCS 5/31.1(c) (2016); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent’s residential property located at 3680 Stare Road in Oakley, Macon County. The property is commonly known to Macon County as the “Oakley Twp./Miller” site and is designated with Site Code No. 1158125020. For the reasons below, the Board finds that respondent violated the Environmental Protection Act (Act) (415 ILCS 5 (2016)) and orders him 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) (2016); 35 Ill. Adm. Code 108.

In this case, Macon County alleges that on April 26, 2018, respondent violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), 21(p)(3), 21(p)(7) (2016)) by causing or allowing open dumping of waste in a manner resulting in litter, open burning, and deposition of general construction or demolition debris. Macon 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, Macon County served respondent with the administrative citation on June 20, 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 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) (2016); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by July 25, 2018. Respondent failed

to timely file a petition. Accordingly, the Board finds that respondent violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act.

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) (2016); 35 Ill. Adm. Code 108.500(a). Because there are three violation(s) of Section 21(p) and no indication in the record that any of these is a second or subsequent adjudicated violation, 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 Gary Miller violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), 21(p)(3), 21(p)(7) (2016)).
2. Gary Miller must pay a civil penalty of \$4,500 no later than Monday, September 24, 2018, which is the first business day following the 30th day after the date of this order. Gary Miller must pay the civil penalty by two certified checks or money orders (\$2,250 each), one made payable to the Macon County Environmental Management Department and one made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and Gary Miller's social security number or federal employer identification number must be included on each of the two certified checks or money orders.
3. Gary Miller must send the certified checks or money orders and the remittance form to:

Macon County Environmental Management Department
Attn.: Debra Hughes-Garrett
141 South Main Street, Room 408
Decatur, Illinois 62523

Illinois Environmental Protection Agency
Attn.: 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) (2016)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2016)).

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) (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	
Parties	Board
Macon County Environmental Management Department Attn.: Michael Baggett, Assistant State's Attorney 253 E. Wood St., 4th Floor Decatur, Illinois 62523 mbaggett@sa-macon-il.us	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601
Gary Miller 3680 Stare Road Oakley, Illinois 62501	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 23, 2018, by a vote of 5-0.



Don A. Brown, Clerk
 Illinois Pollution Control Board