

ILLINOIS POLLUTION CONTROL BOARD
May 4, 2023

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 23-7
) (IEPA No. 28-23-AC)
JOHN TUTTLE and JAMES MUSSER,) (Administrative Citation)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by J. Van Wie):

On February 23, 2023, the Illinois Environmental Protection Agency (IEPA) timely filed an administrative citation against John Tuttle and James Musser (respondents). *See* 415 ILCS 5/31.1(c) (2020); 35 Ill. Adm. Code 101.300(b), 108.200(b)(3). The administrative citation concerns respondents’ property located at 328 East Raymon Avenue in Witt, Montgomery County. The property is commonly known to the IEPA as the “Witt/Tuttle John” site and is designated with Site Code No. 1350855046. For the reasons below, the Board finds that respondents violated the Environmental Protection Act (Act) (415 ILCS 5 (2020)) and orders respondents 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 IEPA or, if IEPA 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) (2020); 35 Ill. Adm. Code 108.

In this case, IEPA alleges that on January 24, 2023, respondents violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 21(p)(7), 55(k)(1) (2020)) by causing or allowing the open dumping of waste in a manner resulting in litter and in deposition of general construction or demolition debris or clean construction of demolition debris, and by causing or allowing water to accumulate in used or waste tires. IEPA asks the Board to impose the statutory \$1,500 civil penalty per violation on respondents, for a total civil penalty of \$4,500. As required, IEPA served John Tuttle with the administrative citation on February 28, 2023, and served James Musser with the administrative citation on March 1, 2023, both of which are within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2020); *see also* 35 Ill. Adm. Code 101.300(c), 108.200(b)(1).

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) (2020); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by Wednesday, April 5, 2023. Respondents failed to timely file a petition. Accordingly, the Board finds that respondents violated Section 21(p)(1), 21(p)(7), and 55(k)(1) of the Act.

The civil penalty for violating any provision of Section 21(p) and 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) (2020); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(p) and one violation of Section 55(k), and there is no indication in the record that any 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 John Tuttle and James Musser violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1), 21(p)(7), 55(k)(1) (2020)).
2. Respondents must pay a civil penalty of \$4,500 no later than Monday, June 5, 2023, which is the first business day following the 30th day after the date of this order. Respondents must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number and case name must appear on the certified check or money order.
3. Respondents 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
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2020)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2020)).
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) (2020); *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
Illinois Environmental Protection Agency Attn.: Michelle M. Ryan, Asst. Counsel 1021 North Grand Avenue East PO Box 19276 Springfield, Illinois 62794-9276	Illinois Pollution Control Board Attn: Don A. Brown, Clerk 60 East Van Buren, Suite 630 Chicago, Illinois 60601 don.brown@illinois.gov
John Tuttle 504 N Stuart Witt, Illinois 62094	
James Musser 504 N Stuart Witt, Illinois 62094	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 4, 2023, by a vote of 3-0.



Don A. Brown, Clerk
 Illinois Pollution Control Board