

ILLINOIS POLLUTION CONTROL BOARD
July 8, 2004

COUNTY OF VERMILION,)	
)	
Complainant,)	
)	
v.)	AC 04-56
)	(County No. 04-01)
JERRY HATHAWAY and DARRELL)	(Administrative Citation)
CRIBE,)	
)	
Respondents.)	

ORDER OF THE BOARD (by J.P. Novak):

This order denies respondent Jerry Hathaway's June 18, 2004 motion asking the Board to reconsider or to vacate the Board's May 6, 2004 default order finding him and respondent Darrell Cripe in violation as charged in the County of Vermilion's administrative citation and assessing the statutory penalty of \$1,500 against respondents. Neither respondent Cripe nor the County has filed a reply to the Hathaway motion.

THE MAY 6, 2004 DEFAULT ORDER

On March 17, 2004, the County of Vermilion timely filed an administrative citation against Jerry Hathaway and Darrell Cripe (respondents). See 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The County of Vermilion alleged that the respondents violated Section 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(7) (2002)). The County of Vermilion further alleged that the respondents violated this provision by causing or allowing the open dumping of waste in a manner that resulted in deposition of general construction or demolition debris or clean construction or demolition debris at 1617 Perrysville Road, Danville, Vermilion County.

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 violation alleged and impose the corresponding civil penalty. 415 ILCS 5/31.1(d)(1) (2002); 35 Ill. Adm. Code 108.204(b), 108.406. Neither respondent filed a petition for review. Accordingly, the Board found that the respondents violated Section 21(p) of the Act. The civil penalty for violating Section 21(p) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500(a). Because there is one violation of Section 21(p) and this violation is a first offense, the total civil penalty assessed was \$1,500, payable no later than June 5, 2004, which is the 30th day after the date of this order.

THE MOTION

In his motion, counsel for respondent Hathaway asserts that Mr. Hathaway is the site owner, and that respondent Cripe is a contract purchaser. Respondent Hathaway asserts that the only “petition” he received was “neither file marked nor contained a case number upon which to respond.” He states that he had previously been unaware of any allegations, and that he “has a viable defense and would have responded to said action had he been provided proper notice of the proceeding, been aware that the action had been filed or been provided a case number upon which to respond to said Petition.” Motion at 1.

The motion is denied. The record is clear that Mr. Hathaway received service of the administrative citation on March 8, 2004. The procedure for contesting the administrative citation is clearly set forth at page 2 of the administrative citation, and states that any petition for review *must* be filed with the Board within 35 days (emphasis in original). Had Mr. Hathaway contacted the Clerk of the Board, he would have received the filing date of the citation and the docket number. Indeed, had Mr. Hathaway filed a petition for review without a number, the Clerk would have filed the petition and contacted him for any additional information.

As a creature of statute, the Board cannot extend the time for filing of petitions for review without explicit statutory authorization to do so. The Board has been given no authority to extend the time for filing of petitions for review of administrative citations. Such authority has been given, under specific enumerated circumstances, only for the filing of permit appeals. Compare the permit appeal procedures of Section 40(a)(1) of the Act, 415 ILCS 5/40(a)(1)(2002), with those for the appeal of administrative citations under Section 31.1(d) (415 ILCS 5/31.1(d)(1) (2002)).

The Board will, however, grant respondents an additional 30 days in which to pay the penalty. The Board also takes this opportunity to correct paragraph 2 of the original order, to clarify that respondents’ check or money order must be payable to the County of Vermilion, Illinois. For the convenience of the parties, the order as amended today is set out in its entirety below:

1. The respondents must pay a civil penalty of \$1,500 no later than August 7, 2004, which is the 30th day after the date of this order.
2. The respondents must pay the civil penalty by certified check or money order, made payable to the County of Vermilion, Illinois. The case number, case name, and the respondents’ social security number or federal employer identification number must be included on the certified check or money order.
3. The respondents must send the certified check or money order and the remittance form to:

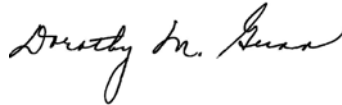
Vermilion County Health Department
200 South College Street
Danville, Illinois 61832

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
5. Payment of this penalty does not prevent future prosecution if the violation continues.

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) (2002); *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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 8, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board