

ILLINOIS POLLUTION CONTROL BOARD  
January 26, 2007

COUNTY OF MACON, )  
 )  
 Complainant, )  
 )  
 v. ) AC 07-21  
 ) (MCSWMD No. 2006-005-AC)  
 TIM WALKER, ) (Administrative Citation)  
 )  
 Respondent. )

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

On October 16, 2006, the County of Macon (County) timely filed an administrative citation against Tim Walker. *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The County alleges that the respondent violated Sections 21(p)(1), (p)(3), and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2004)). The County further alleges that the respondent violated these provisions by causing or allowing the open dumping of waste resulting in litter, open burning, and the deposition of general construction or demolition debris or clean construction or demolition debris at a facility located at 3710 Christmas Tree Road, Macon County.

On November 28, 2006, the Board received a petition to contest the administrative citation. The mailing envelope in which the Board received that petition did not have a legible postmark, but the accompanying certificate of service states that respondent's attorney placed the petition in the United States mail on November 24, 2006.

In an order dated December 7, 2006, the Board noted that any administrative citation must be filed upon respondent within 60 days of the date of the observed violation and that any timely petition for review must be postmarked within 35 days of the date on which the respondent received service. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.202(c) and 108.204(b). In the same order, the Board also noted that it had not received any information from either of the parties concerning the date on which the respondent received the administrative citation and could not determine whether the administrative citation or the petition was timely filed so as to give the Board jurisdiction over this matter.

Consequently, the Board in that December 7, 2006 order directed the County to file, on or before January 4, 2007, the proof of service of the administrative citation on the respondent. *See* 35 Ill. Adm. Code 108.202(c). In the same order, the Board directed the respondent to file, on or before January 4, 2007, an amended petition stating the date on which he received service of the administrative citation from the County and stating the reasons for appeal as required by 35 Ill. Adm. Code 108.206.

On December 12, 2006, the County filed a copy of a certified mail return receipt showing service of the administrative citation on the respondent on October 17, 2006. Because the County served the citation on the respondent within 60 days of the observed violation, the Board finds that this service was timely. *See* 415 ILCS 5/31.1(b)(2004); 35 Ill. Adm. Code 108.202(b).

The Act and the Board's regulation provide that a timely petition for review must be postmarked within 35 days of the date on which the respondent received service. 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). If the respondent fails to file a timely petition, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. 415 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 108.406. Here, the respondent failed to timely file a petition within 35 days on or before November 21, 2006. Accordingly, the Board finds that the respondent violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2004)).

The civil penalty for violating Section 21(p) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense for each violation of any provision of the subsection. 415 ILCS 5/42(b)(4) (2004); 35 Ill. Adm. Code 108.500(a)(2). Because there are three violations of Section 21(p) and these violations are first offenses, 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 respondent must pay a civil penalty of \$4,500 no later than Monday, February 26, 2007, which is the first business day after the 30th day after the date of this order.
2. The respondent 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 the respondent's social security number or federal employer identification number must be included on the certified check or money order.
3. The respondent 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

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate

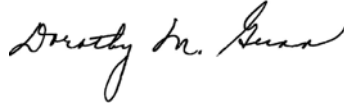
set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).

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) (2004); *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 opinion and order on January 26, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board