

ILLINOIS POLLUTION CONTROL BOARD

October 4, 2007

COUNTY OF MACON,	)	
ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 08-05
	)	MCSWMD File No. 2007-002-AC
ANNETTE TOPPS and RICHARD JONES,	)	(Administrative Citation)
	)	
Respondents.	)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On August 13, 2007, County of Macon (Macon) timely filed an administrative citation against Annette Topps (Topps) and Richard Jones (Jones). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a site located on Bender Road in Oakley Township, Macon County, with the Illinois Environmental Protection Agency Site Code No. 1158125008. For the reasons below, the Board finds that Topps violated the Environmental Protection Act (Act) (415 ILCS 5 (2006)) and orders Topps 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 Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2006); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that Jones and Topps violated Sections 21(p)1, (p)(3), (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2006)) by causing or allowing the open dumping of waste in a manner resulting in (1) litter, (2) open burning, and (3) the deposition of general or clean construction or demolition debris. The Agency asks the Board to impose a \$4,500 civil penalty on Jones and Topps. As required, the Agency served the administrative citation on Jones and Topps individually within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2006); *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) (2006); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Jones timely filed a petition to contest the administrative citation on September 6, 2007. In an order of September 20, 2007, the Board accepted Jones' petition and directed the Agency and Jones to proceed to hearing. Any petition for review from Topps was

due on September 17, 2007. Topps failed to timely file a petition. Accordingly, the Board finds that Topps violated Sections 21(p)(1), (p)(3), (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2006)).

The civil penalty for violating any provision of subsection (p) of Section 21 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) (2006); 35 Ill. Adm. Code 108.500(a). Because there are three of violations of Section 21(p) and no allegation of any 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 regarding Topps.

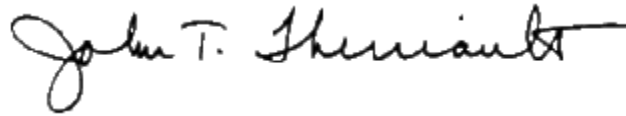
### **ORDER**

1. The Board finds that Topps violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2006))
2. Topps must pay a civil penalty of \$4,500 no later than November 5, 2007, which is the first business day following the 30th day after the date of this order. Topps must pay the civil penalty by certified check or money order, made payable to the Macon County Solid Waste Management Department. The case number, case name, and Topps' social security number or federal employer identification number must be included on the certified check or money order.
3. Topps must send the certified check or money order and the remittance form to:  
  
Darlene K. Powell  
Macon County Solid Waste Management Department  
141 South Main Street  
Room 212  
Decatur, Illinois 62523-1293
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
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) (2006); *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, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 4, 2007, by a vote of 4-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board



- (1) That Respondents caused or allowed the open dumping of waste in a manner resulting in litter, a violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2006).
- (2) That Respondents caused or allowed the open dumping of waste in a manner resulting in open burning, a violation of Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2006).
- (3) That Respondents caused or allowed the open dumping of waste in a manner resulting in the deposition of general construction and demolition debris, a violation of Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2006).

#### CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2006), Respondents are subject to a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each of the violations identified above, for a total of Four Thousand Five Hundred Dollars (\$4,500.00). If Respondents elect not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than November 30, 2007, unless otherwise provided by order of the Illinois Pollution Control Board.

If Respondents elect to contest this Administrative Citation by petitioning the Illinois Pollution Control Board in accordance with Section 31.1 of the Act, 415 ILCS 5/31.1 (2006), and if the Illinois Pollution Control Board issues a finding of violation as alleged herein, after an adjudicatory hearing, Respondents shall be assessed the associated hearing costs incurred by the Macon County Solid Waste Management Department and the Illinois Pollution Control Board. Those hearing costs shall

be assessed in addition to the One Thousand Five Hundred Dollar (\$1,500.00) statutory civil penalty for each violation.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2006), if Respondents fail to petition or elect not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall adopt a final order, which shall include this Administrative Citation and findings of violation as alleged herein, and shall impose the statutory civil penalty specified above.

When payment is made, Respondents' check shall be made payable to the Macon County Solid Waste Management Department and should be mailed to the attention of Darlene K. Powell, Macon County Solid Waste Management Department; 141 South Main Street, Room 212, Decatur, Illinois, 62523-1293. Along with payment, Respondents shall complete and return the enclosed Remittance Form to ensure proper documentation of payment.

If any civil penalty and/or hearing costs are not paid within the time prescribed by order of the Illinois Pollution Control Board, interest on said penalty and/or hearing costs shall be assessed against the Respondents from the date payment is due up to and including the date that payment is received. The Office of the Macon County State's Attorney may initiate proceedings against Respondents in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING THIS  
ADMINISTRATIVE CITATION

Respondents have the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31/1 (2006). If Respondents elect to contest this Administrative Citation, then Respondents shall file a signed Petition for Review, including a Notice of Filing, Certificate of Service, and Notice of Appearance, with the Clerk of the Illinois Pollution Control Board, State of Illinois Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601. A copy of said Petition for Review shall be filed with the Office of the Macon County State's Attorney, 253 E. Wood Street, Decatur, Illinois, 62523. Section 31.1 of the Act provides that any Petition for Review shall be filed within thirty-five (35) days of the date of service of this Administrative Citation or the Illinois Pollution Control Board shall enter a default judgment against the Respondents.

By: Jack W. Ahola  
Macon County States Attorney

By:   
\_\_\_\_\_  
Kenneth Boles  
Assistant State's Attorney  
Macon County, Illinois

Date: August 7, 2007

Prepared by: Darlene K. Powell, Inspector  
Macon County Solid Waste Management Department  
141 South Main Street, Room 212  
Decatur, Illinois 62523-1293  
217-421-0291

REMITTANCE FORM

**RECEIVED**  
CLERK'S OFFICE

**AUG 13 2007**

**STATE OF ILLINOIS**  
Pollution Control Board

COUNTY OF MACON

Complainant,

v.

Annette Topps and  
Richard Jones

Respondents.

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AC

08-5

(MCSWMD file No. 2007 – 002 – AC)

FACILITY: Oakely/Topps-Jones

SITE CODE NO.: 1158125008

COUNTY: Macon

CIVIL PENALTY: \$4,500.00

DATE OF INSPECTION: July 11, 2007

DATE REMITTED:

SS/FEIN NUMBER:

SIGNATURE:

NOTE

Please enter the date of your remittance, your Social Security Number (SSN) if an individual or Federal Employer Identification Number (FEIN) if a corporation, and sign this Remittance Form. Be sure your check is enclosed and mail, along with Remittance Form, to Darlene K. Powell, Macon County Solid Waste Management Department, 141 South Main Street, Room 212, Decatur, Illinois 62523-1293.