ILLINOIS POLLUTION CONTROL BOARD
March 3, 2011

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Complainant,	)	
v.	)	AC 09-55
	)	(IEPA No. 130-09-AC)
JASON D. & ANGELA R. MARRS d/b/a MARRS HAULING, LANDSCAPING & MORE,	)	(Administrative Citation)
Respondents.	)	

MICHELLE M. RYAN, SPECIAL ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT; and

BLAKE WEAVER APPEARED ON BEHALF OF RESPONDENTS.

INTERIM OPINION AND ORDER OF THE BOARD (by G.L. Blankenship):

Today the Illinois Pollution Control Board (Board) finds that Jason D. and Angela R. Marrs (respondents) violated Sections 21(p)(1) and (p)(7) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(7) (2008)). The violations were alleged in an administrative citation issued by the complainant, the Illinois Environmental Protection Agency (Agency). The Board finds that the respondents violated the Act by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of general construction or demolition debris. As described below, the respondents are therefore subject to statutorily-mandated civil penalties of $1,500 per violation, for a total civil penalty of $3,000. Respondents must also pay the hearing costs of the Agency and the Board.

After finding the violations in this interim opinion and order, the Board directs the Agency and the Clerk of the Board to provide hearing cost documentation, to which the respondents may respond. After the time period for the hearing cost filings expire, the Board will issue a final opinion and order assessing the civil penalty and appropriate hearing costs.

Below, the Board first provides the legal framework for administrative citations. Next, the Board sets forth the procedural history of this case. This is followed by the Board's findings of fact and a summary of the parties' arguments. The Board then discusses the alleged violations and claimed defenses before rendering its legal conclusions.

LEGAL FRAMEWORK

Under the Act (415 ILCS 5 (2008)), 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) (2008); 35 Ill. Adm. Code 108.

The Agency or delegated local authority must serve the administrative citation on the respondents within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2008)); *see also* 35 Ill. Adm. Code 108.202(b). The Agency or delegated local authority also must file a copy of the administrative citation with the Board no later than ten days after serving the respondents. *See* 415 ILCS 5/31.1(c) (2008). To contest the administrative citation, the respondents must file a petition with the Board no later than 35 days after being served with the administrative citation. If the respondents fail to do so, the Board must find that the respondents committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2008); 35 Ill. Adm. Code 108.204(b), 108.406.

If the respondents timely contest the administrative citation, but the complainant proves the alleged violations at hearing, the respondents will be held liable not only for the civil penalty but also for the hearing costs of the Board and the complainant. *See* 415 ILCS 5/42(b)(4-5) (2008); 35 Ill. Adm. Code 108.500. Because the Act (415 ILCS 5/42(b)(4-5) (2008)) specifies the penalty for a violation in an administrative citation action, the Board cannot consider mitigating or aggravating factors when determining penalty amounts. *See*, *e.g.*, IEPA v. Stutsman, AC 05-70, slip op. at 2 (Sept. 21, 2006). However, if the Board finds that the respondents "ha[ve] shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty." 415 ILCS 5/31.1(d)(2) (2008); *see also* 35 Ill. Adm. Code 108.500(b).

PROCEDURAL HISTORY

On June 18, 2009, the Agency filed an administrative citation (AC) against the respondents, citing two violations of the Act. The citation was served on the respondents on June 19, 2009.

On July 22, 2009, the respondents filed a petition (Pet.), alleging (1) that they did not commit the alleged violations and (2) if there were violations, they resulted from uncontrollable circumstances. Pet. at 1. On August 6, 2009, the Board accepted the petition for hearing.

The hearing was held on May 5, 2010, at the Urbana City Building in Urbana, Illinois, before Board Hearing Officer Carol Webb. Hearing Transcript (Tr.) at 1. Two witnesses testified at the hearing: Mike Mullins, the inspector for the Agency, and Jason Marrs, one of the respondents. Two exhibits were entered at the hearing. Petitioner's Exhibit 1 is the inspection report of Mr. Mullins that he completed on May 18, 2009 (Exh. 1). Respondent's Exhibit 1 is a number of invoices for clean-up costs dated prior to the inspection date. The Agency filed a

post-hearing brief (Agency Br.) on June 28, 2010. Respondents did not file a post-hearing brief and have not sought any extensions.

FACTS

The property, located at 30 C.R. 3050N, Foosland, Champaign County (commonly known to the Agency as "Foosland/Marrs, Jason-30E CR 3050N," and designated as Site Code No. 0198010002), has had a history of violations. *See e.g.* Report of Inspector Mike Mullins attached to Mike Mullins Affidavit (and herein referred to as "Rep.") at 1-2. At the time of these earlier violations, the property was owned by the respondents. Respondents no longer possessed ownership as of December 2009. Tr. at 27. The property was their residence until it burned down in late 2008. It consisted of a fenced-in yard, a house, a three-car pole barn, a one-car garage and a little building off the garage. Tr. at 30. The house was approximately 3,200 square feet. Tr. at 29. At the time of the fire, Mr. Marrs was attempting to re-landscape the property and storing various items from the respondents' Christmas village business and haunted Halloween house in the large pole barn. Tr. at 33-35.

On June 20, 2008, the Champaign Regional Office (CRO) inspected the property based on a third-party complaint. Rep. at 1. At that time, the investigation and complaints revealed that burning was occurring west of the house, and the CRO sent Mr. Marrs a letter regarding the rules for burning waste. *Id.* After this, however, the Champaign County Zoning Office received several more complaints in July 2008. *Id.* On July 28, 2008, the CRO received a new complaint about the property claiming that open bags of refuse containing furniture, plastic, a mattress, and landscape waste had been hauled there. *Id.* Complaint #C09-011-CH was assigned to this particular complaint. *Id.* On October 20, 2008, the re-inspection concluded that the alleged dumping and burning had ceased, and the property was again in compliance with regulations and the Act. *Id.*

On or about December 23, 2008, the house burned down and the property experienced some water damage from the fire fighting techniques. *Id.*; Tr. at 35. The Champaign County Zoning Department received this information on or about January 20, 2009. Rep. at 1. Sometime between the fire and March 2009, the neighbor's tree fell in the Marrs' property, thereby adding to the material on it. Tr. at 33. There was another complaint about the Marrs' property and on March 11, 2009, the investigation revealed open dumping of "approximately 30 cubic yards of cardboard, paper, plastic, metal, garbage bags with possible garbage, dimensional lumber and landscape waste on the property." *Id.* at 12-13. As a result, an Administrative Citation Warning Notice was sent on April 8, 2009. Rep. at 2. The notice alleged violations of open dumping with litter and included a deadline of May 15, 2009 to resolve the dumping. *Id.*; Tr. at 13. On May 18, 2009, Mike Mullins inspected the property and confirmed that the waste had not been cleared up. Rep. at 2; Tr. at 13. Mr. Mullins concluded that the waste, which included the ruins of the house, an old Christmas tree, full garbage bags that included rotting food, bed parts and mixed landscape waste, had not been reduced or altered since his inspection on March 11. Tr. at 11-12.

During the May 18, 2009 inspection, Mr. Mullins recorded a number of violations of the Act. It is on two of those violations that this administrative citation is based, specifically the

causing or allowing of open dumping resulting in litter and the causing or allowing of open dumping resulting in the deposition of construction or demolition debris. AC at 2. Mr. Mullins' report includes four photographs which reveal two piles of debris in an untended yard. The first photograph includes debris from the burnt house in the foreground and a second pile of debris in the background. Rep. at 5. Photographs two, three and four are all of this same background pile of material. Rep. at 5-6. At hearing, Mr. Mullins stated that he observed in this pile lumber, landscape waste, black plastic garbage bags containing unidentified waste and pieces of furniture. Tr. at 11. He also confirmed that the waste occupied an area of approximately 30 cubic yards. *Id.* at 10.

STATUTORY BACKGROUND

Section 21(a) of the Act states that no person shall:

> Cause or allow the open dumping of any waste. 415 ILCS 5/21(a) (2008).

Section 21(p) of the Act provides in relevant part that no person shall:

> In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:
>
> (1) litter;
>
> ***
>
> (7) deposition of:
>
> (i) general construction or demolition debris as defined in Section 3.160(a) of this Act . . . . 415 ILCS 5/21(p)(1), (p)(7)(i) (2008)).

The Act defines "waste" as:

> [A]ny garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities . . . . 415 ILCS 5/3.535 (2008).

"Open dumping" refers to:

> "[T]he consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill." 415 ILCS 5/3.305 (2008).

"Refuse" is defined under the Act as "waste." 415 ILCS 5/3.385 (2008).

A "sanitary landfill" is defined as:

> [A] facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation. 415 ILCS 5/3.445 (2008).

The Act defines "garbage" as:

> "[W]aste resulting from the handling, processing, preparation, cooking, and consumption of food, and wastes from the handling, processing, storage, and sale of produce." 415 ILCS 5/3.200 (2008).

Section 3.160(a) of the Act defines "general construction or demolition debris" to mean:

> [N]on-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and piping or metals incidental to any of those materials. 45 ILCS 3.160(a)

PARTIES' ARGUMENTS

The Board will first summarize the parties' respective arguments based on their filings and the hearing. The Board will then discuss these positions in the discussion section.

Agency's Position

The Agency argues that it has demonstrated that the respondents caused or allowed open dumping to happen on the site. Agency Br. at 1. The Agency confirmed that the respondents owned the property at the time of the violation. Tr. at 27. The Agency therefore argues that the respondents caused or allowed open dumping on the property. Agency Br. at 1. The Agency bases its argument on the existence of a dead Christmas tree, paper, bed parts, mixed landscape waste and black plastic garbage bags with unidentifiable contents at the site. Agency Br. at 2, citing Tr. at 11; Exh. 1 at 7-8. It supports its argument with the Mr. Marrs' testimony at the hearing that various materials had come from the outbuildings on the property and that the black plastic garbage bags contained all the food from the upright freezer in the garage. Tr. at 37.

Additionally, the Agency contends that the open dumping caused "litter" under Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2008)). Agency Br. at 2. The Agency alleges that the "dimensional lumber, dead Christmas tree, paper, metal bed parts, mixed landscape waste, and the black plastic garbage bags containing melted Christmas decorations and rotting food constitute 'litter'" under Section 21(p)(1) of the Act, pursuant to the definition of litter in the Litter Control Act and case law in St. Clair County v. Louis I. Mund, AC 90-64 (Aug. 22, 1991). Agency Br. at 2.

The Agency further argues that the causing or allowing of open dumping resulted in the deposition of construction or demolition debris in violation of Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2008)). The Agency uses the statutory definition of "construction or demolition debris" from 415 ILCS 5/3.160(a) (2008) and language from IEPA v. Yocum, et al. (AC 01-29, 01-30 (Consolidated) (June 6, 2002)) to argue that the dimensional lumber qualifies as construction or demolition debris. Agency Br. at 3.

The Agency also expresses concern at the black plastic garbage bags full of rotting food since they are "capable of being decomposed to cause malodor, gases, or other offensive conditions, and to provide food for disease vectors." Agency Br. at 4, citing 35 Ill. Adm. Code 810.103. The Agency laments the respondents' refusal to return phone calls and the existence of a fence surrounding the property which prohibited the Agency from finding out about the rotting food sooner. Agency Br. at 4.

The Agency concludes by noting that it is not clear whether or not the respondents were aware that they were violating the Act, but that knowledge is not necessary to cause a violation. Agency Br. at 4, *citing* County of Will v. Utilities Unlimited, Inc., *et al.*, AC 97-41 (July 24, 1997) and People v. Fiorini, 143 Ill.2d 318, 574 N.E.2d 612 (1991). Similarly, the Agency refutes the respondents' position that it ran out of money needed to remove the debris. Agency Br. at 4. The Agency notes that the respondents have offered no documentary evidence of their inability to remove the waste through bank statements or receipts. *Id.* Regardless, the Agency states that this Board "has previously found that delays in removing waste from a site due to lack of funds is not relevant to the statutory defense of 'uncontrollable circumstances.'" *Id.*, citing Illinois Environmental Protection Agency v. John Brown, d/b/a John Brown Painting, AC 04-82, slip op. at 9 (May 19, 2005). The Agency reasons that the respondents were responsible for disposing of the garbage and backyard waste, but still chose to leave rotting garbage there for months in the freezer and then in garbage bags while instead removing other, less environmentally damaging waste from the property. Agency Br. at 5. The Agency therefore concludes that the respondents "had enough control over their property and their voluntary actions for this Board to find them in violation of the provisions cited in the Administrative Citation." *Id.*

Respondents' Position

In their petition for review, the respondents state that their property has never been used as a dump and that they have never caused or allowed open dumping. Pet. at 1. Furthermore, the respondents allege that no activity on their property has resulted in litter nor has it resulted in

deposition of construction or demolition debris. *Id.* The respondents maintain that any such supposed activity or waste was the result of uncontrollable circumstances. *Id.*

At the hearing, Mr. Marrs expanded on his position. He claimed that some of the debris was from trees that he had tried to plant. Tr. at 29. He also explained that some of the debris was from his neighbor's tree falling onto his property after the fire ruined the house. Tr. at 32. Much of the rest of the debris was contents of the various buildings of the property. Tr. at 34-37. Mr. Marrs contends that the fire created a lot of damage, the subsequent fire-fighting caused further damage and that they did not have enough money to complete clean-up even after insurance. Tr. at 40. Mr. Marrs also indicated that landscape debris was added to the pile since "[they] had nowhere else to put it" (Tr. at 34) and that the black garbage bags resulted from food waste that was "really bad" and that they "just bagged it all up and put it out there in that pile." Tr. at 37.

DISCUSSION

First, the Board will discuss its findings for each violation, specifically whether open dumping occurred, whether the respondents caused or allowed open dumping, whether the open dumping resulted in litter and whether the open dumping resulted in construction or demolition debris. The Board's discussion concludes with a description of the civil penalties and hearing costs.

Opening Dumping of Waste

As a threshold matter, to prove a violation of Section 21(p), the Agency must first prove a violation of Section 21(a) of the Act (415 ILCS 5/21(a) (2008)). Section 21(a) provides that no person shall "[c]ause or allow the open dumping of any waste." 415 ILCS 5/21(a) (2008). "Open dumping" is defined as "the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill." 415 ILCS 5/3.305 (2008). "Refuse" means "waste." 415 ILCS 5/3.385 (2008).

The Board finds that there was open dumping on the respondents' property. A thirty-cubic yard debris pile was located on the site. The materials in the pile came from landscaping, the insides of various buildings on the property, and the contents of the respondents' refrigerator. These materials were therefore "consolidat[ed] . . . from one or more sources." 415 ILCS 5/3.305 (2008).

The bags in the debris pile contained rotting food and therefore "waste resulting from the handling . . . of food," meeting the definition of "garbage" under the Act. 415 ILCS 5/3.200 (2008). The definition of "waste" under the Act includes "garbage." 415 ILCS 5/3.535 (2008). Further, the dimensional lumber and other items in the debris pile were neither intended for nor being kept in a manner consistent with future use. The various inspections revealed that the items had been there from at least March 11, 2009 to May 18, 2009 and that the volume was unchanged. The Board finds that these items are "discarded material" constituting "waste." 415 ILCS 5/3.535 (2008).

The final element of "open dumping" is that the disposal site "not fulfill the requirements of a sanitary landfill." 415 ILCS 5/3.305 (2008). This too is satisfied because the Agency did not issue a waste disposal permit for the property.

For these reasons, the Board finds that the open dumping of waste occurred on the property.

Cause or Allow

The Illinois Supreme Court has established that one may "cause or allow" a violation of the Act without knowledge or intent. In People v. Fiorini, 143 Ill. 2d 318, 574 N.E.2d 612 (1991), the court stated that "knowledge or intent is not an element to be proved for a violation of the Act. This interpretation of the Act . . . is the established rule in Illinois." Fiorini, 143 Ill. 2d at 336, 574 N.E.2d at 618; *see also* Freeman Coal Mining Corp. v. PCB, 621 Ill. App. 3d 157, 163, 313 N.E.2d 616, 621 (5th Dist. 1974) (the Act is *malum prohibitum* and no proof of guilty knowledge or *mens rea* is necessary to find liability). In this case, the respondents do not claim to have lacked knowledge of the open dumping but instead claim that it was an uncontrollable circumstance.

A complainant "must show that the alleged polluter has the capability of control over the pollution or that the alleged polluter was in control of the premises where the pollution occurred." People v. A.J. Davinroy Contractors, 249 Ill. App. 3d 788, 793-96, 618 N.E.2d 1282, 1286-88 (5th Dist. 1993); *see also* Meadowlark Farms, Inc. v. PCB, 17 Ill. App. 3d 851, 861, 308 N.E.2d 829, 836 (5th Dist. 1974). Respondents do not deny that they owned the property at the time of the violations. Tr. at 7.

The Board finds that the respondents were in control of the pollution and the premises. They owned the property and they lived on it until December, 2009. Tr. at 30. The property was always surrounded by a fence. Tr. at 22. This fence restricted ingress and egress, which made it impossible for the inspector to enter the property or completely identify the full extent of the waste. *Id.* Therefore, for all intents and purposes, the respondents controlled the pollution and the premises.

The respondents controlled the pollution themselves. They admitted to hauling the contents of their various buildings out into the yard and dumping landscape debris there since "[they] had nowhere else to put it." Tr. at 34. Mr. Marrs also stated at hearing that the food waste was "really bad" and that they "just bagged it all up and put it out there in that pile." Tr. at 37. Therefore, the Board finds that the respondents caused or allowed the open dumping of waste.

Litter

In Miller v. PCB, 267 Ill. App. 3d 160, 642 N.E.2d 475 (4th Dist. 1994), the court stated:

> Given its ordinary meaning, "litter" refers to material of little or no value which has not been properly disposed of. The examples of litter set forth in the Litter

> Control Act [citation omitted] provide additional guidance. Miller, 267 Ill. App. 3d at 168-69, 642 N.E.2d at 483.

The Board has adopted the definition of "litter" provided in the Litter Control Act for purposes of Section 21 of the Act. *See* St. Clair County v. Mund, AC 90-64, slip op. at 4, 6 (Aug. 22, 1991). The Litter Control Act defines "litter" as:

> [A]ny discarded, used or unconsumed substance or waste [and] may include, but is not limited to, any garbage, trash, refuse, debris, rubbish, grass clippings, or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned vehicle (as defined in the Illinois Vehicle Code), motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, potentially infectious medical waste as defined in Section 3.360 of the Environmental Protection Act, or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly. 415 ILCS 105/3(a) (2008).

The food waste in the black plastic bags constitutes litter because it is a waste product,, is unsanitary and has been discarded. As the Agency properly noted, "[r]otting food is putrescible waste, which means that it is capable of being composed to cause malodor, gases, or other offensive conditions." Agency Br. at 5. The old food is unsanitary and was disposed of improperly, thereby satisfying the statutory requirements.

The inspector also discovered bed frames and "mixed landscape waste, some branches, and dead leaves." Tr. at 11. These items constitute furniture and lawn or garden waste, respectively, as mentioned in the statute.

For all these reasons, the Board finds that that the respondents violated Section 21(p)(1) of the Act by causing or allowing the open dumping of waste in a manner resulting in litter.

Deposition of General Construction or Demolition Debris

The Act defines "general construction or demolition debris" in part as:

> [N]on-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and piping or metals incidental to any of those materials. 415 ILCS 5/3.160(a) (2008).

The dimensional lumber constitutes a construction or demolition material because it falls into the category of "wood, including non-hazardous painted, treated, and coated wood and wood products." The Board therefore finds that the respondents violated Section 21(p)(7) of the Act by causing or allowing the open dumping of waste in a manner resulting in the deposition of general construction or demolition debris.

For all of these reasons discussed above, the Board finds that the respondents have violated Sections 21(p)(1) and (p)(7) of the Act.

Uncontrollable Circumstances

Respondents have stated that the alleged dumping was a result of uncontrollable circumstances. Pet. at 1. Section 31.1(d)(2) of the Act provides in part:

> [I]f the Board finds that the person appealing the citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty. 415 ILCS 5/31.1(d)(2) (2008).

For a defense to be successful, it must be proven that the *violation* resulted from uncontrollable circumstances. Mr. Marrs stated at hearing that landscape debris was added to the pile since the respondents "had nowhere else to put it." Tr. at 34. Mr. Marrs also noted that the black garbage bags resulted from food waste that was "really bad" and that the respondents "just bagged it all up and put it out there in that pile." *Id*. at 37. Mr. Marrs stated that they did not have the money to complete the cleanup. *Id*. at 40.

The Board has already determined that the respondents caused or allowed the dumping by hauling contents of various property buildings and leaving them on the debris pile. Further, that the respondents could not afford to remove all of the debris is immaterial since limited finances are irrelevant to the statutory defense of "uncontrollable circumstances." *See* John Brown, AC 04-82, slip op. at 9.

For all of these reasons, the Board finds that the respondents have not proven that the violations were a result of uncontrollable circumstances.

Civil Penalty and Hearing Costs

The Agency seeks the statutory $1,500 civil penalty per violation, for a total of $3,000, as well as hearing costs. Because respondent violated Sections 21(p)(1) and (p)(7) of the Act and those violations were not the result of "uncontrollable circumstances" (415 ILCS 5/31.1(d)(2) (2008)), the Board now discusses civil penalties and hearing costs. Both are addressed in Section 42(b)(4-5) of the Act:

> In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) of Section 21 of this Act shall pay a civil penalty of $1,500 for each violation of each such provision, plus

> any hearing costs incurred by the Board and the Agency, except that the civil penalty amount shall be $3,000 for each violation of any provision of subsection (p) of Section 21 that is the person's second or subsequent adjudicated violation of that provision. 415 ILCS 5/42(b)(4-5) (2008).

There is no indication in the record that either of the violations found today is a second or subsequent adjudicated violation of such provision for the respondents. Therefore, the civil penalty for these first violations of Sections 21(p)(1) and (p)(7) is statutorily set at $1,500 for each violation, totaling $3,000. *See* 415 ILCS 5/42(b)(4-5) (2008); 35 Ill. Adm. Code 108.500(b)(2).

In addition, by unsuccessfully contesting the administrative citation at hearing, the respondents also must pay the hearing costs of the Agency and the Board. *See* 415 ILCS 5/42(b)(4-5) (2008); 35 Ill. Adm. Code 108.500(b)(3). However, no information on those costs is in the record. The Agency and the Clerk of the Board are therefore each ordered to file a statement of costs, supported by affidavit, and to serve the filing on the respondents. Respondents will have an opportunity to respond to the requests for hearing costs, as provided in the order below.

CONCLUSION

The Board finds that the respondents violated Sections 21(p)(1) and (p)(7) of the Act by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of general construction or demolition debris. Having found the violations in this administrative citation, the respondents must pay a civil penalty of $3,000 and the hearing costs of the Agency and the Board. As set forth in the order below, the Board directs the Agency and the Clerk of the Board to file hearing cost documentation, to which the respondents may respond. After the time periods for the filings on hearing costs have expired, the Board will issue a final opinion and order imposing the civil penalty on the respondents and assessing against them any appropriate hearing costs. The final opinion and order will constitute final action by the Board.

This opinion constitutes the Board's interim findings of fact and conclusions of law.

ORDER

1. The Board finds that Jason D. and Angela R. Marrs, d/b/a Marrs Hauling Landscaping & More (Respondents) violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2008)).

2. By April 4, 2011, the Illinois Environmental Protection Agency (Agency) must file a statement of its hearing costs, supported by affidavit. By April 4, 2011, the Clerk of the Board must file a statement of the Board's hearing costs, supported by affidavit.

3. Within 21 days after service of the filings required by paragraph 2 of this order, the respondents may file with the Board a response challenging the claimed costs. Respondents must also serve any such response on the Agency.

4. Within 14 days after service of any response permitted under paragraph 3 of this order, the Agency may file a reply to the response.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on March 3, 2011, by a vote of 5-0.

John Therriault, Assistant Clerk
Illinois Pollution Control Board