

ILLINOIS POLLUTION CONTROL BOARD
December 19, 2013

COUNTY OF LASALLE,)
)
Complainant,)
)
v.) AC 14-29
) (Administrative Citation)
WES AND JESSICA WHITTAKER,)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by D. Glosser):

On November 26, 2013, the County of LaSalle (County) timely filed an administrative citation against Wes and Jessica Whittaker (respondents). The administrative citation concerns respondents' facility located to the east of Dollar General and is described as parcel #03-20-120-000, Earl Township, Earlville, LaSalle County. The property is commonly known to the County as the "Whittaker Property" and is designated with Site Code No. 0998085007. For the reasons below, the Board finds that respondents violated the Environmental Protection Act (Act) (415 ILCS 5 (2012)) and orders respondents to pay \$3,000 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. *See* 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2012); 35 Ill. Adm. Code 108.

In this case, the County alleges that on October 3, 2013, respondents violated Section 21(p)(1) and (p)(2) of the Act (415 ILCS 5/21(p)(1), (p)(2) (2012)) by causing or allowing the open dumping of waste in a manner resulting in litter and causing or allowing scavenging operations. The County asks the Board to impose the statutory \$1,500 civil penalty per violation on respondents, for a total civil penalty of \$3,000. As required, the County served respondent with the administrative citation on October 26, 2013, which is within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2012); *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) (2012); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by November 30, 2013. Respondents failed to timely file a petition. Accordingly, the Board finds that respondents violated Sections 21(p)(1) and (p)(2) of the Act (415 ILCS 5/21(p)(1), (p)(2) (2012)).

The civil penalty for violating any provision of Section 21(p) or Section 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) (2012); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(p) and no indication in the record that either is a second or subsequent adjudicated violation, the total civil penalty is \$3,000. 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 Wes and Jessica Whittaker (respondents) violated Sections 21(p)(1) and (p)(2) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(2) (2012)).
2. Respondents must pay a civil penalty of \$3,000 no later than January 21, 2014, 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 LaSalle County Department of Environmental Services and Land Use. The case number, case name, and respondent's social security number or federal employer identification number must be included on the certified check or money order.
3. Respondent must send the certified check or money order and the remittance form to:

LaSalle County Department of Environmental Services and Land Use
119 West Madison Street, Room 107
Ottawa, Illinois 61350
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2012)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2012)).
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) (2012); *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 T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 19, 2013, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board

Ph: 815 / 434-8666

LA SALLE COUNTY
ENVIRONMENTAL SERVICES AND DEVELOPMENT

Fax: 815 / 433-9303

MICHAEL E. HARSTED
DEPARTMENT DIRECTOR

119 WEST MADISON STREET
ROOM 107
OTTAWA ILLINOIS 61350

STATE OF ILLINOIS

COUNTY OF LASALLE

ADMINISTRATIVE CITATION

AC14-29

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STATE OF ILLINOIS
Pollution Control Board

COUNTY OF LASALLE)
)
 Complainant)
)
 v.)
)
 Wes and Jessica Whittaker)
)
 Respondents)

AC NO. _____

JURISDICTION

This Administrative Citation is issued pursuant to authority vested in the Illinois Environmental Protection Agency by 415 ILCS 5/31.1, formerly Ill. Rev. Stat. 1991, Ch. 111 ½, par. 1031.1, and delegated to the County of LaSalle pursuant to 415 ILCS 5/4 (r), formerly Ill. Rev. Stat., Ch. 111 ½, par. 1004 (r).

FACTS

1. That Respondents, Wes and Jessica Whittaker, are the present owners and/or operators of property located in Earl Township, LaSalle County, Illinois.
2. That said facility is an open dump, operating without an Illinois Environmental Protection Agency Permit, and designated with Site Code No. 0998085007. Said facility is commonly known to the Agency as the Whittaker Property.
3. That the Respondent has owned and/or operated said facility since December 27, 2012.
4. That on October 3, 2013, Christy Vargochik, Landfill Inspector, LaSalle County Department of Environmental Services and Development, under the authority of the Illinois Environmental Protection Agency, inspected the above described facility. A copy of the inspection reports setting forth the results of such inspections are attached hereto and made a part hereof.

VIOLATIONS

5. On the basis of direct observations of Christy Vargochik of the LaSalle County Department of Environmental Services and Development, it has been determined that the Respondents have caused or allowed open dumping at the above described facility in a manner which results in the following occurrences:

That on October 3, 2013, an on-site inspection of said facility disclosed the following:

- XX Causing or allowing litter -- 415 ILCS 5/21 (p) (1), (formerly Ill. Rev. Stat. 1991, ch. 111 ½, par. 1021 (p) (1) [formerly par. 1021 (q) (1)]).
- XX Causing or allowing scavenging operations -- 415 ILCS 5/21 (p) (2), (formerly Ill. Rev. Stat. 1991, ch. 111 ½, par. 102 (p) (2) [formerly par. 1021 (q) (2)]).
- Causing or allowing open burning -- 415 ILCS 5/21 (p) (3), (formerly Ill. Rev. Stat. 1991, ch. 111 ½, par. 1021(p) (3) [formerly par. 1021 (q) (3)]).
- Causing or allowing the deposition of waste in standing or flowing waters -- 415 ILCS 5/21 (p) (4), (formerly Ill. Rev. Stat. 1991, ch. 111 ½, par. 1021 (p) (4) [formerly par. 1021 (q) (4)]).
- Causing or allowing proliferation of disease vectors -- 415 ILCS 5/21 (p) (5), (formerly Ill. Rev. Stat. 1991, ch. 111 ½, par. 1021(p) (5) [formerly par. 1021 (q) (5)]).
- Causing or allowing the generation of standing or flowing liquid discharge from the open dump site -- 415 ILCS 5/21 (p) (6), (formerly Ill. Rev. Stat. 1991, ch. 111 ½, par. 1021(p) (6) [formerly par. 1021 (q) (6)]).

CIVIL PENALTY

6. Pursuant to 415 ILCS 5/42 (b) (4), formerly Ill. Rev. Stat. 1991, ch. 111 ½, par. 1042 (b) (4), Respondent herein is subject to a civil penalty of Fifteen Hundred Dollars (\$1500.00) for each violation specified above in Paragraph 5(b) for a total of Fifteen Hundred Dollars (\$3000.00). Additionally, should Respondent elect to petition the Illinois Pollution Control Board under the review process described herein below, and if there is a finding of the violation alleged herein, after an adjudicatory hearing, Respondent shall be assessed the associated hearing costs incurred by the Illinois Environmental Protection Agency and the Illinois Pollution Control Board, in addition to the Fifteen Hundred Dollar (\$3000.00) statutory penalty for each finding of violation.
7. If you acknowledge the violations cited herein above, the civil penalty specified above shall be due and payable no later than thirty-five (35) days from the date of service hereof. If you do not petition the Illinois Pollution Control Board of review of this Administrative Citation within thirty-five (35) days of service hereof or if you elect to contest this Administrative Citation, any judgment rendered against you shall specify the due date of the statutory civil penalty and any costs assessed against you.
8. When payment is made, your check should be made payable to the **LASALLE COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES AND LAND USE** and mailed to:

**LaSalle County Department of Environmental Services and Land Use
119 West Madison Street
Room 107
Ottawa, Illinois 61350**

Also, please complete and return the enclosed Remittance Form, along with your payment, to assure proper documentation of payment.

9. If any civil penalty imposed by the Illinois Pollution Control Board is not paid within the time prescribed in the order, interest from such penalty will be assessed for the period from the date payment is due until the date payment is received. If any civil penalty, by reason of acknowledgment, default or finding after the adjudicatory hearing is not paid when due, the LaSalle County State's Attorney may initiate proceedings in Circuit Court to collect said civil penalty. In addition to the previously assessed civil penalty, interest and hearing costs of the Illinois Pollution Control Board, if any, the State's Attorney's Office will seek to recover their costs of litigation.

**PROCEDURE FOR CONTESTING THIS
ADMINISTRATIVE CITATION**

10. You have the right to contest this Administrative Citation. See: 415 ILCS 5/31.1, formerly Ill. Rev. Stat. 1991, Ch. 111 ½, par. 1031.1. If you elect to contest this Administrative Citation, you must file a Petition for Review with the Clerk of the Illinois Pollution Control Board. Copies of the Petition for Review should also be filed with:

Mark Anderson
LaSalle County Special Assistant State's Attorney
707 Etna Road
Ottawa, Illinois 61350

LaSalle County Department of Environmental Services and Land Use
119 West Madison Street
Room 107
Ottawa, Illinois 61350

Such Petition for Review must be filed within thirty-five (35) days of the date of service of this Administrative Citation, or a default judgment shall be entered by the Pollution Control Board. Petition for Review may be filed with the:

Clerk of the Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601

Dated: 10-24-13

By: _____



Todd Martin
Special Assistant State's Attorney

**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

**RECEIVED
CLERK'S OFFICE
NOV 26 2013
STATE OF ILLINOIS
Pollution Control Board**

COUNTY OF LASALLE)
)
 Complainant)
)
 v.)
)
 Wes and Jessica Whittaker)
)
 Respondent(s))

AC NO. 14-29

REMITTANCE FORM

FACILITY: Wes and Jessica Whittaker Site Code: 0998085007
1365 N. 45th Rd. County: LaSalle
Earlville, IL 60518 Township: Dayton

CIVIL PENALTY: \$1500.00 for each violation

Number of Violation(s): two (2)

Total Remittance: \$3000.00

Date of Inspection: October 3, 2013

DATE REMITTED: _____

SS/FEIN NUMBER _____

SIGNATURES _____

NOTE

Please enter the date of your remittance, your social security number (SS) 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:

**LaSalle County Department of Environmental Services and Land Use
119 West Madison Street, Room 107
Ottawa, IL 61350**