

ILLINOIS POLLUTION CONTROL BOARD  
February 19, 2015

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 15-27
	)	(IEPA No. 431-14-AC)
LEE FARMS EXCAVATING,	)	(Administrative Citation)
	)	
Respondent.	)	

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

On January 5, 2015, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Lee Farms Excavating (respondent). *See* 415 ILCS 5/31.1(c) (2014); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent's facility located approximately 1.5 miles northeast of Gibson City on Illinois Route 54, Ford County. The property is commonly known to the Agency as the "Gibson City/Lee Farms Excavating" site and is designated with Site Code No. 0538035003. For the reasons below, the Board finds that respondent violated the Environmental Protection Act (Act) (415 ILCS 5 (2014)) and orders respondent to pay \$6,000 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) (2014); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on December 8, 2014, respondent violated Sections 21(p)(1), (p)(3), (p)(7), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7), and 55(k)(1) (2014)) by causing or allowing the open dumping of waste in a manner resulting in: 1) litter, 2) open burning, 3) deposition of general construction or demolition debris, and 4) allowing water to accumulate in used or waste tires. The Agency asks the Board to impose the statutory \$1,500 civil penalty per violation on respondent for a total civil penalty of \$6,000. As required, the Agency served respondent with the administrative citation on January 2, 2015, which is within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2014); *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) (2014); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by February 6, 2015. Respondent

failed to timely file a petition. Accordingly, the Board finds that respondent violated Sections 21(p)(1), (p)(3), (p)(7), and 55(k)(1) of the Act.

The civil penalty for violating any provision of Section 21(p) or 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) (2014); 35 Ill. Adm. Code 108.500(a). Because there are four violations of Section 21(p) and 55(k) and there is no indication in the record that any of these is a second or subsequent adjudicated violation, the total civil penalty is \$6,000. 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 Lee Farms Excavating violated Sections 21(p)(1), (p)(3), (p)(7) and 55(k)(1) of the Environmental Protection Act (415 ILCS 5/21 (p)(1), (p)(3), (p)(7) and 55(k)(1) (2014)).
2. Respondent must pay a civil penalty of \$6,000 no later than March 23, 2015, which is the first business day following the 30th day after the date of this order. 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 respondent's 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:  
  
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) (2014)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2014)).
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) (2014); *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 February 19, 2015, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John T. Therriault, Clerk  
Illinois Pollution Control Board