

ILLINOIS POLLUTION CONTROL BOARD
March 18, 2010

COUNTY OF OGLE,)
)
 Complainant,)
)
 v.) AC 10-16
) (Administrative Citation)
 RICHARD HAAN, JR.,)
)
 Respondent.)

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

On January 28, 2010, Ogle County timely filed an administrative citation against Richard Haan Jr. (respondent). *See* 415 ILCS 5/31.1(c) (2008) ¹; 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent's trailer park known located in Ogle County. The property is commonly known to the Illinois Environmental Protection Agency (Agency) as the Mt. Morris Trailer Park and is designated with Site Code No. 1410350003. For the reasons below, the Board finds that respondent violated the Environmental Protection Act (Act) (415 ILCS 5 (2008)) and orders respondent to pay \$7,500 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) (2008); 35 Ill. Adm. Code 108.

In this case, Ogle County alleges that on December 2, 2009, 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) (2008)) by causing or allowing open dumping resulting in litter, open burning and deposition of construction or demolition debris. Ogle County asks the Board to impose the statutory \$7,500 civil penalty on respondent. As required, Ogle County served the administrative citation on respondent within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2008); *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) (2008); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by March 9, 2010. Respondent

¹ All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

failed to timely file a petition. Accordingly, the Board finds that 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) (2008)) of the Act.

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) (2008); 35 Ill. Adm. Code 108.500(a). Because there are three violations of Section 21(p) and this is a second or subsequent adjudicated violation of Sections 21(p)(1) and (p)(3), the total civil penalty is \$7,500. 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 Board finds that Richard Haan Jr. violated Sections 21(p)(1), (p)(3) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(3) and (p)(7) (2008)).
2. Richard Haan Jr. must pay a civil penalty of \$7,500 no later than March 19, 2010, which is the first business day following the 30th day after the date of this order. Richard Haan Jr. must pay \$3,750 of the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. Richard Haan Jr. must pay \$3,750 of the civil penalty by certified check or money order, made payable Ogle County Solid Waste Fund. The case number, case name, and Richard Haan Jr.'s social security number or federal employer identification number must be included on the certified check or money order.
3. Richard Haan Jr. must send the \$3,750 certified check or money order and the remittance form for the Illinois Environmental Protection Trust Fund to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276.

Richard Haan Jr. must send the \$3,750 certified check or money order and the remittance form for the Ogle County Solid Waste Fund to:

Ogle County Treasurer
P.O. Box 40
Oregon, Illinois 61061

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2008)) at the rate

set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).

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) (2008); *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 March 18, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION**

COUNTY OF OGLE,)
)
COMPLAINANT,)
)
v.) AC#
)
RICHARD HAAN, JR.,)
)
RESPONDENT)

JURISDICTION

This Administrative Citation is issued pursuant to authority vested in the Illinois Environmental Protection Agency by 415 ILCS 5/1 *et. seq.*, specifically 415 ILCS 5/31.1, and delegated to Ogle County pursuant to 415 ILCS 5/4(r).

FACTS

- 1) Respondent, Richard Haan, Jr., is a present owner and in control and possession of a facility located in the County of Ogle, State of Illinois.
- 2) Respondent, Richard Haan, Jr., is the present operator of a facility located in the County of Ogle, State of Illinois, known as Mt. Morris Estates Trailer Park or Mt.Morris Estates Mobile Home Park.
- 3) Respondent, Richard Haan, Jr., has occupied, controlled and/or operated the facility at all relevant times hereto.
- 4) The facility is an open dump, operating without an Illinois Environmental Protection Agency Operating Permit, and designated with the Site Code # 1410350003. The facility is known to the Agency as Mt. Morris Estates Trailer Park.

- 5) That on December 2, 2009, Joy K. Bliton, Field Inspector, Ogle County Solid Waste Management Department, inspected the facility.
- 6) Respondent, Richard Haan Jr., has received two Administrative Citations in 1992 (AC 92-29 and AC 92-38) for open dumping and open burning.
- 7) Respondent, Richard Haan Jr., has received five Administrative Citation Warning Notices for open burning and open dumping dated June 22, 2009, April 5, 2007, January 24, 2002, February 20, 1996, and March 13, 1992.

VIOLATIONS

On the basis of Field Inspector, J. K. Bliton's direct observation, she has determined that the Respondent has caused or allowed open dumping at the above described facility in a manner that has violated the Illinois Environmental Protection Act (hereinafter, the "ACT") as follows:

- 1) The Respondent has caused or allowed the open dumping of waste which resulted in littering in violation of 415 ILCS 5/21(p)(1);
- 2) The Respondent has caused or allowed open burning of waste in violation of 415 ILCS 5/21(p)(3); and
- 3) The Respondent has caused or allowed the deposition of general construction or demolition debris or clean construction or demolition debris in violation of 415 ILCS 5/21(p)(7).

CIVIL PENALTY

In accordance with 415 ILCS 5/42 (b)(4-5), the Respondent is subject to a civil penalty of \$1,500.00 for each violation specified above, except that the civil penalty amount shall be \$3,000 for each violation that is the second or subsequent offense. This is a total of \$7,500 for this Citation: \$3,000 for 21(p)(1), \$3,000 for 21(p)(3), and \$1,500 for 21(p)(7). Additionally, should the Respondent elect to petition the Illinois Pollution Control Board under the review process described below, after an adjudicatory hearing, the Respondent shall be assessed the hearing costs incurred by the Pollution Control Board. The hearing cost would be in addition to the fine.

If Respondent acknowledges the violations cited herein above, the civil penalty shall be due and payable no later than 35 days from the date of service hereof. If Respondent does not petition the Pollution Control Board for review of the Administrative Citation within 35 days of service of the Administrative Citation, or contest the Citation, any judgment that may be rendered against Respondent shall specify the due date of the civil fine and any additional costs assessed against you.

Respondent shall complete and return the enclosed Remittance Forms to ensure proper documentation of payment. When payment is made, checks shall be made payable in equal amounts (\$3,750 or 50% of the total penalty each) to:

- A. Illinois Environmental Protection Trust Fund, mailed to the attention of Fiscal Services, Illinois Protection Agency, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276; and
- B. Ogle County Solid Waste Fund, Ogle County Treasurer, P.O. Box 40, Oregon, Illinois 61061.

If any civil penalty, by reason of acknowledgment, default or finding after adjudicatory hearing, is not paid when due, the Illinois Environmental Protection Agency shall take into consideration such failure to pay during any permit review process upon Respondents' application for a new permit or for renewal of an existing permit. If any civil penalty imposed by the Illinois Pollution Control Board is not paid within the time prescribed in the Order, the law allows for the accumulation and payment of interest on the remaining unpaid balance, from the date the payment is due until the date payment is received. If any civil penalty is not paid when due, the Office of the State's Attorney shall be requested to initiate proceedings in Circuit Court to collect the penalty. In addition to the civil penalty, hearing costs, and any interest, the Ogle County State's Attorney may seek to recover their costs of litigation.

PROCEDURE FOR CONTESTING ADMINISTRATIVE CITATION

Respondent has the right to contest this Citation, pursuant to 415 ILCS 5/31.1. If Respondent elects to contest this Citation, Respondent must file a Petition For Review with the Clerk of the Illinois Pollution Control Board. A copy of the Petition For Review must also be sent to the Ogle County State's Attorney. **Respondent's Petition For Review must be filed within 35 days of the date of service of the present citation on you. If Respondent fails to file a Petition, a Default Order against Respondent will be entered by the Pollution Control Board.**

Respondent's original Petition must be filed with the Clerk of the Board at:

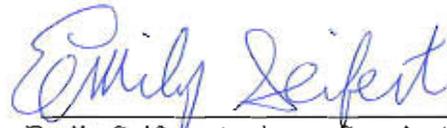
Clerk of the Illinois Pollution Control Board
Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Copies must also be sent to:

Ogle County State's Attorney's Office
Ogle County Judicial Center
106 S. 5th Street, Suite 110
Oregon, IL 61061; and

Ogle County Solid Waste Management Department
909 W. Pines Road
Oregon, IL 61061

DATED: 1/28/10



Emily Seifert, Assistant State's Attorney
Ogle County

Emily Seifert
Assistant State's Attorney
Ogle County
106 S. 5th Street, Ste 110
Oregon, IL 61061
(815) 732-1170

cc: IEPA Rockford
IEPA Springfield
OCSWMD

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION**

COUNTY OF OGLE,)	
)	
COMPLAINANT,)	
)	
v.)	AC#
)	
RICHARD HAAN, JR.,)	
)	
RESPONDENT)	

FACILITY: Mt. Morris Estates Trailer Park

COUNTY: Ogle

DATE OF INSPECTION: 12/02/2009

SITE CODE: 1410350003

CIVIL PENALTY: \$3,750 (50% of \$7,500 penalty to Ogle County)

Date Remitted _____

SS/FEIN # _____

Signature _____

NOTE

Please include the information on the blank lines. Mail this form with your check to:

Ogle County Solid Waste Fund
Ogle County Treasurer
Ogle County Courthouse
P.O. Box 40
Oregon, IL 61061

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION**

COUNTY OF OGLE,)
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RICHARD HAAN, JR.,)
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FACILITY: Mt. Morris Estates Trailer Park
COUNTY: Ogle
DATE OF INSPECTION: 12/02/2009
SITE CODE: 1410350003
CIVIL PENALTY: \$3,750 (50% of \$7,500 penalty to IEPA)

Date Remitted _____
SS/FEIN # _____
Signature _____

NOTE

Please include the information on the blank lines. Mail this form with your check to:

Fiscal Services
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276