

ILLINOIS POLLUTION CONTROL BOARD
April 1, 2010

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

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

By this order, the Board vacates its March 18, 2010 order, in which the Board found the respondent, Richard Haan, Jr., in default for violation of Sections 21(p)(1), (p)(3) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2008)). In that order, the Board also assessed a civil penalty of \$7,500. Today's order accepts a settlement agreement reached by the parties. On March 22, 2010, Ogle County filed with the Board a Motion to Vacate Board Order (Mot.) and a Stipulation of Settlement (Stipulation). In addition, on March 22, 2010, Haan filed a Motion to Vacate Default (Resp. Mot.) and a Petition for Review (Pet.). To implement the Stipulation of Settlement, the Board declines to accept the petition for review and dismisses certain counts.

On January 28, 2010, Ogle County timely filed an administrative citation against Richard Haan, Jr. *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 108.202(c). Ogle County alleges that Haan violated Sections 21(p)(1), (p)(3) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2008)). Ogle County further alleges that Haan violated these provisions on December 2, 2009 by causing or allowing open dumping resulting in litter, open burning, and deposition of construction or demolition debris at a site located in Ogle County known as the Mt. Morris Estates Trailer Park, designated with Site Code No. 1410350003.

As required, Ogle County served the administrative citation on Haan 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). To contest an administrative citation, a respondent must file a petition for review 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 violation alleged and impose the corresponding civil penalty. 415 ILCS 5/31.1(d)(1) (2008); 35 Ill. Adm. Code 108.204(b), 108.406. Haan failed to file a petition for review. *See* 35 Ill. Adm. Code 108.204(b). Accordingly, the Board in a March 18, 2010 order found Haan in default for the violations alleged in the citation.

On March 22, 2010, Ogle County filed a Motion to Vacate Board Order and a Stipulation of Settlement. On behalf of both parties, Ogle County states that the parties had been working

on a settlement agreement. Mot. at 1. Under the terms of the Stipulation of Settlement, Haan admits he violated Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2008)) by causing or allowing the open burning of waste, and agrees to pay the statutory civil penalty of \$3,000 for this violation. Stipulation at 2. The stipulation further states that the waste that was the subject of the administrative citation has been removed and properly disposed. *Id.* According to the Stipulation of Settlement, Haan “agrees to diligently comply with, and shall cease and desist from further violation of the Act... and the Board’s rules and regulations.” Stipulation at 2.

In his Motion to Vacate Default, Haan states that he did not file the petition for review because he believed that the parties had reached an agreement. Resp. Mot. at 1. According to Haan, Ogle County’s attorney had emailed Haan’s attorney with the settlement documents attached on March 11, 2010, but the email went into Haan’s attorney’s “spam account and went unnoticed.” *Id.* In addition, Haan’s attorney underwent surgery on March 8, 2010, under the “mistake[n] belief that the cause was settled by the agreement of the parties.” *Id.*

The Board accepts the parties’ settlement agreement. To implement that agreement, the Board vacates the March 18, 2010 order directing Haan to pay a civil penalty of \$7,500. *See IEPA v. Haas*, AC 05-32 slip. op. at 3-4 (Feb. 3, 2005). In addition, the Board accepts the stipulation and proposal for settlement. Under Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (2008)), the Board therefore finds that Haan violated Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2008)). Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2008)) establishes a civil penalty of \$3,000 for this violation. The Board accordingly assesses a civil penalty of \$3,000. To effectuate the parties’ intent that Haan pay a total civil penalty of \$3,000, the Board dismisses the alleged violation of Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (7) (2008)).

This opinion constitutes the Board’s finding of fact and conclusions of law.

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. The Board finds that Richard Haan, Jr. violated Section 21 (p)(3) of the Environmental Protection Act (415 ILCS 5/21(p)(3) (2008)).
3. Richard Haan, Jr. must pay a civil penalty of \$3,000 no later than May 3, 2010, which is the first business day following the 30th day after the date of this order. Haan must pay \$1,500 of the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. Richard Haan, Jr. must pay \$1,500 of the civil penalty by certified check or money order, made payable to 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(s) or money order(s).
4. Richard Haan, Jr. must send the \$1,500 certified check or money order 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 \$1,500 certified check or money order for the Ogle County Solid Waste Fund to:

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

5. 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)).
6. The Board dismisses the alleged violation of Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (7) (2008)).

IT IS SO ORDERED.

Section 41(a) of the 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 April 1, 2010, by a vote of 4-0.



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:

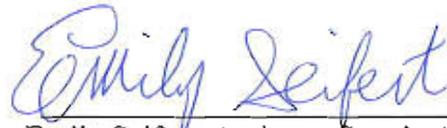
Clerk of the Illinois Pollution Control Board
Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

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

INFORMATIONAL NOTICE

IT IS IMPORTANT THAT YOU READ THE ENCLOSED DOCUMENTS!

NOTE: THIS ADMINISTRATIVE CITATION REFERS TO ONE STATE AGENCY AND TWO COUNTY ENTITIES.

The one state agency is: Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601

The two county entities are: John B. Roe, Ogle County State's Attorney
Ogle County State's Attorney's Office
106 S. 5th Street, Suite 110
Oregon, IL 61061

Ogle County Solid Waste Management Department
Stephen J. Rypkema, Director
909 W. Pines Road
Oregon, IL 61061

If Respondent elects to contest the enclosed Administrative Citation, a Petition for Review must be filed within thirty-five (35) days of the date the Administrative Citation was served upon Respondent. Any such Petition for Review must be filed with the Clerk of the Illinois Pollution Control Board at the address given above. A copy of the Petition for Review should be either hand-delivered or mailed to the Ogle County State's Attorney's Office, Attention: John B. Roe, at the address given above. Also, a copy of the Petition for Review should be either hand-delivered or mailed to the Ogle County Solid Waste Management Department at the address given above.

**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,)	
)	
COMPLAINANT,)	
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v.)	AC#
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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 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