

ILLINOIS POLLUTION CONTROL BOARD
June 3, 2010

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 08-27
)	(IEPA No. 51-08-AC)
HIRAM VANDERHEIDEN, JR.,)	(Administrative Citation)
)	
Respondent.)	
)	

MICHELLE M. RYAN APPEARED ON BEHALF OF COMPLAINANT.

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

On April 1, 2010, the Board issued an interim opinion and order, finding that Hiram Vanderheiden, Jr. (Mr. Vanderheiden) allowed the open dumping of waste resulting in litter and the deposition of general construction or demolition debris in violation of Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (7) (2008)), at a site located at 510 N. Park Avenue, Manito, Mason County. The February 7, 2008 violation was alleged in an administrative citation issued by the Illinois Environmental Protection Agency (Agency). The site is known to the Agency as the “Manito/Vanderheiden” site and is designated with Site Code No. 1258075004.

In the April 1, 2010 decision, after the Board found the violation, the Board held that under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2008)), Mr. Vanderheiden was subject to the statutorily-fixed \$3,000 civil penalty. In addition, the Board held that Mr. Vanderheiden, by unsuccessfully contesting the administrative citation at hearing, also must pay the hearing costs of the Agency and the Board. The hearing in this case was held on November 12, 2009, at the Mason County Courthouse in Havana.

Because no information on hearing costs was in the record, the Board directed the Agency and the Clerk of the Board to each file documentation of the respective hearing costs, supported by affidavit, and to serve the filing on Mr. Vanderheiden. The Board also gave Mr. Vanderheiden an opportunity to respond to the requests for hearing costs and noted that after the time periods for these filings had expired, the Board would issue a final opinion and order assessing the civil penalty and any appropriate hearing costs.

On April 8, 2010, the Board received the Agency’s statement of hearing costs, supported by affidavit, which the Agency served on Mr. Vanderheiden. The Agency’s hearing costs total \$85.60, consisting of mileage and copying, clerical and mailing fees. On April 6, 2010, the Clerk of the Board submitted an affidavit of the Board’s hearing costs totaling \$321.00, the

entirety of which reflects the costs of court reporting. The Clerk served this documentation on Mr. Vanderheiden, who did not respond to either the Agency's statement of hearing costs or the Clerk's affidavit. *See* 35 Ill. Adm. Code 108.502-108.506.

The Board finds the hearing costs of the Agency and the Board reasonable and below orders Mr. Vanderheiden to pay those costs under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2008)). The Board incorporates by reference the findings of fact and conclusions of law from its April 1, 2010 interim opinion and order. Under Section 31.1(d)(2) of the Act (415 ILCS 5/31.1(d)(2) (2008)), the Board attaches the administrative citation and makes it part of the Board's final order.

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

ORDER

1. The Board finds that Hiram Vanderheiden Jr. (Mr. Vanderheiden) violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21 (p)(1), (7) (2008)).
2. The Board assesses the statutory civil penalty of \$3,000 for the violation, as well as hearing costs totaling \$406.60, for a total amount due of \$3,406.60. Mr. Vanderheiden must pay \$3,406.60 no later than July 19, 2010, which is the first business day following the 45th day after the date of this order. Mr. Vanderheiden must pay this amount by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and Mr. Vanderheiden's social security number or federal employer identification number must be included on the certified check or money order.
3. Mr. Vanderheiden must send the certified check or money order to:

Illinois Environmental Protection Agency
Attn.: Fiscal Services
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) (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 violation continues.

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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 3, 2010, by a vote of 5-0.

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, Assistant Clerk
Illinois Pollution Control Board

VIOLATIONS

Based upon direct observations made by Paul Eisenbrandt during the course of his February 7, 2008 inspection of the above-named facility, the Illinois Environmental Protection Agency has determined that Respondent has violated the Illinois Environmental Protection Act (hereinafter, the "Act") as follows:

- (1) That Respondent caused or allowed the open dumping of waste in a manner resulting in litter, a violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2006).

- (2) That Respondent caused or allowed the open dumping of waste in a manner resulting in open burning, a violation of Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3)(2006).

- (3) That Respondent caused or allowed the open dumping of waste in a manner resulting in Deposition of General Construction or Demolition Debris; or Clean Construction or Demolition Debris a violation of Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2006).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2006), Respondent is subject to a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each of the violations identified above, for a total of Four Thousand Five Hundred Dollars (\$4,500.00). If Respondent elects not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than April 30, 2008, unless otherwise provided by order of the Illinois Pollution Control Board.

If Respondent elects to contest this Administrative Citation by petitioning the Illinois Pollution Control Board in accordance with Section 31.1 of the Act, 415 ILCS 5/31.1 (2006), and if the Illinois Pollution Control Board issues a finding of violation as 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. Those hearing costs shall be assessed in addition to the One Thousand Five Hundred Dollar (\$1,500.00) statutory civil penalty for each violation.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2006), if Respondent fails to petition or elects not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall adopt a final order, which shall include this Administrative Citation and findings of violation as alleged herein, and shall impose the statutory civil penalty specified above.

When payment is made, Respondent's check shall be made payable to the Illinois Environmental Protection Trust Fund and mailed to the attention of Fiscal Services, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Along with payment, Respondent shall complete and return the enclosed Remittance Form to ensure proper documentation of payment.

If any civil penalty and/or hearing costs are not paid within the time prescribed by order of the Illinois Pollution Control Board, interest on said penalty and/or hearing costs shall be assessed against the Respondent from the date payment is due up to and including the date that payment is received. The Office of the Illinois Attorney General may be requested to initiate proceedings against Respondent in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING THIS
ADMINISTRATIVE CITATION

Respondent has the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31/1 (2006). If Respondent elects to contest this Administrative Citation, then Respondent shall file a signed Petition for Review, including a Notice of Filing, Certificate of Service, and Notice of Appearance, with the Clerk of the Illinois Pollution Control Board, State of Illinois Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601. A copy of said Petition for Review shall be filed with the Illinois Environmental Protection Agency's Division of Legal Counsel at 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Section 31.1 of the Act provides that any Petition for Review shall be filed within thirty-five (35) days of the date of service of this Administrative Citation or the Illinois Pollution Control Board shall enter a default judgment against the Respondent.

Douglas P. Scott
Douglas P. Scott, Director
Illinois Environmental Protection Agency

Date: 3/25/08

Prepared by: Susan E. Konzelmann, Legal Assistant
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

ORIGINAL

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CLERK'S OFFICE

MAR 31 2008

STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Complainant,)
)
 v.)
)
 HIRAM L. VANDERHEIDEN, JR.,)
)
)
)
 Respondent.)

AC 08-21
 (IEPA No. 51-08-AC)

FACILITY: Manito/Vanderheiden

SITE CODE NO.: 1258075004

COUNTY: Mason

CIVIL PENALTY: \$4,500.00

DATE OF INSPECTION: February 7, 2008

DATE REMITTED:

SS/FEIN NUMBER:

SIGNATURE:

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 Illinois Environmental Protection Agency, Attn.: Fiscal Services, P.O. Box 19276, Springfield, Illinois 62794-9276.