

ILLINOIS POLLUTION CONTROL BOARD
June 16, 2011

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 11-18
) (IEPA No. 375-10-AC)
JOHN and DEBRA WATSON,) (Administrative Citation)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

PROCEDURAL HISTORY

On January 20, 2011, the Board received an administrative citation (Cit.) from the Illinois Environmental Protection Agency (Agency) alleging violations by John and Debra Watson (Watsons). *See* 415 ILCS 5/31.1 (2010)¹; 35 Ill. Adm. Code 108. The administrative citation concerns the Watsons' Union County property located in "Section 16, Township 13, Range 1W, Part of SE, NE, 8 acres." Cit. at 1. The facility is commonly known to the Agency as the "Dongola/Watson" site and is designated with Site Code No. 1818555006.

In this case, the Agency alleges that on November 9, 2010, the Watsons violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of general or clean construction or demolition debris. The Agency asks the Board to impose the statutory \$1,500 civil penalty per violation on the Watsons, for a total civil penalty of \$3,000.

By order of March 17, 2011, the Board found that the Agency timely served the administrative citation and that the Agency timely filed the citation. IEPA v. John and Debra Watson, AC 11-18, (Mar. 5, 2011). The Board also found that the Watsons timely filed a petition to contest the citation, but that the Watsons' petition was deficient for failure to set forth the reasons why the Watsons believe that this administrative citation was improperly issued. *See* 35 Ill. Adm. Code 108.206. Additionally, the Board found that the petition was signed only by John Watson, and not by Debra. *See* 35 Ill. Adm. Code 101.400(a). Therefore, the Board accepted the petition as timely filed, but directed that an amended petition be filed with the Board by April 18, 2011, to cure the deficiencies identified in the order.

¹ The administrative citation cited to the 2008 edition of the Illinois Compiled Statutes. As there is no material difference in the statutory sections involved here between the 2008 edition and the current 2010 edition, the Board will cite to the 2010 edition throughout.

The Watsons timely filed an amended petition on April 14, 2011. But, as the Board noted in a May 5, 2011 order, they again failed to cure the previous deficiency. In the order the Board stated that

the Watsons have one more chance, until June 6, 2011 to file an amended petition curing the noted deficiencies, or the Board will dismiss their petition and enter its final order fining violations and imposing penalties. IEPA v. John and Debra Watson, AC 11-18, slip op. at 3 (May 5, 2011).

The Watsons have not filed an amended petition.

FINDINGS OF VIOLATION AND IMPOSITION OF CIVIL PENALTY

The Board today dismisses the Watsons' deficient April 14, 2011 petition for review. The Board finds that John and Debra Watson have violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2010)), finds that the Watsons have committed the violations as alleged in the administrative citation, and fines them the statutory penalty of \$3,000 for two violations.

The civil penalty for violating any provision of Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2010)) 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) (2010); 35 Ill. Adm. Code 108.500(a). Because this is a first adjudicated violation of each section, respondents are subject to a total civil penalty of \$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 John and Debra Watson have violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), and (p)(7)(2010)).
2. John and Debra Watson must pay a civil penalty of \$3,000 no later than July 18, 2011, which is the first business day following the 30th day after the date of this order. John and Debra Watson 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 John and Debra Watson's social security numbers must be included on the certified check or money order.
3. John and Debra Watson 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) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
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) (2010); *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.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 16, 2011, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

RECEIVED
CLERK'S OFFICE
JAN 20 2011
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
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Complainant,)
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v.)
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JOHN and DEBRA WATSON,)
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Respondents.)

AC 11-18
(IEPA No. 375-10-AC)

ORIGINAL

JURISDICTION

This Administrative Citation is issued pursuant to the authority vested in the Illinois Environmental Protection Agency by Section 31.1 of the Illinois Environmental Protection Act, 415 ILCS 5/31.1 (2008).

FACTS

1. That John and Debra Watson are the current owners ("Respondents") of a facility located at the following legal description: Section 16, Township 13, Range 1W, Part of SE, NE, 8 acres. The property is commonly known to the Illinois Environmental Protection Agency as Dongola/Watson.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 1818555006.
3. That Respondents have owned said facility at all times pertinent hereto.
4. That on November 9, 2010, Sheila Williams of the Illinois Environmental Protection Agency's ("Illinois EPA") Marion Regional Office inspected the above-described facility. A copy of

her inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

5. That on 12-29-10, Illinois EPA sent this Administrative Citation via Certified Mail No. 7007 0220 0000 0152 4141.

VIOLATIONS

Based upon direct observations made by Sheila Williams during the course of her November 9, 2010 inspection of the above-named facility, the Illinois Environmental Protection Agency has determined that Respondents have violated the Illinois Environmental Protection Act (hereinafter, the "Act") as follows:

- (1) That Respondents 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) (2008).

- (2) That Respondents 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) (2008).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2008), Respondents are 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 Three Thousand Dollars (\$3,000.00). If Respondents elects not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than January 30, 2011, unless otherwise provided by order of the Illinois Pollution Control Board.

If Respondents elect 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 (2008), and if the Illinois Pollution Control Board issues a finding of violation as alleged herein, after an adjudicatory hearing, Respondents 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.

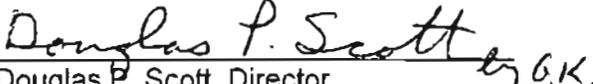
Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2008), if Respondents fail to petition or elect not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall 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, Respondents 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 Respondents 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 Respondents in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING THIS
ADMINISTRATIVE CITATION

Respondents have the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31/1 (2008). If Respondents elect to contest this Administrative Citation, then Respondents 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 Respondents.


Douglas P. Scott, Director
Illinois Environmental Protection Agency

Date: 12/29/10

Prepared by: Susan E. Konzelmann, Legal Assistant
Division of Legal Counsel
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