

ILLINOIS POLLUTION CONTROL BOARD
December 4, 2014

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 15-1
)	(IEPA No. 164-14-AC)
DALE WHITE and SHAWN & AMANDA)	(Administrative Citation)
DEPEW,)	
)	
Respondents.)	

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

On July 2, 2014, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Dale White, Shawn Depew, and Amanda Depew (respondents). See 415 ILCS 5/31.1(c) (2014); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' facility located at 21977 North Krupp Lane in Centralia, Jefferson County. The property is commonly known to the Agency as the "Centralia/Depew-White" site and is designated with Site Code No. 1818645005.

On September 18, 2014, the Board found that Dale White, Shawn Depew, and Amanda Depew violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2012)). On October 22, 2014, Shawn Depew filed a document asking for "reconsideration". The Agency has not responded to the motion. The Agency is therefore deemed to have waived any objection to granting the motion. 35 Ill. Adm. Code 101.500(d).

Mr. Depew indicates in his letter that the area is cleaned up and that he did as he "was instructed". The Board notes voluntary clean up action following a properly alleged violation is not a valid defense. IEPA v. Mark A. Lewis, AC 09-41 slip op. at 3 (Mar. 20, 2014). Further in IEPA v. Jack Wright, AC 89-227, slip op. at 7 (Aug. 30, 1990), the Board stated that "[t]he Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative or voluntarily cleans-up the site." Therefore, Mr. Depew's actions to clean up the site do not mitigate the alleged violations.

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902. In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993), the Board observed that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992). The Board finds that Mr. Depew provided no new evidence

or a change in the law that would indicate the Board's September 18, 2014 decision was in error. Therefore, the request to reconsider is denied.

The Board will set forth the September 18, 2014 order below, adjusting the dates for payment of all civil penalties.

ORDER

1. The Board finds that Dale White, Shawn Depew, and Amanda Depew violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2014)).
2. Respondents must pay a civil penalty of \$4,500 no later than January 5, 2015, which is the first business day following the 30th day after the date of this order. Respondents 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 Respondents' social security numbers or federal employer identification numbers must be included on the certified check or money order.
3. Respondents 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) (2012)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2012)).
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 order on December 4, 2014, by a vote of 4-0.

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, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

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JUL 02 2014

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Complainant,)	AC 15-1
)	
v.)	(IEPA No. 164-14-AC)
)	
DALE WHITE and SHAWN & AMANDA DEPEW,)	
)	
)	
Respondents.)	

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 (2014).

FACTS

1. That Dale White is the current property owner and Shawn and Amanda Depew are the current operators ("collectively Respondents") of a facility located at 21977 North Krupp Lane, Jefferson County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Centralia/Depew-White.
2. That said facility is designated with Site Code No. 1818645005.
3. That Respondents have owned/operated said facility at all times pertinent hereto.
4. That on June 5, 2014 Maggie Stevenson of the Illinois Environmental Protection Agency's ("Illinois EPA") Marion Regional Office inspected the above-described facility. A copy of the inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

5. That on 6-30-14, Illinois EPA sent this Administrative Citation via Certified Mail No. 7012 0470 0001 3000 8654 - White
7012 0470 0001 3000 8630 - Depew
VIOLATIONS

Based upon direct observations made by Maggie Stevenson during the course of the June 5, 2014 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 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) (2014).
- (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) (2014).
- (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) (2014).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2014), 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 Four Thousand Five Hundred Dollars (\$4,500.00). If

Respondents elect not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than August 18, 2014, 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 (2014), 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) (2014), 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 (2014). 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.

Lisa Bonnett by HR

Date:

6-27-14

Lisa Bonnett, Director
Illinois Environmental Protection Agency

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

RECEIVED
CLERK'S OFFICE

JUL 02 2014

STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Complainant,)
v.)
DALE WHITE and SHAWN & AMANDA)
DEPEW,)
Respondents.)

AC 15-1
(IEPA No. 164-14-AC)

FACILITY: Centralia/Depew-White
SITE CODE NO.: 0818075006
COUNTY: Jefferson
CIVIL PENALTY: \$4,500.00
DATE OF INSPECTION: June 5, 2014

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.