

ILLINOIS POLLUTION CONTROL BOARD
June 3, 2010

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 09-56
) (Site Code: 0778035009)
GARY J. and JAMES R. SZCZEBLEWSKI,) (Administrative Citation)
)
Respondents.)

MICHELLE RYAN APPEARED ON BEHALF OF THE COMPLAINANT; and

GARY SZCZEBLEWSKI APPEARED ON BEHALF OF RESPONDENTS.

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

On April 15, 2010, the Board issued an interim opinion and order, finding that Gary J. and James R. Szczeblewski (Szczeblewskis) caused or allowed the open dumping of waste resulting in litter and the unlawful deposition of construction or demolition debris in violation of Sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1), (p)(7) (2008)) at a site located in Franklin Count . The June 11, 2009, violation was alleged in an administrative citation issued by the Illinois Environmental Protection Agency (Agency). The site is known to the Agency as the “Sesser/Szczeblewski, Gary J. and James R. Property” site and is designated as Site Code No. 0550455034.

In the Board’s decision of April 15, 2010, the Board found that although there were two violations of Section 21(p) of the Act (415 ILCS 5/21(p) (2008)), those violations were the first offense. The Board held that under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2008)), the Szczeblewskis are subject to the statutorily-fixed \$3,000 civil penalty. In addition, the Board held that by unsuccessfully contesting the administrative citation at hearing, the Szczeblewskis must also pay the hearing costs of the Board. The hearing in this case was held on November 4, 2009, at Benton City Hall.

Because no information on hearing costs was in the record, the Board directed the Agency and the Clerk of the Board each to file documentation of their respective hearing costs, supported by affidavit, and to serve the filing on the Szczeblewskis. The Board also gave the Szczeblewskis 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 an order assessing the civil penalty and any appropriate hearing costs.

On April 21, 2010, the Board received the Agency’s statement of hearing costs, supported by affidavit, which the Agency served on the Szczeblewskis. The Agency’s hearing

costs totaled \$206.60, consisting of mileage (for 312 miles traveled between Springfield and Benton by Agency counsel, at \$0.55/mile), as well as clerical and mailing costs. On April 24, 2010, the Clerk of the Board submitted an affidavit of the Board's hearing costs totaling \$299.60, the entirety of which reflects the costs of court reporting. The Clerk served this documentation on the Szczeblewskis. *See* 35 Ill. Adm. Code 108.502-108.506. A response was due on or about May 19, 2010. *See* 35 Ill. Adm. Code 108.506(a) (setting a 21-day deadline for response) and 101.300(c) (mail service is presumed complete after four days of mailing). The Szczeblewskis have not responded to either the Agency's or the Clerk's affidavit.

The Board finds the hearing costs of the Agency and the Board to be reasonable and, below, orders the Szczeblewskis 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 15, 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 the Szczeblewskis violated Section 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (7) (2008)).
2. The Board assesses the statutory civil penalty of \$3,000 for the violation, as well as hearing costs of \$206.60 and \$299.60, for a total amount due of \$3,506.20. The Szczeblewskis must pay \$506.20 no later than July 19, 2010, which is the first business day after 45th day after the date of this order. The Szczeblewskis 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 the Szczeblewskis' social security number or federal employer identification number must be included on the certified check or money order.
3. The Szczeblewskis must send the certified check or money order to:

Illinois Environmental Protection Agency
Fiscal Services
1020 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.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUN 29 2009

ADMINISTRATIVE CITATION

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
GARY J. and JAMES R. SZCZEBLEWSKI,)
)
)
)
Respondents.)

AC 09-56
(IEPA No.136-09-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 (2006).

FACTS

1. That Gary and James Szczebleski ("Respondents") are the current owners and operators of a facility located at 402 East Yung Road, Sesser, Franklin County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Sesser/Szczebleski, Gary J. and James R. Property.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 0550455034.
3. That Respondents have owned and operated said facility at all times pertinent hereto.
4. That on June 11, 2009, Maggie Stevenson 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 June 25, 2009, Illinois EPA sent this Administrative Citation via Certified Mail No. 7007 3020 0002 3214 3404 & 7007 3020 0002 3214 3503.

VIOLATIONS

Based upon direct observations made by Maggie Stevenson during the course of her June 11, 2009 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) (2006).

- (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) (2006).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2006), 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 elect not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than September 1, 2009, 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 (2006), 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) (2006), 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 (2006). 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 by G. King Date: 6-25-09
Douglas P. Scott, 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

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JUN 29 2009

REMITTANCE FORM

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Complainant,)
v.)
GARY J. and JAMES R. SZCZEBLEWSKI,)
Respondents.)

AC 09-56
(IEPA No. 136-09-AC)

ORIGINAL

FACILITY: Sesser/Szczablewski, Gary J. and James R. Property

SITE CODE NO.: 0550455034

COUNTY: Franklin

CIVIL PENALTY: \$3,000.00

DATE OF INSPECTION: June 11, 2009

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.