

ILLINOIS POLLUTION CONTROL BOARD
August 18, 2011

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 11-26
)	(IEPA No. 100-11-AC)
ESTATE OF KENNETH D. BERHENKE,)	(Administrative Citation)
)	
Respondent.)	

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

On May 12, 2011, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against the estate of Kenneth D. Berhenke (Berhenke), alleging that Berhenke violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1), 21(p)(7), 55(k)(1) (2010)). The citation concerns Berhenke's property designated with Site Code No. 1618005002 and located at 10012 92nd Avenue West in rural Andalusia, Rock Island County.

Berhenke timely filed a petition to contest the administrative citation, but through a June 16, 2011 order, the Board required Berhenke to file an amended petition to address petition deficiencies. In turn, Berhenke timely filed an amended petition, but through an order of July 7, 2011, the Board required that Burhenke file a second amended petition by August 8, 2011, to address remaining petition deficiencies. No second amended petition has been filed. However, on August 11, 2011, the Agency filed a motion for voluntarily dismissal of this action. In the motion, the Agency states that "[b]ased upon facts and circumstances discovered since the filing of the Administrative Citation, Illinois EPA has determined that it is prudent to withdraw this Administrative Citation at this time." Motion at 1. The Board grants the Agency's motion, dismisses the case, and closes the docket.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 18, 2011, 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 flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

RECEIVED
CLERK'S OFFICE

MAY 12 2011

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
))
Complainant,)
))
v.)
))
ESTATE OF KENNETH D. BERHENKE,)
SR.,)
))
))
Respondent.)

AC 11-26
(IEPA No. 100-11-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 the Estate of Kenneth D. Berhenke, Sr. is the current owner ("Respondent") of a facility located on private property at 10012 92nd Avenue West in rural Andalusia, Rock Island County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Berhenke, Mike.

2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 1618005002.

3. That Respondent has owned said facility at all times pertinent hereto.

4. That on March 16, 2011, Jason Thorpe of the Illinois Environmental Protection Agency's ("Illinois EPA") Peoria Regional Office inspected the above-described facility. A copy of

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

5. That on 5-10-11, Illinois EPA sent this Administrative Citation via Certified Mail No. 7004 2510 0001 8619 1418.

VIOLATIONS

Based upon direct observations made by Jason Thorpe during the course of his March 16, 2011 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) (2008).
- (2) 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) (2008).
- (3) That Respondent caused or allowed the open dumping of waste in a manner resulting in used tires, at this site, not altered, covered or otherwise prevented from accumulating water, a violation of Section 55(k)(1) of the Act, 415 ILCS 55(k)(1) (2008).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2008), 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 May 31, 2011, 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 (2008), 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) (2008), 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 (2008). 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.

 Lisa Bonnett by SOP

Lisa Bonnett, Interim Director
Illinois Environmental Protection Agency

Date: 5/9/11

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
MAY 12 2011
STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
ESTATE OF KENNETH D. BERHENKE,)
SR.,)
)
)
Respondent.)

AC 11-26
(IEPA No. 100-11-AC)

ORIGINAL

FACILITY: Berhenke, Mike
SITE CODE NO.: 1618005002
COUNTY: Rock Island
CIVIL PENALTY: \$4,500.00
DATE OF INSPECTION: March 16, 2011

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.