

ILLINOIS POLLUTION CONTROL BOARD
September 8, 2011

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 11-23
)	(IEPA No. 65-11-AC)
DENNIS WEILER,)	(Administrative Citation)
)	
Respondent.)	

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

On May 5, 2011, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Dennis Weiler. *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Dennis Weiler’s property located along the 200 block of East Railroad Street, West Liberty, Jasper County. The property is commonly known to the Agency as the “West Liberty/Weiler, Dennis” site and is designated with Site Code No. 0798015002. On July 7, 2011, the Board found that Dennis Weiler violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Environmental Protection Act (Act) (415 ILCS 5/ 21(p)(1), (p)(7) and 55(k)(1) (2010)). The Board found that Dennis Weiler violated these provisions by open dumping waste resulting in litter, open dumping of general construction or demolition of debris, and open dumping of waste in a manner resulting in used tires. The Board ordered Dennis Weiler to pay \$4,500 in civil penalties.

On August 5, 2011, Dennis Weiler filed a motion asking that the Board reconsider the July 7, 2011 opinion and order (Mot.). In the motion, Dennis Weiler represents that a petition for review was mailed to the Agency on June 13, 2011. Mot. at Exh. 1.

On August 17, 2011, the Agency filed a response in opposition to the motion (Resp.). The Agency notes that the exhibit is unsigned and contains no proof of filing. Resp. at 2. Further, the Agency states: “[i]f a respondent fails to file a Petition for Review within the 35 days set by 415 ILCS 5/31.1(d)(1), the Board has no jurisdiction to hear the Petition. Illinois EPA v. Reynolds Service Co., AC 09-14, slip op. at 4 (Dec. 4, 2008), *citing* Illinois EPA v. Jack Busby, AC 01-6, slip op. at 1 (Dec. 7, 2000).”

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), we 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). In addition, a motion to reconsider may specify "facts in the record which were overlooked." Wei Enterprises v. IEPA, PCB 04-23, slip op. at 3 (Feb. 19, 2004). The Board finds that the Dennis Weiler has provided no new evidence, a change in the law or fact the Board overlooked that would indicate that the Board's July 7, 2011 order finding a violation was in error. Therefore the motion to reconsider is denied.

Furthermore, the Board notes that even if a petition for review had been filed on June 13, 2011, with the Board as the exhibit indicates, the petition would have been untimely. Any petition for review was due by June 9, 2011. See IEPA v. Dennis Weiler, AC 11-23, slip op. at 1 (July 7, 2011). Thus, the Board was statutorily required to find that he committed the violations as alleged in the AC and to impose the statutory penalty for said violations. IEPA v. Ken and Ella Cook, AC 08-11, slip op. at 2 (May 15, 2008).

CIVIL PENALTY DUE DATE

Under the Board's procedural rules, a "timely-filed motion for reconsideration . . . stays the effect of the final order until final disposition of the motion." 35 Ill. Adm. Code 101.520(c). Accordingly, the Board's July 7, 2011 order was stayed with the timely filing of Dennis Weiler's motion to reconsider. By that same rule, today's denial of the motion to reconsider lifts the stay. Accordingly, to the extent Dennis Weiler has not already paid the civil penalty, Dennis Weiler must pay the civil penalty of \$ 4,500 no later than September 19, 2011, which is the first business day following the 30th day after the date of today's order. The terms of the Board's July 7, 2011 order are otherwise unchanged.

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.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 8, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

RECEIVED
CLERK'S OFFICE
MAY 05 2011
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
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v.)
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DENNIS WEILER,)
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)
Respondent.)

AC 11-23
(IEPA No. 65-11-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 Dennis Weiler is the current owner ("Respondent") of a facility located along the 200 block of East Railroad Street, West Liberty, Jasper County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as West Liberty/Weiler, Dennis.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 0798015002.
3. That Respondent has owned said facility at all times pertinent hereto.
4. That on March 29, 2011, Curt White of the Illinois Environmental Protection Agency's ("Illinois EPA") Champaign 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 5-2-11, Illinois EPA sent this Administrative Citation via Certified Mail No. 7004 2510 0001 8619 1364.

VIOLATIONS

Based upon direct observations made by Curt White during the course of his March 29, 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 June 15, 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 *184 SOP*
Lisa Bonnett, Interim Director
Illinois Environmental Protection Agency

Date: *4/22/2011*

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