

ILLINOIS POLLUTION CONTROL BOARD

October 4, 2012

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 12-39
)	(IEPA No. 78-12-AC)
CMH HOMES, INC. and DAVID R. MOSER ,)	(Administrative Citation)
)	
Respondents.)	

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

On April 6, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against CMH Homes, Inc. (CMH) and David R. Moser (Moser) (collectively, respondents). See 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents’ facility located at 1195 East Radio Tower Road, Mt. Vernon, Jefferson County. The property is commonly known to the Agency as the “Mt. Vernon/ CMH Homes, Inc.” site and is designated with Site Code No. 0818105002. For the reasons below, the Board finds that Moser violated the Environmental Protection Act (Act) (415 ILCS 5 (2010)) and orders Moser to pay \$3,000 in civil penalties. The Board also accepts the proposed settlement and partial dismissal of the administrative citation enforcement action against CMH and pursuant to the stipulation assess a civil penalty of \$1,500 against CMH.

BACKGROUND

Under the Act, an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations. See 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2010); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on March 13, 2012, respondents 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 asked the Board to impose the statutory \$1,500 civil penalty per violation on respondents. As required, the Agency served the administrative citation on respondents within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2010); see also 35 Ill. Adm. Code 101.300(c), 108.202(b).

To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. If the respondent fails to do

so, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by May 10, 2012. On May 10, 2012, respondent CMH timely filed a petition for review; however Moser failed to timely file a petition. On May 17, 2012, the Board accepted the petition for review from CMH and found that Moser violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2010)). The Board withheld a final opinion as to Moser until a determination was made regarding CMH.

CMH HOMES STIPULATION

On September 27, 2012, CMH and the Agency filed a “stipulation of settlement and dismissal of respondent’s petition for administrative review.” Under its terms, CMH admits that it violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter, and agrees to pay the statutory civil penalty of \$1,500 for this violation. Stipulation at 2. CMH also agrees to the dismissal of its petition contesting the administrative citation. *Id.* at 3. The stipulation further states that the waste that was the subject of the administrative citation has been removed and properly disposed of. Stipulation at 2. In addition, the Agency agrees not to refer the violations that are the subject of the administrative citation to the Office of the Illinois Attorney General or any other prosecuting authority to initiate a civil enforcement action. Stipulation at 3.

The Board accepts the stipulation and proposal for settlement. Under Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (2010)), the Board therefore finds that CMH violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2010)). Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2010)) establishes a civil penalty of \$1,500 for this violation. The Board accordingly assesses a civil penalty of \$1,500. To effectuate the parties’ intent that CMH pay a total civil penalty of \$1,500, the Board dismisses the alleged violation of Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2010)).

DAVID MOSER FINDING OF VIOLATION

At this time the Board issues its final opinion and finds that Moser violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1) and (p)(7) (2010)). The civil penalty for violating any provision of Section 21(p), 22.51, 22.51a, or 55(k) 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 there are two violations of Section 21(p) and no indication in the record that either of these is a second or subsequent adjudicated violation, the civil penalty is \$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 David R. Moser (Moser) violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(7) (2010)).
2. Moser must pay a civil penalty of \$3,000 no later than November 5, 2012, which is the first business day following the 30th day after the date of this order. Moser 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 Moser's social security number or federal employer identification number must be included on the certified check or money order.
3. Moser 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. The Board accepts and incorporates by reference the stipulation and proposed settlement between the Agency and CMH Homes, Inc. (CMH).
5. The Board finds that CMH violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2010)).
6. CMH must pay a civil penalty of \$1,500 no later than November 5, 2012, which is the first business day following the 30th day after the date of this order. CMH 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 CMH's social security number or federal employer identification number must be included on the certified check or money order.
7. CMH must send the certified check or money order to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
8. 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)).

9. The Board dismisses the allegation that CMH violated Section 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(7) (2010)) and CMH's petition to contest the administrative citation.

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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 4, 2012 by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

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STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
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Complainant,)
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v.)
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CMH HOMES INC., AND DAVID R.)
MOSER,)
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)
Respondents.)

AC 12-39
(IEPA No. 78-12-AC)

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 (2010).

FACTS

1. That CMH Homes, Inc. is the current owner and property operator and David R. Moser is the current operator ("Respondents") of a facility located at 1195 East Radio Tower Road, Mt. Vernon, Jefferson County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Mt. Vernon/CMH Homes, Inc.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 0818105002.
3. That Respondents have owned/operated said facility at all times pertinent hereto.
4. That on March 13, 2012, Garrison Gross of the Illinois Environmental Protection Agency's ("Illinois EPA") Marion 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 4-4-12, Illinois EPA sent this Administrative Citation via Certified Mail No. 7009 2820 0001 7496 0582
7009 2820 0001 7496 0599

VIOLATIONS

Based upon direct observations made by Garrison Gross during the course of his March 13, 2012 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) (2010).

- (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) (2010).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2010), 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 April 30, 2012, 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 (2010), 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) (2010), 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 (2010). 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.



John J. Kim, Interim Director
Illinois Environmental Protection Agency

Date: 4/2/2012

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

STATE OF ILLINOIS)
) SS
COUNTY OF WILLIAMSON)

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APR 05 2012

STATE OF ILLINOIS
Pollution Control Board

AC12-39

AFFIDAVIT

I, Garrison Gross, being first duly sworn upon oath, depose and state as follows:

1. Affiant is a field inspector employed by the Land Pollution Control Division of the Illinois Environmental Protection Agency and has been so employed at all times pertinent hereto.
2. On March 13, 2012, between 9:50 a.m. and 10:10 a.m., Affiant conducted an inspection of the CMH Homes, Inc. in Jefferson County, Illinois, known as Mt. Vernon / CMH Homes, Inc., by the Illinois Environmental Protection Agency. Said site has been assigned site code number 0818105002 by the Agency.
3. Affiant inspected said Mt. Vernon / CMH Homes, Inc. site by an on-site inspection, which included walking and photographing the site.
4. As a result of the material actions referred to in paragraph 3 above, Affiant completed the Inspection Report form attached hereto and made a part hereof, which, to the best of Affiant's knowledge and belief, is an accurate representation of Affiant's observations and factual conclusions with respect to said Mt. Vernon / CMH Homes, Inc.

FURTHER AFFIANT SAYETH NOT.

/s/ Garrison Gross

Subscribed and Sworn to before
me this 19th day of March 2012

Gail Stricklin
Notary Public



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APR 05 2012

STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
))
Complainant,))
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v.))
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CMH HOMES INC., AND DAVID R.)
MOSER,))
))
))
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(IEPA No. 78-12-AC)

FACILITY: Mt. Vernon/CMH Homes, Inc.
SITE CODE NO.: 0818105002
COUNTY: Jefferson
CIVIL PENALTY: \$3,000.00
DATE OF INSPECTION: March 13, 2012

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.