

ILLINOIS POLLUTION CONTROL BOARD
March 21, 2013

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 12-38
)	IEPA No. 63-12-AC
FUNK BUILDERS, INC.,)	(Administrative Citation)
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by T. A. Holbrook):

For the reasons below, the Board accepts the proposed settlement and dismissal of this administrative citation enforcement action. The Illinois Environmental Protection Agency (Agency) timely filed an administrative citation on April 5, 2012, against Funk Builders, Inc. (respondent). The Agency alleged that, on February 8, 2012, respondent 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) (2010)) by causing or allowing litter, open burning and deposition of general construction or demolition debris or clean construction or demolition debris. The violation allegedly took place at respondent's facility located at vacant lots between 402 and 500 Jones Street, Kappa, Woodford County. The property is commonly known to the Agency as the "Funk Builders, Inc." site and is designated with Site Code No.2030300004.

On May 8, 2012, respondent timely filed a petition to contest the administrative citation, which the Board accepted on May 17, 2012. On March 7, 2013, the parties filed a "stipulation of settlement and dismissal of respondent's petition for administrative review" (Stipulation). Under its terms, respondent does not admit that it violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2010)), but agrees to pay the statutory civil penalty of \$1,500.00 for this violation. Stipulation at 2. Respondent 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 disposed of properly. *Id.* 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. *Id.*

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 respondent 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 \$1,500.00 for this violation. The Board accordingly assesses a civil penalty of \$1,500.00. To effectuate the parties' intent that respondent pay a total civil penalty of \$1,500.00, the Board dismisses the alleged violations of

Sections 21(p)(3) and 21(p)(7) of the Act (415 ILCS 5/21(p)(3) and (p)(7) (2010)) and also dismisses respondent's petition for review.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. The Board finds that Funk Builders, Inc. (respondent) violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2010)).
3. Respondent must pay a civil penalty of \$1,500.00 no later than April 22, 2013, which is the first business day following the 30th day after the date of this order. Respondent 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 respondent's social security number or federal employer identification number must be included on the certified check or money order.
4. Respondent 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
5. 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)).
6. The Board dismisses the alleged violation of Section 21(p)(3) and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(3) and (p)(7) (2010)) and also dismisses respondent'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 March 21, 2013, by a vote of 5-0.

A handwritten signature in black ink, reading "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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

ADMINISTRATIVE CITATION

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
FUNK BUILDERS, INC.,)
)
)
)
Respondent.)

AC 12-38
(IEPA No. 63-12-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 Funk Builders, Inc. is the present owner and operator ("Respondent") of a facility located at vacant lots between 402 and 500 Jones Street, Kappa, Woodford County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Funk Builders, 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. 2030300004.

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

4. That on February 8, 2012, Jeb McGee of the Illinois Environmental Protection Agency's 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 4-3-12, Illinois EPA sent this Administrative Citation via Certified Mail No. 7009 2820 0001 7496 0650.

VIOLATIONS

Based upon direct observations made by Jeb McGee during the course of his February 8, 2012 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) (2010).

- (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) (2010).

- (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) (2010).

CIVIL PENALTY

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

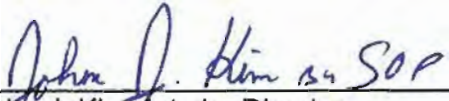
Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2010), if Respondent fails to petition or elects not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board 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 (2010). 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's.



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

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STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
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FUNK BUILDERS, INC.,))
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Respondent.))

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(IEPA No. 63-12-AC)

FACILITY: Funk Builders, Inc. SITE CODE NO.: 2030300004
COUNTY: Woodford CIVIL PENALTY: \$4,500.00
DATE OF INSPECTION: February 8, 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.