

ILLINOIS POLLUTION CONTROL BOARD
June 5, 2014

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 12-48
) (IEPA No. 89-12-AC)
RUTH WHITE,) (Administrative Citation)
)
Respondent.)

MICHELLE M. RYAN APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On April 3, 2014, the Board issued an interim opinion and order, finding that Ruth White (respondent) violated Section 21(p)(1), 21(p)(3), and 55(k)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), 55(k)(1) (2012)). The case concerns respondent's property located on Charles Street, south of Illinois Route 75, in Freeport, Stephenson County (Site). The February 22, 2012 violations were alleged in an administrative citation issued by the Illinois Environmental Protection Agency (Agency). The Site is known to the Agency as "Freeport/White Property" and designated with Site Code No. 1770205230.

On January 14, 2014, the Board conducted a hearing on the alleged violations. In an April 3, 2014 order, the Board found respondent had violated Sections 21(p)(1), 21(p)(3), and 55(k)(1) of the Act. On April 30, 2014, the Board received from respondent a filing construed as a motion for reconsideration. In this order, the Board denies respondent's motion for reconsideration and assesses the hearing costs along with the statutory civil penalty in this matter.

MOTION FOR RECONSIDERATION

In the April 3, 2014 decision, after the Board found respondent had violated the Act, the Board held that under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2012)), respondent was subject to the statutorily-fixed penalty of \$4,500. In addition, the Board held that respondent, by unsuccessfully contesting the administrative citation at hearing, must pay the hearing costs of the Agency and the Board.

On April 30, 2014, the Board received from respondent a filing construed as a motion for reconsideration (Mot.). In the motion, respondent repeats much of what was asserted in respondent's May 18, 2012 petition for review. In part, respondent states that upon learning of the violations, respondent instructed the operator of the Site "to cease and desist in allowing

dumping and/or burning on the site.” Mot. at 1. Respondent states, “I am not disputing the ownership of the property, but I do not operate, maintain or control any activities that occur on this property.” *Id.* With regard to uncontrollable circumstances, respondent argues that respondent’s vehicle has been inoperable and respondent has been unable to request time off of work due to family medical issues. *Id.* at 2. In addition, respondent states that she cannot afford to pay a third party to clean the Site. *Id.*

With regard to the Board hearing in this matter, respondent argues that she “was unaware of this scheduling” and that she was “out of town from December 16, 2013—January 29, 2014” and did not receive any hearing documents or summons to appear. Mot. at 2. Finally, respondent indicates that if penalties are issued in this matter, she will be unable to pay them. *Id.*

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), the Board 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).

The Board finds that respondent provided no new evidence or a change in the law that would indicate the Board’s April 3, 2014 decision finding respondent in violation of the Act was in error. Therefore, the motion to reconsider is denied.

CIVIL PENALTY AND HEARING COSTS

In its April 3, 2014 order, the Board found the statutory civil penalty of \$4,500 proper for violations of Sections 21(p)(1), 21(p)(3), and 55(k)(1) of the Act. Because the record in this matter contained no information on hearing costs in its April 3, 2014 order, the Board directed the Agency and the Clerk of the Board each to file documentation of the respective hearing costs, supported by an affidavit, and to serve the filing on respondent. The Board also gave respondent, who did not appear at hearing, until May 1, 2014 to respond to the documentation of hearing costs and noted that after the time periods for these filings had expired, the Board would issue a final opinion and order assessing the civil penalty and any appropriate hearing costs.

On April 14, 2014, the Clerk of the Board submitted an affidavit of the Board’s hearing costs totaling \$215.25, the entirety of which reflects the costs of court reporting. The Clerk served this documentation on respondent. On April 22, 2014, the Board received the Agency’s statement of hearing costs, supported by affidavit, which the Agency served on respondent. The Agency’s hearing costs total \$201.88, consisting of mileage and copying, clerical, and mailing fees. Respondent has not filed a response to either of these statements.

The Board finds the hearing costs of the Agency and the Board reasonable and orders respondent to pay those costs along with the statutory civil penalty under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2012)). The Board incorporates by reference the findings of

fact and conclusions of law from its April 3, 2014 interim opinion and order. The Board attaches the administrative citation and makes it part of the Board's final order under Section 31.1(d)(2) of the Act. 415 ILCS 5/31.1(d)(2) (2012).

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

ORDER


1. The Board finds that Ruth White (respondent) violated Section 21(p)(1), 21(p)(3), and 55(k)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), 55(k)(1) (2012)).
2. The Board assesses the statutory civil penalty of \$4,500 for the violations, as well as hearing costs totaling \$417.13, for a total amount of \$4,917.13. Respondent must pay \$4,917.13 no later than July 21, 2014, which is the first business day following the 45th day after the date of this order. Respondent 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 Respondent's social security number or federal employer identification number must be included on the certified check or money order.
3. Respondent must send the certified check or money order to:

Illinois Environmental Protection Agency
Attn.: Fiscal Services
1021 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 Act (415 ILCS 5/42(g) (2012)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
5. Payment of this penalty does not prevent future prosecution if the violation continues.

IT IS SO ORDERED.

Section 41(a) of the 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) (2012); *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, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion order on June 5, 2014, by a vote of 4-0.

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, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

RECEIVED
CLERK'S OFFICE
APR 17 2012
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
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v.)
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RUTH WHITE,)
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Respondent.)

AC 12-48
(IEPA No. 89-12-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 Ruth White is the current owner ("Respondent") of a property located on Charles Street, south of Illinois Route 75, Freeport, Stephenson County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Freeport/White 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. 1770205230.
3. That Respondent has owned said facility at all times pertinent hereto.
4. That on February 22, 2012, Kaare Jacobsen of the Illinois Environmental Protection Agency's ("Illinois EPA") Rockford 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 4-12-12, Illinois EPA sent this Administrative Citation via Certified Mail No. 7009 2820 0001 7496 0896.

VIOLATIONS

Based upon direct observations made by Kaare Jacobsen during the course of his February 22, 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 water to accumulate in used or waste tires, a violation of Section 55(k)(1) of the Act, 415 ILCS 55(k)(1) (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 May 15, 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.


John J. Kim, Interim Director
Illinois Environmental Protection Agency

Date: 4/12/2012

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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CLERK'S OFFICE

APR 17 2012

STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL)
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(IEPA No. 89-12-AC)

FACILITY: Freeport/White Property
SITE CODE NO.: 1770205230
COUNTY: Stephenson
CIVIL PENALTY: \$4,500.00
DATE OF INSPECTION: February 22, 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.