

ILLINOIS POLLUTION CONTROL BOARD
July 26, 2007

COUNTY OF OGLE,)
)
 Complainant,)
)
 v.) AC 07-67
) (Administrative Citation)
 HENRY POGGIOLI, JR.,)
)
 Respondent.)

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

On June 12, 2007, the County of Ogle (County) timely filed an administrative citation against Henry Poggioli, Jr. (respondent). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns a site commonly known as Poggioli, Henry Property with Site Code No. 1418095003, and located at 10708 N. Leaf River Road, Leaf River, Ogle County. For the reasons below, the Board finds that respondent violated the Environmental Protection Act (Act) (415 ILCS 5 (2006)) and orders respondent to pay \$3,000 in civil penalties.

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 Illinois Environmental Protection Agency (Agency) or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2006); 35 Ill. Adm. Code 108.

In this case, the County alleges that respondent violated Sections 21(p)(3) and (p)(7) of the Act (415 ILCS 5/21(p)(3), (p)(7) (2006)) by operating an open dump resulting in open burning and deposition of general construction or demolition debris or clean construction or demolition debris. The County asks the Board to impose a \$3,000 civil penalty on respondent. As required, the County served the administrative citation on respondent within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 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 a respondent fails to do so, the Board must find that the respondent committed the violation alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2006); 35 Ill. Adm. Code 108.204(b), 108.406. Here, any petition for review was due on July 19, 2007. Respondent failed to timely file a petition. Accordingly, the Board finds that respondent violated Sections 21(p)(3) and (p)(7) of the Act (415 ILCS 5/21(p)(3), (p)(7) (2006)).

The civil penalty for violating Section 21(p) is \$1,500 for each violation. 415 ILCS 5/42(b)(4-5) (2006); 35 Ill. Adm. Code 108.500(a). Because there are two violations, the total 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. Respondent must pay a civil penalty of \$3,000 no later than August 27, 2007, which is the first business day following the 30th day after the date of this order.
2. Respondent must pay the civil penalty by certified check or money order, made payable to the Ogle County Solid Waste Fund.
3. Respondent must send the certified check or money order and the remittance form to:

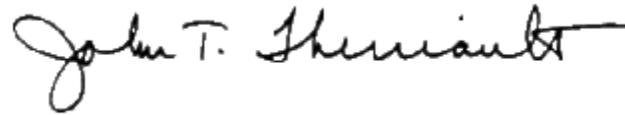
Ogle County Treasurer
Ogle County Courthouse
P.O. Box 40
Oregon, Illinois 61061

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
5. Payment of this penalty does not prevent future prosecution if the violations continue.

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) (2006); *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 July 26, 2007, by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION**

County of Ogle,)
)
 Complainant,)
)
 v.) AC# 07-
) (Administrative Citation)
 Harry Poggioli, Jr.,)
)
)
 Respondent.)

NOTICE OF FILING

TO: Harry Poggioli, Jr.
8501 N. Triumph Road
Leaf River, Illinois 61047

PLEASE TAKE NOTICE that I have filed with the Office of the Clerk of the Illinois
Pollution Control Board the Complaint for Administrative Citation, a copy of which is herewith
served upon you.

John B. Roe
Ogle County State's Attorney

Date: _____

By: _____

Emily S. Seifert
Assistant State's Attorney
Ogle County State's Attorney's Office
Oregon, Illinois 61061

CC: IEPA Rockford
IEPA Springfield
OCSWMD File
Ogle County State's Attorney

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

County of Ogle,)
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 Complainant,)
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 v.) AC#
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) (ADMINISTRATIVE CITATION)
 Harry Poggioli, Jr.,)
)
 Respondent)

JURISDICTION

This Administrative Citation is issued pursuant to authority vested in the Illinois Environmental Protection Agency by 415 ILCS 5/1 *et. seq.* (2005), specifically 415 ILCS 5/31.1.

FACTS

1. The Respondent, Harry Poggioli, Jr., is the present owner and operator and in control and possession of a facility located in the County of Ogle, State of Illinois.
2. The facility is an open dump, operating without an Illinois Environmental Protection Agency Operating Permit, and designated with the Site Code Number 1418095003. The facility is known to the Agency as Poggioli, Harry Jr.
3. That respondent, Harry Poggioli, Jr., has occupied, controlled and/or operated the facility at all relevant times hereto.
4. That on April 16, 2007, Joy K. Bliton, Field Inspector for Ogle County Solid Waste Management Department, inspected the facility.

VIOLATIONS

On the basis of Field Inspector J. K. Bliton's direct observation, she has determined that the Respondent has caused or allowed open dumping at the above described facility in a manner that resulted in the following violations: 415 ILCS 9(a), 9(c), 21(a), 21(d), 21(e), 21(p)(3), 21(p)(7), 55(a)(1&2) and 35 Illinois Administrative Code Requirements, Subtitle G 812.101(a).

That on April 16, 2007 an on-site inspection of the facility disclosed the following:

The Respondent has:

- 1) Caused or allowed the open dumping of any waste in a manner which resulted in open burning in violation of 415 ILCS 5/21(p)(3).
- 2) 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 in violation of 415 ILCS 5/21(p)(7).

CIVIL PENALTY

In accordance with 415 ILCS 5/42 (b)(4), the Respondent is subject to a civil penalty of \$1,500.00 for each violation specified above. This is a total of \$3,000.00 for this Citation. Additionally, should the Respondent elect to petition the Illinois Pollution Control Board under the review process described below, after an adjudicatory hearing, the Respondent shall be assessed the hearing costs incurred by the Pollution Control Board. The hearing cost would be in addition to the \$3,000.00.

If Respondent acknowledges the violations cited hereinabove, the civil penalty shall be due and payable no later than thirty-five (35) days from the date of service hereof. If Respondent does not petition the Pollution Control Board for review of this Administrative Citation within

thirty-five (35) days of service hereof or if Respondent elects to contest this Administrative Citation, any judgment rendered against Respondent shall specify the due date of the statutory civil penalty and any costs assessed against Respondent.

When payment is made, Respondent's check should be made payable to Ogle County Solid Waste Fund and mailed to the Ogle County Treasurer, Ogle County Courthouse, P.O. Box 40, Oregon, IL 61061. Respondent shall complete and return the enclosed Remittance Form to ensure proper documentation of payment.

If any civil penalty, by reason of acknowledgment, default or finding after adjudicatory hearing, is not paid when due, the Illinois Environmental Protection Agency shall take into consideration such failure to pay during any permit review process upon Respondent's application for a new permit or for renewal of an existing permit. If any civil penalty imposed by the Illinois Pollution Control Board is not paid within the time prescribed in the order, interest on such penalty will be assessed for the period from the date payment is due until the date payment is received. Furthermore, if payment is not received when due, the Ogle County State's Attorney shall be requested to initiate proceedings in Circuit Court to collect said civil penalty. In addition to the previously assessed civil penalty, interest, and hearing costs of Ogle County and the Illinois Pollution Control Board, if any, the Ogle County State's Attorney's Office will seek to recover their costs of litigation.

PROCEDURE FOR CONTESTING ADMINISTRATIVE CITATION

Respondent has the right to contest this Administrative Citation (*See* 415 ILCS 5/31.1). If Respondent elects to contest this Administrative Citation, Respondent must file a Petition for Review with the Clerk of the Illinois Pollution Control Board. A copy of the Petition for Review must also be sent to the Ogle County State's Attorney's Office. **Such Petition for Review must**

be filed within thirty-five (35) days of the date of service of this Administrative Citation, or a Default Judgment against you shall be entered by the Pollution Control Board.

Respondent's original Petition must be filed with the Clerk of the Illinois Pollution Control Board at the James R. Thompson Center, 100 West Randolph, Suite 11-500, Chicago, IL 60601; and a copy of said Petition for Review must also be sent to John B. Roe, Ogle County State's Attorney, Ogle County Courthouse, 106 S. Fifth Street, Suite 110, Oregon, IL 61061. In addition, a copy of the Petition needs to be sent to the Ogle County Solid Waste Management Department, Stephen J. Rypkema, Director, 909 West Pines Road, Oregon, IL 61061.

John B. Roe
Ogle County State's Attorney

Date: _____

By: _____
Emily S. Seifert
Assistant State's Attorney
Ogle County State's Attorney's Office
Oregon, Illinois 61061

CC: IEPA Rockford
IEPA Springfield
OCSWMD File
Ogle County State's Attorney

INFORMATIONAL NOTICE

IT IS IMPORTANT THAT YOU READ THE ENCLOSED DOCUMENTS!

NOTE: THIS ADMINISTRATIVE CITATION REFERS TO ONE STATE AGENCY AND TWO COUNTY ENTITIES.

The one state agency is: Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601

The two county entities are: Ogle County State=s Attorney Office
Attention: John Roe
106 S. 5th Street, Suite 110
Oregon, IL 61061

Ogle County Solid Waste Management Department
Stephen J. Rypkema, Director
909 W. Pines Road
Oregon, IL 61061

If you elect to contest the enclosed Administrative Citation, you must file a Petition for Review within thirty-five (35) days of the date the Administrative Citation was served upon you. Any such Petition for Review must be filed with the Clerk of the Illinois Pollution Control Board at the address given above. A copy of the Petition for Review should be either hand-delivered or mailed to the Ogle County State=s Attorney=s Office, Attention: John Roe, at the address given above. Also, a copy of the Petition for Review should be either hand-delivered or mailed to the Ogle County Solid Waste Management Department at the address given above.

REMITTANCE FORM

County of Ogle,)
)
 Complainant,)
)
 v.) AC#
)
 Harry Poggioli, Jr.,)
)
 Respondent)

FACILITY: Poggioli, Harry Jr.
COUNTY: Ogle
DATE OF INSPECTION: April 16, 2007
SITE CODE: 1418095003
CIVIL PENALTY: \$3,000.00

Date Remitted _____

SS/FEIN # _____

Signature _____

NOTE

Please include the information on the blank lines. Mail this form with your check to:

Ogle County Solid Waste Fund
Ogle County Treasurer
Ogle County Courthouse
P.O. Box 40
Oregon, IL 61061