

ILLINOIS POLLUTION CONTROL BOARD
May 15, 2008

COUNTY OF DUPAGE,)
)
Complainant,)
)
v.) AC 08-14
) (County No. DP-AC-08-02)
NICOLAS CRUZ,) (Administrative Citation)
)
Respondent.)

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

On February 8, 2008, the County of DuPage (County) timely filed an administrative citation against Nicolas Cruz (Cruz). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Cruz’s property located at 1N570 Mac Queen Drive in West Chicago, DuPage County. The property is designated with Site Code No. 0438075019. For the reasons below, the Board finds that Cruz violated the Environmental Protection Act (Act) (415 ILCS 5 (2006)) and orders Cruz to pay \$1,500 in civil penalties.

Under the Act (415 ILCS 5 (2006)), 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 Cruz violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2006)) by causing or allowing the open dumping of waste resulting in litter at his West Chicago property. The County asks the Board to impose the statutory \$1,500 civil penalty on Cruz. As required, the County served the administrative citation on Cruz within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b).

In an order of April 3, 2008, the Board accepted as timely filed Cruz’s petition to contest the administrative citation, but directed Cruz to file an amended petition to cure the deficiencies identified in that order, including Cruz’ failure to provide any grounds for contesting the citation. The Board’s order stated:

If Cruz fails to file an amended petition by May 5, 2008, which is the first business day following the 30th day after the date of this order, Cruz’s petition will be dismissed and a default order will be entered against him, imposing the \$1,500 civil penalty. County of DuPage v. Nicolas Cruz, AC 08-14, slip op. at 2 (Apr. 3, 2008).

Cruz has not filed an amended petition and therefore has defaulted. *See* 35 Ill. Adm. Code 108.404. Accordingly, the Board dismisses Cruz' petition and finds that Cruz violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2006)). The civil penalty for violating any provision of subsection (p) of Section 21 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) (2006); 35 Ill. Adm. Code 108.500(a). Because there is one violation of Section 21(p) and no allegation of any second or subsequent adjudicated violation, the total civil penalty is \$1,500. 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 dismisses Cruz' petition and finds that Cruz violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2006)).
2. Cruz must pay a civil penalty of \$1,500 no later than June 16, 2008, which is the first business day following the 30th day after the date of this order. Cruz must pay the civil penalty with two certified checks or money orders. One certified check or money order must be in the amount of \$750 and made payable to DuPage County. The other certified check or money order must be in the amount of \$750 and made payable to the Illinois Environmental Protection Agency. The case number, case name, and Cruz' social security number must be included on each certified check or money order.
3. Cruz must send the certified checks or money orders and the remittance form to:

DuPage County
Department of Economic Development and Planning
Regulatory Services Division
421 North County Farm Road
Wheaton, IL 60187
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 violation continues.

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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 15, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

County of DuPage,)	
)	
Complainant,)	
)	
v.)	AC 08 - 14
)	DP-08-02
Nicolas Cruz,)	
)	
Respondent.)	

ADMINISTRATIVE CITATION

<u>Violation:</u>	<u>Civil Penalty</u>
415 ILCS 5/21(p)(1)	\$1,500.00
	TOTAL: \$1,500.00

JURISDICTION

This Administrative Citation is issued pursuant to authority vested in the Illinois Environmental Protection Agency by 415 ILCS 5/1 *et. seq.* (1996), specifically 415 ILCS 5/31.1.

FACTS

1. Complainant, County of DuPage, is a unit of local government to which the Illinois Environmental Protection Agency has delegated authority to issue administrative citations pursuant to Section 4(r) of the Illinois Environmental Protection Act, ("Act"), 415 ILCS 5/4(r) (2007). DuPage County is thus a "delegated unit" and may issue administrative citations under 35 Ill. Adm. Code 108.200.

2. The Respondent, Nicolas Cruz, is the present occupant and in control and possession of the property at 1N570 Mac Queen Drive; West Chicago, located in the County of DuPage, State of Illinois.

3. The property is an open dump, operating without an Illinois Environmental Protection Agency Operating Permit, and designated with the Site Code #0438075019. The facility is known to the County as the Nicolas Cruz site.

4. The Respondent has occupied, controlled and/or operated the facility at all relevant times hereto.

5. On December 3, 2007, Joy Hinz, Field Inspector for DuPage County as delegated by the Illinois Environmental Protection Agency, inspected the property. A true and correct copy of the inspection report, along with Ms. Hinz's affidavit, are attached hereto and made a part hereof.

6. Based upon direct observations made by Ms. Hinz during the course of her inspection, DuPage County has determined that Respondent violated the Act as follows:

a. Respondent caused or allowed the open dumping of waste in a manner resulting in litter, in violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2007).

7. Based upon the foregoing facts, under Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5), 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 civil penalty of One Thousand Five Hundred Dollars (\$1,500.00).

Notices and Instructions to Respondent

1. **You must pay the civil penalty set forth above unless you contest this Administrative Citation.** The following paragraphs contain payment instructions and more information about contesting this Administrative Citation.
2. To pay the civil penalty (and any other amounts due) send two (2) checks or money orders with the attached Remittance Form, one check in the amount of Seven Hundred and Fifty Dollars payable to DuPage County and the second check or money order in the amount of Seven Hundred and Fifty Dollars payable to the Illinois Environmental Protection Agency to:

DuPage County
Department of Economic Development and Planning
Regulatory Services Division
421 North County Farm Road
Wheaton, IL 60187

To ensure that you receive timely and proper credit for your payment, complete the attached Remittance Form and include it with your payment.

3. You may contest this Administrative Citation by filing a Petition for Review, including a Notice of Filing, Certificate of Service, and Appearance with the Illinois Pollution Control Board ("Board").
4. **Any Petition for Review must be filed within thirty-five (35) days of the date of service of this Administrative Citation on you. The Board will not review the Administrative Citation if the Petition for Review is not filed within this time.**
5. The Petition for Review must be filed with:

Clerk of the Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

A copy of the Petition for Review must be served on the County of DuPage at the following address:

County of DuPage
Office of the State's Attorney, Civil Division
508 North County Farm Road
Wheaton, IL 60187

6. The contents of a Petition for Review and the procedures to be followed are governed by the Board's procedural rules. Copies may be obtained from the Clerk of the Board at the address above, by calling the Board at (312) 814-3620, or from the Board's website at:

<http://www.ipcb.state.il.us/rules/procedural/procedural.htm>

7. If you do not contest this Administrative Citation by filing a petition for review with the Board within the allotted time, the Board will enter an order finding that you committed the violations alleged above imposing the statutory civil penalty

set forth above. See Section 31.1(d) of the Act, 415 ILCS 5/31.1(d) and 35 Ill. Adm. Code 108.500(a).

8. If you contest this Administrative Citation by filing a timely petition for review with the Board, the Board will hold a hearing. The Board's procedural rules have more information on hearings; see 35 Ill. Adm. Code Parts 101 and 108.
9. If the Board finds after the hearing that you committed a violation as alleged above, you will be assessed the hearing costs incurred by the County of DuPage and the Board. Hearing costs are assessed in addition to the statutory civil penalty for the violations. If the Board finds after the hearing that you did not commit a violation as alleged above, or that the violation resulted from uncontrollable circumstances, you will not be assessed hearing costs and you will not have to pay a civil penalty.
10. If any civil penalty and/or hearing costs are not paid within the time set by the Board in its final order, interest on the amount due will be assessed against you from the date payment is due and including the date that payment is received.
11. If any civil penalty and/or hearing costs are not paid within the time set by the Board in its final order, the DuPage County State's Attorney's Office may initiate court proceedings against you to collect the amount due, plus any interest accrued. In that event, you may also be liable for court costs.

DATE January 17, 2008

County of DuPage
Office of the State's Attorney

Mary A Fleming
Assistant State's Attorney

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CLERK'S OFFICE
JAN 29 2008
STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

County of DuPage,)
)
 Complainant,)
)
 v.) AC -14
) DP-08-02
 Nicolas Cruz,)
)
 Respondent.)

FACILITY: Nicolas Cruz Site
COUNTY: DuPage
DATE OF INSPECTION: December 3, 2007
SITE CODE: 0438075019
CIVIL PENALTY: \$1,500.00

Date Remitted _____
SS/FEIN # _____
Signature _____

Instructions

Enter the date of your remittance, your Federal Employee Identification Number (FEIN) (or social security number (SSN) if an individual) and sign this Remittance Form. Print the name of the person signing this Remittance Form and that person's title, if applicable.

Send two (2) checks or money orders with the attached Remittance Form, one check in the amount of Seven Hundred and Fifty Dollars payable to DuPage County and the second check or money order in the amount of Seven Hundred and Fifty Dollars payable to the Illinois Environmental Protection Agency to:

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Regulatory Services Division
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