

ILLINOIS POLLUTION CONTROL BOARD
June 5, 2008

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|----------------------------------|---|---------------------------|
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | AC 08-28 |
| |) | (IEPA No. 52-08-AC) |
| JOSEPH COSENTINO and ROB PINSKI, |) | (Administrative Citation) |
| |) | |
| Respondents. |) | |

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

On April 11, 2008, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Joseph Cosentino (Cosentino) and Rob Pinski (Pinski). *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a facility located at 1043 N. Walnut Street, St. Johns, Perry County, designated with Site Code No. 1450200009, and commonly known to the Agency as “St.Johns/Cosentino-P. and E. Construction, Pinski.” On May 12, 2008, Pinski filed a timely petition to contest the administrative citation. On June 2, 2008, the Agency filed a motion to dismiss Cosentino. For the reasons below, the Board grants the Agency’s motion to dismiss Cosentino and accepts Pinski’s petition to contest the administrative citation.

MOTION TO DISMISS

The Agency requests that the Board dismiss Cosentino from this administrative citation action, leaving Pinski as the only respondent. According to the motion, the Agency has determined, based upon information and belief, that Cosentino “has been deceased for several years.” Motion at 1. The Board grants the Agency’s motion.

PETITION TO CONTEST THE ADMINISTRATIVE CITATION

Under the Environmental Protection Act (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 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 Agency alleges that on February 29, 2008, Pinski violated Sections 21(p)(1), (p)(3), and (p)(4) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(4) (2006)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the deposition of waste in standing or flowing waters at the Perry County site. According to the

administrative citation, Pinski is the current operator of the site. The Agency asks the Board to impose a \$4,500 civil penalty on Pinski.

As required, the Agency served the administrative citation on Pinski 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). Any petition to contest the administrative citation was due by May 29, 2008. On May 12, 2008, Pinski timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2006); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.206. According to Pinski’s petition, he was unaware that he was “doing anything illegal by burning wood in the country.” Petition at 3. Pinski further claims that he complied with the disposal and cleanup requests of the Agency inspector, who allegedly informed him that he “was going to get 3 warning tickets most likely if [he] complied with this Agreement.” *Id.* at 1-3.

The Board accepts Pinski’s petition and directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. *See* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2006). By contesting the administrative citation, Pinski may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2006); 35 Ill. Adm. Code 108.500. A schedule of the Board’s hearing costs is available from the Clerk of the Board and on the Board’s Web site at www.ipcb.state.il.us. *See* 35 Ill. Adm. Code 108.504.

Pinski may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Pinski chooses to withdraw his petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Pinski withdraws his petition after the hearing starts, the Board will require Pinski to pay the hearing costs of the Board and the Agency. *See id.* at 108.500(c).

The Agency has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2006); 35 Ill. Adm. Code 108.400. If the Board finds that Pinski violated Section 21(p)(1), (p)(3), or (p)(4) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(4) (2006)), the Board will impose civil penalties on Pinski. 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). However, if the Board finds that Pinski “has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.” 415 ILCS 5/31.1(d)(2) (2006); *see also* 35 Ill. Adm. Code 108.500(b).

CONCLUSION

For the reasons above, the Board grants the Agency’s motion to dismiss Cosentino and accepts Pinski’s petition to contest the administrative citation. Consistent with today’s order, the caption of future pleadings in this case should reflect Pinski as the sole respondent.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 5, 2008, 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 stroke at the end.

John Therriault, Assistant Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

ADMINISTRATIVE CITATION

APR 11 2008

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

v.

JOSEPH COSENTINO and ROB PINSKI,

Respondents.

ORIGINAL AC 08-28

(IEPA No. 52-08-AC)


NOTICE OF FILING

To: Joseph Cosentino
1043 N. Walnut Street
St. Johns, IL 62832

Rob Pinski
529 South Madison Street
DuQuoin, IL 62832

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled ADMINISTRATIVE CITATION, AFFIDAVIT, and OPEN DUMP INSPECTION CHECKLIST.

Respectfully submitted,



Michelle M. Ryan
Assistant Counsel

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Dated: April 8, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

ADMINISTRATIVE CITATION

APR 11 2008

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

ORIGINAL

Complainant,

AC 08-28

v.

(IEPA No. 52-08-AC)

JOSEPH COSENTINO and ROB PINSKI,

Respondents.

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 (2006).

FACTS

1. That Joseph Cosentino is the present owner and Rob Pinski is the current operator ("Respondents") of a facility located at 1043 N. Walnut Street, St. Johns, Perry County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as St. Johns/Cosentino-P. and E. Construction, Pinski.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 1450200009.
3. That Respondents have owned/operated said facility at all times pertinent hereto.
4. That on February 29, 2008, Sheila Williams of the Illinois Environmental Protection Agency's Marion Regional Office inspected the above-described facility. A copy of her inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

VIOLATIONS

Based upon direct observations made by Sheila Williams during the course of her February 29, 2008 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) (2006).

- (2) That Respondents 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) (2006).

- (3) That Respondents caused or allowed the open dumping of waste in a manner resulting in deposition of waste in standing or flowing waters, a violation of Section 21(p)(4) of the Act, 415 ILCS 5/21(p)(4)(2006).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2006), 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 Four Thousand Five Hundred Dollars (\$4,500.00). 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 May 15, 2008, 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 (2006), 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.

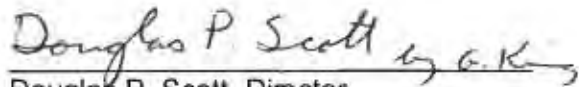
Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2006), if Respondents fail to petition or elect not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall 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, Respondents 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 (2006). 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.


Douglas P. Scott, Director
Illinois Environmental Protection Agency

Date: 4/8/08

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 11 2008

STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
 Complainant,) ORIGINAL)
 v.)
 JOSEPH COSENTINO and ROB PINSKI,)
 Respondents.)

AC 08-28
 (IEPA No. 52-08-AC)

FACILITY: St. Johns/Cosentino- P&E Construction, Pinski

SITE CODE NO.: 1450200009

COUNTY: Perry

CIVIL PENALTY: \$4,500.00

DATE OF INSPECTION: February 29, 2008

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.