

ILLINOIS POLLUTION CONTROL BOARD
December 4, 2008

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 08-32
)	(IEPA No. 73-08-AC)
JOSEPH FLICK,)	(Administrative Citation)
)	
Respondent.)	

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

In a September 4, 2008 order, the Board dismissed an administrative citation filed by the Illinois Environmental Protection Agency (Agency) on June 3, 2008, against Joseph Flick (Flick). The Board dismissed the administrative citation because as of September 4, 2008, the Agency had not filed proof with the Board that the Agency served the administrative citation on Flick. On October 14, 2008, the Agency filed a motion asking the Board to reconsider the September 4, 2008 order. Today the Board grants the Agency's motion to reconsider and, based on new evidence of service, vacates the September 4, 2008 order and enters a default order against Flick. Below, the Board provides background before turning to the issues.

BACKGROUND

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. The Act requires the Agency to serve the administrative citation on the respondent "within not more than 60 days after the date of the observed violation" and to file a copy of the administrative citation with the Board "no later than 10 days after the date of service." 415 ILCS 5/31.1(b), (c) (2006). The respondent has "35 days from the date of service" to file a petition with the Board to contest the administrative citation. 415 ILCS 5/31.1(d)(1) (2006).

In this case, the administrative citation filed on June 3, 2008, concerns a facility located at 280 Pine Tree Lane in Cobden, Union County. According to the citation, Flick is the present owner and operator of the facility, which is commonly known to the Agency as the "Cobden/Flick" site and is designated with Site Code No. 1818540002.

The Agency alleges in the administrative citation that Flick violated Sections 21(p)(1) and (p)(7) of the (415 ILCS 5/21(p)(1), (p)(7) (2006)) at the site on May 5, 2008, by causing or

allowing the open dumping of waste in a manner resulting in litter and the deposition of general or clean construction or demolition debris. The Agency seeks the statutory civil penalty of \$1,500 for each alleged violation, totaling \$3,000. *See* 415 ILCS 5/42(b)(4-5) (2006). The sixtieth day after May 5, 2008, was July 4, 2008, a national holiday. Accordingly, the deadline for Agency service of the administrative citation was the next business day, *i.e.*, July 7, 2008. *See* 35 Ill. Adm. Code 101.300(a).

On September 4, 2008, the Board dismissed the June 3, 2008 administrative citation because the Agency had failed to file proof of service of the administrative citation on Flick. Without proof of service, the Board was unable to determine whether it had jurisdiction over the case. *See* 415 ILCS 5/31.1(b), (c) (2006). As the Board noted, failure to serve the citation within the 60-day period deprives the Board of jurisdiction. Likewise, compliance with the Act's 10-day filing requirement is also a jurisdictional prerequisite for the Board to hear or enter a default judgment on an administrative citation. *See* IEPA v. Joseph Flick, AC 08-32, slip op. at 1-2 (Sept. 4, 2008).

MOTION TO RECONSIDER

On October 14, 2008, the Agency filed a motion for reconsideration (Mot.) of the Board's September 4, 2008 order. *See* 35 Ill. Adm. Code 101.520. Any response from Flick was due by October 28, 2008. *See* 35 Ill. Adm. Code 101.520(b). The Board received no response and Flick is therefore deemed to have waived any objection to the Board granting the motion. *See* 35 Ill. Adm. Code 101.500(d).

A motion to reconsider may be brought "to bring to the [Board's] attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the [Board's] previous application of existing law." Citizens Against Regional Landfill v. County Board of Whiteside County, PCB 92-156, slip op. at 2 (Mar. 11, 1993), citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1991); *see also* 35 Ill. Adm. Code 101.902. In addition, a motion to reconsider may specify "facts in the record which were overlooked." Wei Enterprises v. IEPA, PCB 04-23, slip op. at 3 (Feb. 19, 2004). The Agency's motion "requests that the Board reconsider its September 4, 2008 order based on the new evidence herein contained." Mot. at 1-2. As described below, the new evidence concerns service of the administrative citation on Flick. The Board accordingly grants the motion to reconsider.

In the motion, the Agency states that on May 28, 2008, the Agency issued the administrative citation to Flick. Mot. at 1. The Agency asserts that Flick was served on May 31, 2008, attaching a copy of a certified mail receipt, which is signed and dated May 31, 2008. Mot. at 1, Att. According to the Agency, service was timely as the site inspection took place on May 5, 2008. Mot. at 1. Based on this new evidence of service, coupled with Flick's failure to contest the administrative citation, the Agency asks that the Board issue a default order against Flick. *Id.* at 1-2.

The Board's procedural rules call for administrative citations to be served "personally, by registered or certified mail, or by messenger service." 35 Ill. Adm. Code 101.304(c). In

addition, “[p]roof of service of . . . administrative citations must be filed with the Board upon completion of service.” *Id.* For service by registered mail, certified mail, or messenger service, “service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt.” 35 Ill. Adm. Code 101.300(c).

As stated above, based on the May 5, 2008 inspection date, the Agency was required to serve the administrative citation on Flick by July 7, 2008. The Agency has provided a signed and dated certified mail receipt, demonstrating that Flick was timely served on May 31, 2008. Further, the Agency’s June 3, 2008 filing of the administrative citation was no later than ten days after the date of service. The Board finds that the Agency timely served and filed the administrative citation. With the satisfaction of these jurisdictional prerequisites (415 ILCS 5/31(b), (c) (2006)), the Board will enter a default order against Flick. The Board therefore vacates its September 4, 2008 order based on the new evidence of service presented by the Agency.

DEFAULT

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 the respondent fails to do so, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2006); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by July 7, 2008. *See* 35 Ill. Adm. Code 101.300(a). Flick has not filed any petition with the Board. The administrative citation is therefore “non-contested.” *See* 35 Ill. Adm. Code 108.406. Accordingly, the Board finds that Flick violated Sections 21(p)(1) and (p)(7) of the Act.

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 are two violations of Section 21(p) and no allegation of any second or subsequent adjudicated violation, 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 findings of fact and conclusions of law.

ORDER

1. The Board grants the Agency’s motion to reconsider and vacates the Board’s September 4, 2008 order.
2. The Board finds that Flick violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(7) (2006)).
3. Flick must pay a civil penalty of \$3,000 no later than January 5, 2009, which is the first business day following the 30th day after the date of this order. Flick

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 Flick's social security number or federal employer identification number must be included on the certified check or money order.

4. Flick must send the certified check or money order and the remittance form 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) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
6. 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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 4, 2008, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board

VIOLATIONS

Based upon direct observations made by Phillip Fatka during the course of his May 5, 2008 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) (2006).

- (2) That Respondent caused or allowed the open dumping of waste in a manner resulting in the 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) (2006).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2006), 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 Three Thousand Dollars (\$3,000.00). 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 July 30, 2008, 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 (2006), 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.

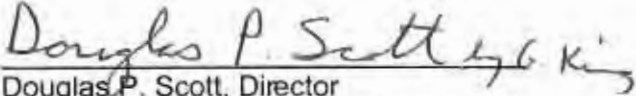
Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2006), if Respondent fails to petition or elects not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board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


Douglas P. Scott, Director
Illinois Environmental Protection Agency

Date: 5/28/08

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

ORIGINAL

RECEIVED
CLERK'S OFFICE

JUN 03 2008

STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Complainant,)
)
 v.)
)
 JOSEPH FLICK,)
)
)
)
 Respondent.)

AC 08 32
 (IEPA No. 73-08-AC)

FACILITY: Cobden/Flick

SITE CODE NO.: 181850002

COUNTY: Union

CIVIL PENALTY: \$3,000.00

DATE OF INSPECTION: May 5, 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.