

ILLINOIS POLLUTION CONTROL BOARD
December 4, 2008

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 08-34
)	(IEPA No. 75-08-AC)
JOSEPH COMBS,)	(Administrative Citation)
)	
Respondent.)	

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

In a September 16, 2008 order, the Board dismissed an administrative citation filed by the Illinois Environmental Protection Agency (Agency) on June 19, 2008, against Joseph Combs (Combs). The Board dismissed the administrative citation because as of September 16, 2008, the Agency had not filed proof with the Board that the Agency served the administrative citation on Combs. On October 22, 2008, the Agency filed a motion asking the Board to reconsider the September 16, 2008 order. Today the Board grants the Agency's motion to reconsider and, based on new evidence of service, vacates the September 16, 2008 order and enters a default order against Combs. 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 19, 2008, concerns a facility located at 260 Israel Street in White Hall, Greene County. According to the citation, Combs is the present operator of the facility, which is commonly known to the Agency as the "White Hall/Combs" site and is designated with Site Code No. 0610405013.

The Agency alleges in the administrative citation that Combs violated Sections 21(p)(1) and (p)(7) of the (415 ILCS 5/21(p)(1), (p)(7) (2006)) at the site on April 22, 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. Because this administrative citation addresses allegedly second or subsequent violations of Sections 21(p)(1) and (p)(7) by Combs, the Agency seeks the statutory civil penalty of \$3,000 for each violation, totaling \$6,000. *See* 415 ILCS 5/42(b)(4-5) (2006). The sixtieth day after April 22, 2008, was July 21, 2008, a Saturday. Accordingly, the deadline for Agency service of the administrative citation was the next business day, *i.e.*, July 23, 2008. *See* 35 Ill. Adm. Code 101.300(a).

On September 16, 2008, the Board dismissed the June 19, 2008 administrative citation because the Agency had failed to file proof of service of the administrative citation on Combs. 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 Combs, AC 08-34, slip op. at 1-2 (Sept. 16, 2008).

MOTION TO RECONSIDER

On October 22, 2008, the Agency filed a motion for reconsideration (Mot.) of the Board's September 16, 2008 order. *See* 35 Ill. Adm. Code 101.520. Any response from Combs was due by November 5, 2008. *See* 35 Ill. Adm. Code 101.520(b). The Board received no response and Combs 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 16, 2008 order based on the new evidence herein contained." Mot. at 2. As described below, the new evidence concerns service of the administrative citation on Combs. The Board accordingly grants the motion to reconsider.

In the motion, the Agency states that on June 17, 2008, the Agency issued the administrative citation to Combs, based on an April 22, 2008 site inspection. Mot. at 1. The Agency received a certified mail return receipt card, a copy of which is attached to the Agency's motion, "indicating that [Combs] was served and signed for the Administrative Citation." *Id.*, Att. However, the Agency continues, the exact date of service is not evident from the receipt card, nor is the information available on the U.S. Postal Service website. Mot. at 1. Nevertheless, because the certified mail receipt card was postmarked "June 19, 2008" for its return to the Agency, the Agency asserts that "the actual date of service could have been no later than June 19, 2008, and therefore [Combs] was timely served." *Id.* The Agency's attorney

certifies that the statements made in the motion are true and correct. Mot., Certification. The Agency asks that the Board issue a default order against Combs based on this new evidence. Mot. 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).

Here, the Agency initiated service on June 17, 2008, by the requisite certified mail, return receipt requested, as indicated in the certificate of service attached to the administrative citation filed with the Board. Based on the April 22, 2008 inspection date, the Agency was required to serve the administrative citation on Combs by July 23, 2008. Combs signed but did not date the certified mail receipt. Accordingly, the Agency was able to provide a signed, but not a dated, certified mail receipt. However, under the circumstances of this case, the Board finds that the Agency has provided adequate proof of service. The "June 19, 2008" postmark date on the receipt card for return mailing to the Agency is compelling evidence that service on Combs was complete by June 19, 2008, and therefore within the 60-day time period. Further, the Agency's June 17, 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 Combs. The Board therefore vacates its September 16, 2008 order based on the new evidence presented by the Agency.

DEFAULT

As discussed above, 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 on or about July 24, 2008. Combs 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 Combs 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 this administrative citation addresses second or subsequent adjudicated violations of Sections 21(p)(1) and (p)(7) by Combs, the total civil penalty is \$6,000. *See* IEPA v. Joseph Combs, AC 07-60, slip op. at 2 (July 12, 2005) (Combs

violated 415 ILCS 5/21(p)(1), (p)(3), (p)(7)). 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 16, 2008 order.
2. The Board finds that Combs violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(7) (2006)).
3. Combs must pay a civil penalty of \$6,000 no later than January 5, 2009, which is the first business day following the 30th day after the date of this order. Combs 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 Combs' social security number or federal employer identification number must be included on the certified check or money order.
4. Combs must send the certified check or money order and the remittance form to:

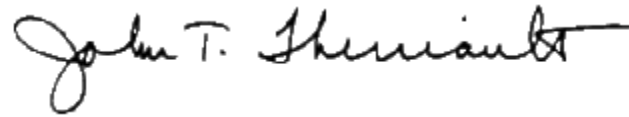
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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.

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

John Therriault, Assistant Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

RECEIVED
CLERK'S OFFICE

JUN 19 2008

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

v.

JOSEPH COMBS,

Respondent.

ORIGINAL
AC 08-34

(IEPA No. 75-08-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 (2006).

FACTS

1. That Joseph Combs ("Respondent") is the present operator of a facility located at 260 Isreal Street, White Hall, Greene County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as White Hall/Combs.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 0610405013.
3. That Respondent has operated said facility at all times pertinent hereto.
4. That on April 22, 2008, Charlie King of the Illinois Environmental Protection Agency's Springfield 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.

VIOLATIONS

Based upon direct observations made by Charlie King during the course of his April 22, 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 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

On July 12, 2007, the Board found Joseph Combs in violation of Sections 21(p)(1), (3) and (7) of the Act in AC 07-60.

Because this Administrative Citation addresses a second or subsequent violation of Sections 21(p)(1) and (7) of the Act, 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 Three Thousand Dollars (\$3,000.00) for each violation, for a total of Six Thousand Dollars (\$6,000.00). 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 15, 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, 1021North 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: 6/17/08

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

REMITTANCE FORM

RECEIVED
CLERK'S OFFICE

JUN 19 2008

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

v.

JOSEPH COMBS,

Respondent.

ORIGINAL

AC 08-34

(IEPA No. 75-08-AC)

FACILITY: White Hall/Combs

SITE CODE NO.: 0610405013

COUNTY: Greene

CIVIL PENALTY: \$6,000.00

DATE OF INSPECTION: April 22, 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.