

ILLINOIS POLLUTION CONTROL BOARD
December 4, 2008

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 09-14
) (IEPA No. 214-08-AC)
REYNOLDS SERVICE CO.,) (Administrative Citation)
)
Respondent.)

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

On September 11, 2008, the Illinois Environmental Protection Agency (Agency) filed an administrative citation against Reynolds Service Co. (respondent). *See* 415 ILCS 5/31.1 (2006); 35 Ill. Adm. Code 108. Respondent filed a petition to contest the administrative citation on October 30, 2008, a motion to clarify the record on November 5, 2008. For the reasons below, the Board (1) finds that respondent's petition was untimely; (2) denies respondent's motion to clarify; and (3) enters a default order against respondent, finding that respondent violated the Environmental Protection Act (Act) (415 ILCS 5 (2006)) and ordering respondent to pay \$4,500 in civil penalties. Below, the Board provides background before turning to the issues.

BACKGROUND

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 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).

The administrative citation in this case concerns a facility commonly known to the Agency as the "Jonesboro/Reynolds Service Co., Inc." site, designated with Site Code No. 1818565001, and located at Section 23, TWP 12, Rng 2W, Part of SE corner of NE, Union County. The Agency alleges that respondent violated Sections 21(p)(1), (p)(5), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(5), (p)(7) (2006)) on August 4, 2008, by causing or allowing the open dumping of waste in a manner resulting in (1) litter, (2) the proliferation of disease vectors, and (3) the deposition of general or clean construction or demolition debris. The Agency seeks

the statutory penalties of \$1,500 for each of the three alleged violations, totaling \$4,500. *See* 415 ILCS 5/42(b)(4-5) (2006). The deadline for Agency service of the administrative citation on respondent was October 3, 2008, *i.e.*, the sixtieth day after the Agency's August 4, 2008 site inspection.

On September 25, 2008, the Agency filed a certified mail receipt addressed to respondent, which was signed and dated September 11, 2008. On October 30, 2008, respondent filed a petition to contest the administrative citation. On November 5, 2008, respondent filed a motion to clarify the record (Mot.). On November 17, 2008, the Agency filed a response (Resp.) in opposition to respondent's motion to clarify.

MOTION TO CLARIFY RECORD

The Board will summarize the parties' arguments and then discuss the Board's analysis.

Respondent's Arguments

According to respondent's motion to clarify the record:

it appears that the Respondent has received multiple documents from the offices of Complainant via certified mail on various dates and that the instant Citation was actually received by Respondent on September 29, 2008, not September 11th, and that Respondent's filing of a Petition for Review was due on or before November 3, 2008. Mot. at 2 (emphasis in original).

Respondent therefore argues that its October 30, 2008 petition was timely filed and that respondent "should not be subject to risk of a default order." *Id.* The motion asks that this matter not be decided at the Board's November 5, 2008 meeting "to permit a response to this motion by Complainant, or, alternatively, that the matter be authorized for hearing." *Id.*

Agency's Response

On November 17, 2008, the Agency filed a response to the motion to clarify. Attached to the Agency's response is the signed certified mail receipt addressed to respondent and filed on September 25, 2008. The Agency notes that this "proof of service . . . indicates that the service date on Respondent was September 11, 2008," the date on which the administrative citation was filed with the Board. Resp. at 1, Exh. 3. The Agency states that it sends all administrative citations to respondents and the Board "at the same time, via certified mail, in the regular course of its business." Resp. at 1.

The Agency also provides photocopies of both of the unsigned and undated certified mail return receipt cards, one addressed to respondent and one addressed to the Board. Resp. at 2, Exh. 1. The Agency describes these return receipt cards:

The card addressed to the Board is marked toward the center with "Reynolds AC 214-08," which is Illinois EPA's file number for the instant case. *** The same

return receipt was received from the Board with an indicated service date of September 11, 2008 (Exhibit 2). *** Likewise, the return receipt addressed to Respondent as copied in Exhibit 1 was returned to Illinois EPA with an indicated service date of September 11, 2008 (Exhibit 3). The same certified number appears on both copies (#7004 2510 0001 8618 9101). Resp. at 2, Exhs. 1-3.

The Agency states that it can neither confirm nor deny that “one of the ‘offices of Complainant’ may have sent additional material to Respondent ‘via certified mail on various dates.’” Resp. at 2, quoting Mot. at 2. The Agency does confirm, however, that “the Administrative Citation filed in the instant case is the only document related to *this* case that has been sent via certified mail.” Resp. at 2 (emphasis in original). According to the Agency, the only other document sent to respondent concerning this case was the proof of service, sent by U.S. Mail on September 22, 2008, which “clearly indicated the Petition for Review deadline of October 16, 2008.” *Id.*

The Agency argues that the Board should deny respondent’s motion to clarify. In addition, the Agency maintains that because respondent’s petition was untimely, this administrative citation is non-contested and the Board should therefore issue a default order against respondent. Resp.at 3.

Discussion

The Board finds no lack of clarity in the record and denies respondent’s motion to clarify. Respondent’s motion requests that the Board either (1) not decide this matter at the November 5, 2008 Board meeting, allowing time for the Agency to respond to the motion, or (2) accept the matter for hearing. Respondent’s initial request is moot, as the Board took no action on this matter at its November 5, 2008 meeting, permitting the Board to consider both respondent’s motion and the Agency’s timely response. Nor can the Board accept this matter for hearing. As discussed below, the Board finds that the Agency served respondent with the administrative citation on September 11, 2008, making respondent’s October 30, 2008 petition untimely.

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). 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). The certificate of service attached to the administrative citation filed with the Board on September 11, 2008, states that on September 9, 2008, the Agency sent the administrative citation to respondent and the Board by certified mail, return receipt requested. The certified mail receipt addressed to respondent is signed and dated September 11, 2008. The certified mail receipt addressed to the Board and signed by the Clerk’s Office of the Board is also dated September 11, 2008, and identifies the Agency’s file number for this case. The article numbers on the two unsigned and undated return receipts match the corresponding article numbers on the two signed and dated return receipts.

The Agency represents that in the regular course of business, the Agency sends all administrative citations to respondents and the Board at the same time by certified mail. The

Agency's attorney certifies that the statements made in the response are true and correct. Resp., Certification. Respondent has not sought leave to reply to the Agency's response, and respondent's motion states only that "it appears" respondent was served on September 29, 2008, rather than September 11th, 2008. Mot. at 2. Further, respondent's motion is unsupported by affidavit or certification.

Based on this record, the Board finds that the Agency served respondent in accordance with the Act and the Board's procedural rules. As stated above, based on the August 4, 2008 inspection date, the Agency was required to serve the administrative citation by October 3, 2008. As documented by the signed and dated certified mail receipt, the Agency served respondent with the administrative citation on September 11, 2008, which is 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), 101.304(c), 108.202(b). Further, the Agency's September 11, 2008 filing of the administrative citation was "no later than 10 days after the date of service." 415 ILCS 5/31.1(c) (2006).

The Board finds that the Agency has satisfied the Act's jurisdictional prerequisites of timely service and filing of the administrative citation. *See* 415 ILCS 5/31(b), (c) (2006)). Because respondent failed to timely file a petition for review, as discussed below, the Board will enter a default order against respondent.

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 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, because the Agency served respondent with the administrative citation on September 11, 2008, any petition for review was due by October 16, 2008. The Board received respondent's petition on November 3, 2008, but because the petition was sent by U.S. Mail and received after the October 16, 2008 filing deadline, the petition is deemed filed on its postmark date, *i.e.*, October 30, 2008. *See* 35 Ill. Adm. Code 101.300(b)(2). Respondent therefore failed to timely file the petition. If a respondent fails to file within the statutory 35-day period, the Board lacks jurisdiction to hear the petition. *See, e.g., IEPA v. Jack Busby*, AC 01-6, slip op. at 1 (Dec. 7, 2000) ("Section 31.1(d)(1) neither grants the Board nor the Agency the authority to waive the 35-day jurisdictional deadline."). Accordingly, the Board finds that respondent violated Sections 21(p)(1), (p)(5), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(5), (p)(7) (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 are three violations of Section 21(p) and no allegation of any second or subsequent adjudicated violation, the total civil penalty is \$4,500.

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 denies respondent's motion to clarify the record.
2. The Board finds that respondent violated Sections 21(p)(1), (p)(5), and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(5), (p)(7) (2006)).
3. Respondent must pay a civil penalty of \$4,500 no later than January 5, 2009, which is the 30th day after the date of this order. Respondent 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 respondent's federal employer identification number must be included on the certified check or money order.
4. Respondents must send the certified check or money order and the remittance form to:

Fiscal Services
Illinois Environmental Protection Agency
1021 N. 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.

IT IS SO ORDERED.

I, John T. 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 extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Complainant,)
)
 v.)
)
 REYNOLDS SERVICE CO. INC.,)
)
)
 Respondent.)

AC 09-14
 (IEPA No. 214-08-AC)

RECEIVED
 CLERK'S OFFICE
 SEP 11 2008
 STATE OF ILLINOIS
 Pollution Control Board

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 Reynolds Service Co., Inc. ("Respondent") is the present owner and operator of a facility located at the following: Section 23, TWP 12, Rng 2W, Part of SE corner of NE NE, Union County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Jonesboro/Reynolds Service Co., Inc.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 1818565001.
3. That Respondent has owned and operated said facility at all times pertinent hereto.
4. That on August 4, 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 August 4, 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 proliferation of disease vectors, a violation of Section 21(p)(5) of the Act, 415 ILCS 5/21(p)(5) (2006).

- (3) 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

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 Four Thousand Five Hundred Dollars (\$4,500.00). 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 October 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, 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: 9/9/08

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

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
REYNOLDS SERVICE CO. INC.,)
)
Respondent.)

AC 09-14
(IEPA No. 214-08-AC)

FACILITY: Jonesboro/Reynolds Service Co., Inc. SITE CODE NO.: 1818565001
COUNTY: Union CIVIL PENALTY: \$4,500.00
DATE OF INSPECTION: August 4, 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.