

ILLINOIS POLLUTION CONTROL BOARD
April 5, 2012

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 11-13
)	(IEPA No. 305-10-AC)
RAY NEWINGHAM,)	(Administrative Citation)
)	
Respondent.)	

MICHELLE M. RYAN APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY; and

RAY NEWINGHAM APPEARED *PRO SE*.

OPINION AND ORDER OF THE BOARD (by J. A. Burke):

On February 16, 2012, the Board issued an interim opinion and order, finding that Ray Newingham (Respondent) violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), 21(p)(7) (2010)). The case concerns respondent's property located at the southeast corner of the intersection of Worcester and Clay Streets in Roodhouse, Greene County. The September 16, 2010 violations were alleged in an administrative citation issued by the Illinois Environmental Protection Agency (Agency). The site is known to the Agency as the "Roodhouse/Newingham" site and is designated with Site Code No. 0610355023.

In the February 16, 2012 decision, after the Board found the violations, the Board held that under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2010)), respondent was subject to the statutorily-fixed \$1,500 civil penalty for each violation. In addition, the Board held that respondent, by unsuccessfully contesting the administrative citation at hearing, also must pay the hearing costs of the Agency and the Board. The hearing in this case was held on November 2, 2011, at the City Hall in Carrollton, Greene County.

Because no information on hearing costs was in the record, the Board directed the Agency and the Clerk of the Board each to file documentation of the respective hearing costs, supported by affidavit, and to serve the filing on respondent. The Board also gave respondent an opportunity to respond to the requests for hearing costs and noted that after the time periods for these filings had expired, the Board would issue a final opinion and order assessing the civil penalty and any appropriate hearing costs.

On February 29, 2012, the Board received the Agency's statement of hearing costs, supported by affidavit, which the Agency served on respondent. The Agency's hearing costs total \$70, consisting of mileage and copying, clerical, and mailing fees. On February 22, 2012,

the Clerk of the Board submitted an affidavit of the Board's hearing costs totaling \$245, the entirety of which reflects the costs of court reporting. The Clerk served this documentation on respondent, who did not respond to either the Agency's statement of hearing costs or the Clerk's affidavit. *See* 35 Ill. Adm. Code 108.502-108.506.

The Board finds the hearing costs of the Agency and the Board reasonable and below orders respondent to pay those costs under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2010)). The Board incorporates by reference the findings of fact and conclusions of law from its February 16, 2012 interim opinion and order. Under Section 31.1(d)(2) of the Act (415 ILCS 5/31.1(d)(2) (2010)), the Board attaches the administrative citation and makes it part of the Board's final order.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board finds that Ray Newingham (Respondent) violated Sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), 21(p)(7) (2010)).
2. The Board assesses the statutory civil penalty of \$3,000 for the violations, as well as hearing costs totaling \$315, for a total amount due of \$3,315. Respondent must pay \$3,315 no later than May 21, 2012, which is the first business day following the 45th day after the date of this order. Respondent must pay this amount by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and respondent's social security number or federal employer identification number must be included on the certified check or money order.
3. Respondent must send the certified check or money order to:

Illinois Environmental Protection Agency
Attn.: Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
5. 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) (2010); *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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 5, 2012, 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 T. Therriault, Assistant Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

ADMINISTRATIVE CITATION

NOV 10 2010

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
))
Complainant,))
))
v.))
))
RAY NEWINGHAM,))
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))
))
Respondent.))

AC 11-13
(IEPA No. 305-10-AC)

ORIGINAL

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 (2008).

FACTS

1. That Ray Newingham is the current owner and operator ("Respondent") of a facility located at the southeast corner of the intersection of Worchester and Clay Streets, in the City of Roodhouse, Greene County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Roodhouse/Newingham.

2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 0610355023.

3. That Respondent has owned and operated said facility at all times pertinent hereto.

4. That on September 16, 2010, Charlie King of the Illinois Environmental Protection Agency's ("Illinois EPA") 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.

5. That on _____, Illinois EPA sent this Administrative Citation via Certified Mail No. _____.

VIOLATIONS

Based upon direct observations made by Charlie King during the course of his September 16, 2010 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) (2008).

- (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) (2008).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2008), 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 November 30, 2010, 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 (2008), 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) (2008), if Respondent fails 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, 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 (2008). 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 by SOP

Douglas P. Scott, Director
Illinois Environmental Protection Agency

Date: 11/1/20

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
NOV 10 2010
STATE OF ILLINOIS
Pollution Control Board

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(IEPA No. 305-10-AC)

ORIGINAL

FACILITY: Roodhouse\Newingham

SITE CODE NO.: 0610355023

COUNTY: Greene

CIVIL PENALTY: \$3,000.00

DATE OF INSPECTION: September 16, 2010

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.