

ILLINOIS POLLUTION CONTROL BOARD
September 20, 2012

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 11-28
)	(IEPA No. 125-11-AC)
THAD SHAFER,)	(Administrative Citation)
)	
Respondent.)	

MICHELLE RYAN, ASSISTANT COUNSEL, APPEARED ON BEHALF OF
COMPLAINANT; and

THAD SHAFER APPEARED ON HIS OWN BEHALF.

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On July 26, 2012, the Board issued an interim opinion and order, finding that Thad Shafer violated Section 21(p)(1) and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) and (p)(7) (2010)). The case concerns a site located at 984 U.S. Route 40, Jewett, Cumberland County. The April 7, 2011 violations were alleged in an administrative citation issued by the Illinois Environmental Protection Agency (Agency). The site is known to the Agency as the “Jewett/Shafer” site and is designated with Site Code No. 0350105004.

In the July 26, 2012 decision, after the Board found two violations, the Board held that under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2010)), Thad Shafer was subject to the statutorily-fixed \$3,000.00 civil penalty. In addition, the Board held that Thad Shafer, 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 March 27, 2012, at the Cumberland County Courthouse, Toledo, Cumberland 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 Thad Shafer. The Board also gave Thad Shafer 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 August 13, 2012, the Board received Agency’s statement of hearing costs, supported by affidavit, which Agency served on Thad Shafer. The Agency included a motion to file *instanter*, which the Board grants. The Agency’s hearing costs total \$151.00, consisting of mileage and copying/clerical/mailling fees. On August 8, 2012, the Clerk of the Board submitted an

affidavit of the Board's hearing costs totaling \$291.75, the entirety of which reflects the costs of court reporting. The Clerk served this documentation on Thad Shafer, 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 undisputed hearing costs of the Agency and the Board reasonable and below orders Thad Shafer 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 in its July 26, 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 Thad Shafer violated Section 21(p)(1) and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (p)(7) (2010)).
2. The Board assesses the statutory civil penalty of \$3,000.00 for the violation, as well as hearing costs totaling \$442.75, for a total amount due of \$3,442.75. Thad Shafer must pay \$3,442.75 no later than November 5, 2012, which is the first business day following the 45th day after the date of this order. Thad Shafer 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 Thad Shafer's social security number or federal employer identification number must be included on the certified check or money order.
3. Thad Shafer 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 violation(s) continue(s).

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 September 20, 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 flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

RECEIVED
CLERK'S OFFICE
JUN 07 2011
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
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Complainant,)
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v.)
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THAD and LINDA SHAFER,)
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Respondents.)

AC 11-28
(IEPA No. 125-11-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 Thad and Linda Shafer are the current owners ("Respondents") of a facility located at 984 US Route40, Jewett, Cumberland County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Jewett/Shافر (fka Gran).

2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 0350105004.

3. That Respondents have owned said facility at all times pertinent hereto.

4. That on April 7, 2011, Dustin Burger of the Illinois Environmental Protection Agency's ("Illinois EPA") Champaign 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 6-2-11, Illinois EPA sent this Administrative Citation via Certified Mail No. 7004 2510 0001 8619 1630.

VIOLATIONS

Based upon direct observations made by Dustin Burger during the course of his April 7, 2011 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) (2008).

- (2) That Respondents 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) (2008).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2008), 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 Three Thousand Dollars (\$3,000.00). If Respondents elects not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than June 30, 2011, 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 (2008), 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) (2008), 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, 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, 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 (2008). 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.

Lisa Bonnett *by SOP*
Lisa Bonnett, Interim Director
Illinois Environmental Protection Agency

Date: 5/31/11

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

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ORIGINAL

FACILITY: Jewett/Shafer (fka Gran) SITE CODE NO.: 0350105004
COUNTY: Cumberland CIVIL PENALTY: \$3,000.00
DATE OF INSPECTION: April 7, 2011

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.