

ILLINOIS POLLUTION CONTROL BOARD
June 5, 2014

COUNTY OF SANGAMON,)
)
 Complainant,)
)
 v.) AC 14-44
) (SCDPH 14-AC-1)
) (Administrative Citation)
 JOE CHERNIS, JR. and)
 MIDWEST DEMOLITION AND)
 SCRAP, INC.,)
)
 Respondents.)

OPINION AND ORDER OF THE BOARD (by D. Glosser):

For the reasons below, the Board accepts the proposed settlement and dismissal of this administrative citation enforcement action. County of Sangamon (County) timely filed an administrative citation on April 9, 2014 against Joe Chernis, Jr. and Midwest Demolition and Scrap, Inc. The County alleges that on March 6, 2014, Mr. Chernis violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2012)) by open dumping waste materials leading to litter, open burning and depositions of general construction or demolition debris. The violation allegedly took place at Mr. Chernis' property located at parcel number 14-12.0-176-019 in Springfield Township, Sangamon County. The property is commonly known to the County as the "Springfield/Joe Chernis" site and is designated with Site Code No.1678225059.

On May 14, 2014, the parties filed a "stipulation and proposal for settlement" (Stipulation). Under its terms, Mr. Chernis denies that he violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2012)), but agrees to pay the civil penalty of \$3,000 in exchange for a release of liability for the alleged violations. *Id* at 3. The County contends that Mr. Chernis open dumped waste materials, but that such dumping had minimal impact on human health and the environment. *Id* at 3. In exchange for the negotiated penalty of \$3,000, the County releases, waives, and discharges Mr. Chernis from any violations of the Act or the Board's regulations that were the subject matter of the Administrative Citation at issue. *Id* at 8. The County also agrees to dismiss the alleged violation of Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2012)). *Id.* at 7.

The Board accepts the stipulation and proposal for settlement. Under Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (2012)), the Board therefore finds that Mr. Chernis violated Sections 21(p)(1) and 21(p)(3) of the Act (415 ILCS 5/21(p)(1) and (p)(3) (2012)). Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2012)) establishes a civil penalty of \$1,500 for each violation. The Board therefore assesses a civil penalty of \$3,000. To effectuate the parties' intent that Mr. Chernis pay a total civil penalty of \$3,000, the Board dismisses the alleged violation of Sections 21(p)(7) of the Act (415 ILCS 5/21 (p)(7) (2012)).

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

ORDER


1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. The Board finds that Joe Chernis, Jr. and Midwest Demolition and Scrap, Inc (respondents) violated Sections 21(p)(1) and 21(p)(3) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) and 21(p)(3) (2012)).
3. Respondents must pay a civil penalty of \$3,000 no later than July 7, 2014, which is the 30th day after the date of this order. Respondents must pay the civil penalty by certified check, made payable to the Sangamon County Department of Public Health. The case number, case name, and Mr. Chernis' social security number must be included on the certified check or money order.
4. Mr. Chernis must send the certified check or money order to:

Sangamon County Department of Public Health
Attention: Sheri L. Carey
2833 South Grand Avenue East
Springfield, Illinois 62703
5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2012)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2012)).
6. The Board dismisses the alleged violation of Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/3.78, 21(p)(1), 21(p)(3), and 21(p)(7) (2012)).

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) (2012); *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, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 5, 2014, 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 stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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APR - 9 2014

ADMINISTRATIVE CITATION

COUNTY OF SANGAMON,)
)
 Complainant,)
)
 v.)
)
 Joe Chernis, Jr and,)
 Midwest Demolition and Scrap, Inc.)
 Respondent.)

STATE OF ILLINOIS
Pollution Control Board

AC 14-44
 ADMINISTRATIVE CITATION
 SCDPH 14-AC-1

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 ("Act"), 415 ILCS 5/31.1, (2010) and delegated to the County of Sangamon pursuant to Section 4(r) of the Act, 415 ILCS 5/4(r) (2010).

FACTS

1. Joe Chernis, Jr, ("Respondent") owner and registered agent for Midwest Demolition and Scrap, Inc. is an excavation, demolition contractor and scrape metal dealer operating this business within Sangamon County, Illinois.
2. That the Respondent is the owner of real property, with parcel number 14-12.0-176-019, with a legal description of PT E 1/2, NW 1/4, & PT SW 1/4, NW1/4,(former RR Row) 12-16-5, located in Springfield Township, Sangamon County, Illinois.
3. That said property is an open dump operating without an Illinois Environmental Protection Agency ("IEPA") Operating Permit and is designated with IEPA Land Pollution Control #1678225059

THIS FILING IS SUBMITTED ON RECYCLED PAPER

4. That Respondent has owned said property at all times pertinent hereto.
5. That on March 6, 2014, Darlene K. Powell of the Sangamon County Department of Public Health ("SCDPH") inspected the above-described property. A copy of her inspection report setting forth the results of said inspection is attached hereto and made a part hereof.
6. That on April 7, 2014, Sangamon County Department of Public Health sent this Administrative Citation via Certified Mail No. 7009 3410 0001 2388 7247.

VIOLATIONS

Based upon direct observations made by Darlene K. Powell during the course of her March 6, 2014 inspections of Respondent's property, the County of Sangamon has determined that Respondent has violated 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 open burning, a violation of Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2008);
and
3. That Respondent caused or allowed the deposition of (i) general construction or demolition debris as defined in Section 3.78 of the Act, 415 ILCS 5/3.78 (2008), or (ii) clean construction or demolition debris as defined in Section 3.78(a) of the Act, 415 ILCS 5/3.78(a) (2008), 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 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 May 12, 2014, 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 County of Sangamon 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 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 Sangamon County Department of Public Health and mailed to the attention of James D. Stone, Director of the Sangamon County Department of Public Health, 2833 South Grand Avenue East, Springfield, Illinois 62703. 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 Respondent from the date payment is due up to and including the date that payment is received. The State's Attorney of Sangamon County may be requested to initiate proceedings against Respondent in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued. In addition to the previously assessed civil penalty and/or hearing costs and/or interest, the State's Attorney of Sangamon County will seek to recover his costs of litigation.

PROCEDURE FOR CONTESTING THIS ADMINISTRATIVE CITATION

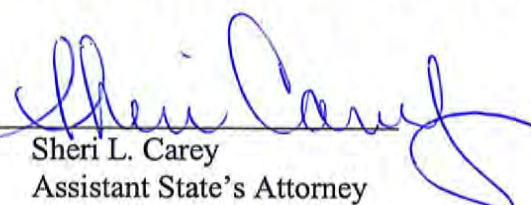
Respondent has the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31.1 (2008). If Respondent elects to contest this Administrative Citation, then Respondent shall file a Petition for Review with the Clerk of the Illinois Pollution Control Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601. A copy of said Petition for Review shall be filed with the Sangamon County State's Attorney, Attention: Sheri L. Carey, Sangamon County Complex, Rm 402, 200 South Ninth Street, Springfield, Illinois 62701. Section 31.1 of the Act, 415 ILCS 5/31.1 (2008),

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 Respondent.



James D. Stone, M.A.
Director
Sangamon County Department of Public Health

Date: 4/7/14

BY: 

Sheri L. Carey
Assistant State's Attorney

Prepared by: Sheri L. Carey
Assistant State's Attorney
Sangamon County
Room 402 County Complex
200 South Ninth Street
Springfield, Il 62702
(217) 753-6690

REMITTANCE FORM

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STATE OF ILLINOIS
Pollution Control Board

COUNTY OF SANGAMON,)
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AC 2014-44
 ADMINISTRATIVE CITATION
 SCDPH 14-AC-1

FACILITY: Chernis/Midwest Demolition and Scrape, Inc.

LPC SITE CODE: 1678225059

COUNTY: Sangamon

DATE OF INSPECTION: March 6, 2014

CIVIL PENALTY: \$4,500.00

DATE REMITTED: _____

SSN: _____

SIGNATURE: _____

Please enter the date of your remittance, your Social Security Number, and sign this Remittance Form. Be sure your check is enclosed and mail, along with Remittance Form, to Sangamon County Department of Public Health, James D. Stone, Director, 2833 South Grand Avenue East, Springfield, Illinois 62703.