

ILLINOIS POLLUTION CONTROL BOARD
January 8, 2014

COUNTY OF SANGAMON,)
)
Complainant,)
)
v.) AC 15-21
) (Administrative Citation)
JOE CHERNIS, JR. AND MIDWEST)
DEMOLITION AND SCRAP, INC.,)
)
Respondents.)

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

On November 26, 2014, the County of Sangamon (County) timely filed an administrative citation against Joe Chernis, Jr. and Midwest Demolition and Scrap, Inc. (respondents). See 415 ILCS 5/31.1(c) (2012); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' facility 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. For the reasons below, the Board finds that respondents violated the Environmental Protection Act (Act) (415 ILCS 5 (2012)) and orders him to pay \$4,500 in civil penalties.

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 Illinois Environmental Protection Agency (Agency) or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations. See 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2012); 35 Ill. Adm. Code 108.

In this case, the County alleges that on October 6, 2014, respondents violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2012)) by causing or allowing the open dumping of waste in a manner resulting in litter and deposition of general or clean construction debris. The County asks the Board to impose the statutory \$3,000 civil penalty per violation for the violations of Section 21(p)(1) and \$1,500 for the violation of Section 21(p)(7) on respondent, for a total civil penalty of \$4,500. As required, the County served respondents with the administrative citation on November 25, 2014, which is within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2012); see also 35 Ill. Adm. Code 101.300(c), 108.202(b).

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) (2012); 35 Ill. Adm. Code 101.300(b),

108.204(b), 108.406. Here, any petition for review was due by December 29, 2014. Respondents failed to timely file a petition. Accordingly, the Board finds that respondents violated Sections 21(p)(1) and 21(p)(7) of the Act.

The civil penalty for violating any provision of Section 21(p) 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) (2012); 35 Ill. Adm. Code 108.500(a). There are two violation of Section 21(p): 1) one violation of Section 21(p)(1), which is subject to a \$3,000 civil penalty as a second or subsequent adjudicated violation (County of Sangamon v. Joe Chernis, Jr. and Midwest Demolition and Scrap, Inc., AC 14-44 (June 5, 2014)) and; 2) one violation of Section 21(p)(7), which is subject to \$1,500 as a first 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 finds that Joe Chernis, Jr. and Midwest Demolition and Scrap, Inc. (respondents) violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1),(p)(7) (2012)).
2. Respondents must pay a total civil penalty of \$4,500 no later than February 9, 2015, which is the first business day following the 30th day after the date of this order. Respondents must pay the civil penalty by certified check with \$4,500 to the County of Sangamon Department of Public Health. The case number, case name, and respondent's social security numbers or federal employer identification numbers must be included on the certified check.
3. Respondents must send the certified check and the remittance forms to:

James B. Stone
Director
Sangamon County Department of Public Health
2833 South Grand Avenue East
Springfield, Illinois 62703
4. 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)).
5. Payment of this penalty does not prevent future prosecution if the violation continues.

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 January 8, 2015, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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ADMINISTRATIVE CITATION

STATE OF ILLINOIS
Pollution Control Board

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

AC 15-21
ADMINISTRATIVE CITATION
SCDPH 14-AC-1

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 ("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 October 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 November 24, 2014, Sangamon County Department of Public Health sent this Administrative Citation via Certified Mail No. 7009 3410 0001 2385 6526.

VIOLATIONS

Based upon direct observations made by Darlene K. Powell during the course of her October 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) (2010),

2. 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 (2010), 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) (2010).

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 Three Thousand Hundred Dollars (\$3,000.00) for violation identified in (1) above as it is the second adjudication of this violation and a civil penalty of One Thousands Five Hundred (\$1,500.00) for the violation identified in (2) 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 December 29, 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 (2010), 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 Four Thousand Five Hundred Dollar (\$4,500.00) statutory civil penalty for both violation.

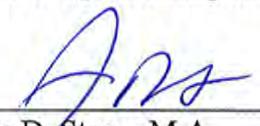
Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2010), if Respondent fails to petition or elects not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board 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

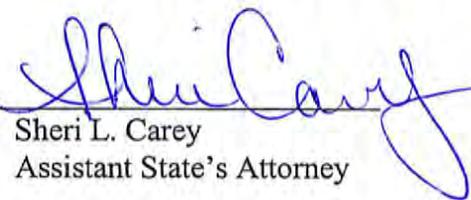
Respondent has the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31.1 (2008). If Respondent elects to contest this Administrative Citation, then Respondent shall file a Petition for Review with the Clerk of the Illinois Pollution 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 (2010),

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: 11/24/18

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

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STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

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

AC 15-21
 ADMINISTRATIVE CITATION
 SCDPH 14-AC-2

FACILITY: Chernis/Midwest Demolition and Scrape, Inc.

LPC SITE CODE: 1678225059

COUNTY: Sangamon

DATE OF INSPECTION: October 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.