

ILLINOIS POLLUTION CONTROL BOARD
February 5, 2015

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 11-16
)	(IEPA No. 322-10-AC)
PHILLIP NEWELL,)	(Administrative Citation)
)	
Respondent.)	

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

For the reasons below, the Board accepts the proposed settlement and dismissal of this administrative citation enforcement action. The Illinois Environmental Protection Agency (Agency) timely filed an administrative citation on December 15, 2010, against Phillip Newell. The Agency alleged that on October 28, 2010, Mr. Newell violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), 21(p)(3), 21(p)(7) (2012)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the deposition of general or clean construction or demolition debris. The violations allegedly took place at Mr. Newell's facility located at 11038 Cedar Grove in rural Marion, Williamson County. The property is commonly known to the Illinois Environmental Protection Agency as the "Marion/Newell. Phillip" site and is designated with Site Code No. 1998625012.

Mr. Newell timely filed a petition to contest the administrative citation, which the Board accepted on February 3, 2011. On January 20, 2015, the parties filed a "stipulation of settlement and dismissal of respondent's petition for administrative review" (Stip.). Under its terms, Mr. Newell admits that he violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2012)) by open dumping in a manner resulting in litter at the facility and agrees to pay the statutory civil penalty of \$1,500 for this violation. Stip. at 2. Mr. Newell also agrees to the dismissal of his petition contesting the administrative citation. *Id.* at 3. The stipulation further states that violations observed during the October 28, 2010 inspection are not continuing at this time. *Id.* at 2. In addition, the Agency agrees not to refer the violations that are the subject of the administrative citation to the Office of the Illinois Attorney General or any other prosecuting authority to initiate a civil enforcement action. *Id.* at 2-3.

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. Newell violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (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 this violation. The Board accordingly assesses a civil penalty of \$1,500. To effectuate the parties' intent that Mr. Newell pay a total civil penalty of \$1,500, the Board dismisses the alleged violations of Section 21(p)(3) and 21(p)(7) of the Act (415 ILCS 5/21(p)(3), 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 Phillip Newell violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2012)).
3. Mr. Newell must pay a total civil penalty of \$1,500 in the following installments: \$500 by March 9, 2015, which is the first business day following the 30th day after the date of this order; \$500 by April 8, 2015; and \$500 by May 8, 2015. Mr. Newell must pay the civil penalty by certified checks or money orders, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and Mr. Newell's social security number or federal employer identification number must be included on the certified checks or money orders.
4. Mr. Newell must send the certified checks or money orders to:

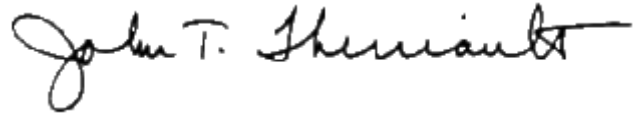
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (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 Section 21(p)(3) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(3), 21(p)(7) (2012)) and Mr. Newell's petition to contest the administrative citation.

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 February 5, 2015 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

ADMINISTRATIVE CITATION



ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Complainant,)
)
 v.)
)
 PHILLIP E. NEWELL,)
)
)
)
)
 Respondent.)

AC 11-16
 (IEPA No. 322-10-AC)



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 Phillip E. Newell is the present owner ("Respondent") of a facility located at 11038 Cedar Grove in rural Marion, Williamson County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Marion/Newell. Phillip.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 1998625012.
3. That Respondent has owned said facility at all times pertinent hereto.
4. That on October 28, 2010, Maggie Stevenson and Garrison Gross of the Illinois Environmental Protection Agency's ("Illinois EPA") Marion Regional Office inspected the above-described facility. A copy of their inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

5. That on 12-14-10, Illinois EPA sent this Administrative Citation via Certified Mail No. 7007 0220 0000 0152 4080.

VIOLATIONS

Based upon direct observations made by Maggie Stevenson and Garrison Gross during the course of their October 28, 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 burning, a violation of Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3)(2008).
- (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) (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 January 14, 2011, 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.

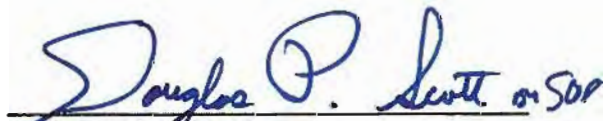
Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2008), if Respondent fails to petition or elect not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall 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, Director
Illinois Environmental Protection Agency

Date: 12/8/10

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

RECEIVED
CLERK'S OFFICE

DEC 29 2010

STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
))
Complainant,)
))
v.)
))
PHILLIP E. NEWELL, RUSSELL D.)
MORRIS, DOUGLAS L. CARPENTER and)
THOMAS L. BURNETT,)
))
Respondent.)

AC 11-16
(IEPA No. 322-10-AC)

ORIGINAL

FACILITY: Marion/Newell, Phillip .

SITE CODE NO.: 1998625012

COUNTY: Williamson

CIVIL PENALTY: \$4,500.00

DATE OF INSPECTION: October 28, 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.