

ILLINOIS POLLUTION CONTROL BOARD
July 24, 2014

| | | |
|-------------------------------------|---|---------------------------|
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | AC 06-16 |
| |) | AC 06-17 |
| REX D. EVANS and ROY W. EVANS, JR., |) | (IEPA No. 442-05-AC) |
| |) | (IEPA No. 443-05-AC) |
| Respondent. |) | (Administrative Citation) |

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

For the reasons below, the Board accepts the proposed settlement and dismissal of these administrative citation enforcement actions. The Illinois Environmental Protection Agency (“Agency”) timely filed two administrative citations on November 14, 2005, both against Rex D. Evans and Roy W. Evans, Jr. (“respondents”). The Agency alleged that on October 13, 2005, respondents violated Sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(7) (2012)) by causing or allowing open dumping resulting in litter and deposition of construction or demolition debris. The violations allegedly took place at two properties owned by respondents. One property is located in the Southeast Quarter of Section 31, Township 14 North, Range 10 West of the Third Principal Meridian and the other is located in the Northeast Quarter of Section 6, Township 13 North, Range 10 West of the Third Principal Meridian, both in Morgan County. The properties are designated with Site Code Nos. 1378100006 and 1378110004 and commonly known to the Agency as “Road District No. 10/Evans” and “Road District No. 11/Evans” respectively.

Respondents timely filed petitions to contest the administrative citations, which the Board accepted on January 5, 2006 in a single order in which the Board also consolidated the administrative citations for hearing. On July 15, 2014 the parties filed a “stipulation of settlement and dismissal of respondent’s petition for administrative review” (Stip.). Under its terms, respondents admit that they violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2012)) by open dumping resulting in litter at both properties. Stip. at 2. Respondents also admit that they violated Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2012)) by open dumping resulting in deposition of construction or demolition debris at the property designated with Site Code No. 1378110004.¹ *Id.*

¹ The Board notes that while the stipulation references Site Code No. 1378110004 with regard to the Section 21(p)(7) violation, the Section 21(p)(7) allegation was made with regard to the property designated with Site Code No. 1378100006. To effectuate the parties’ intent to settle the allegations in both administrative citations, the Board notes the error in the stipulation and accepts the respondents’ admission to the Section 21(p)(7) violation.

Respondents agree to pay the statutory civil penalty of \$4,500 for these violations. Stip. at 2. Respondents also agree to the dismissal of their petitions contesting the administrative citations. *Id.* at 3. The stipulation further states that the violations observed during the October 13, 2005 inspection are not continuing at this time and that respondents shall cease and desist from further violation of the Act and Board regulations. *Id.*

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 respondents admit to violating Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (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 of these violations. The Board accordingly assesses a civil penalty of \$4,500.

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 Rex D. Evans and Roy W. Evans, Jr. (respondents) violated Sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(7) (2012)).
3. Respondents must pay a civil penalty of \$4,500 no later than August 25, 2014 which is the first business day after the 30th day following the date of this order. Respondents must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case numbers, case names, and respondents' social security numbers or federal employer identification numbers must be included on the certified check or money order.
4. Respondents must send the certified check or money order 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 respondents' petitions to contest the administrative citations.

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 July 24, 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, sweeping underline that extends to the right.

John T. Therriault, Clerk
Illinois Pollution Control Board

NOV 14 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

| | |
|---|---|
| ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, |) |
| |) |
| Complainant, |) |
| |) |
| v. |) |
| |) |
| REX D. EVANS and ROY W. EVANS, JR., |) |
| |) |
| |) |
| |) |
| Respondents. |) |

AC 06-16
(IEPA No. 442-05-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 (2004).

FACTS

1. That Rex D. Evans and Roy W. Evans are the present owners and Rex D. Evans is the operator (collectively "Respondents") of a facility located as follows: Part of the Southeast Quarter of the Southeast Quarter of Section Thirty-one in Township Fourteen North, Range Ten West of the Third Principal Meridian in Morgan County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Road District No. 10/Evans.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 1378100006.
3. That Respondents have owned/operated said facility at all times pertinent hereto.
4. That on October 13, 2005, Michelle Cozadd of the Illinois Environmental Protection Agency's Springfield Regional Office inspected the above-described facility. A copy of her

inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

VIOLATIONS

Based upon direct observations made by Michelle Cozadd during the course of her October 13, 2005 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) (2004).

- (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) (2004).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2004), 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 elect not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than December 30, 2005, 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 (2004), 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) (2004), 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, Respondents' 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 (2004). 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 Respondent.

Douglas P. Scott
Douglas P. Scott, Director
Illinois Environmental Protection Agency

Date: 11/9/05

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

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CLERK'S OFFICE

NOV 14 2005

STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
REX D. EVANS and ROY W. EVANS, JR.,)
)
)
)
)
Respondents.)

AC *06-16*
(IEPA No. 442-05-AC)

FACILITY: Road District No. 10/Evans SITE CODE NO.: 1378100006
COUNTY: Morgan CIVIL PENALTY: \$3,000.00
DATE OF INSPECTION: October 13, 2005

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.

inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

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Douglas P. Scott, Director
Illinois Environmental Protection Agency

Date: 11/9/05

Prepared by: Susan E. Konzelmann, Legal Assistant
Division of Legal Counsel
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1021 North Grand Avenue East
P.O. Box 19276
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REMITTANCE FORM

**RECEIVED
CLERK'S OFFICE**

NOV 14 2005

**STATE OF ILLINOIS
Pollution Control Board**

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Complainant,)
v.)
REX D. EVANS and ROY W. EVANS, JR.,)
Respondents.)

AC *de-17*
(IEPA No. 443-05-AC)

FACILITY: Road District No. 11/Evans SITE CODE NO.: 1378110004
COUNTY: Morgan CIVIL PENALTY: \$1,500.00
DATE OF INSPECTION: October 13, 2005

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.