

ILLINOIS POLLUTION CONTROL BOARD
January 6, 1994

SANGAMON COUNTY,)	
)	
Complainant,)	
)	
v.)	AC 93-41
)	(SCDPH-93-AC-8)
)	(Administrative Citation)
STANLEY RAY STEWART,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C. A. Manning):

On December 29, 1993, the complainant moved the Board to reconsider its default order entered November 4, 1993. The motion states that the parties have engaged in negotiations and **reached a settlement, and that "refusal to adopt the stipulation defeats the goals of the Act [which is] compliance...not punitive damages".** In the proposed settlement, the complainant would withdraw one count of the administration citation (AC), the respondent would admit to the other two alleged violations, and the respondent would accordingly pay a \$1,000 fine rather than the \$1,500 fine assessed by the Board on November 4 based on the original AC.

Complainant's motion for reconsideration is untimely filed outside the 35 day period specified in 35 Ill. Adm. Code 101.246, and the motion does not state why the Board was not earlier notified of the pendency of settlement negotiations. However, as the Board has previously acknowledged, the "law favors settlements", People v. Kershaw, PCB 92-164, (Order of August 26, 1993 on reconsideration at p. 6 and cases cited therein). The Board will accordingly grant complainant's motion, but requests that we be more timely notified of settlement negotiations in future cases.

The Board's November 4, 1993 order is hereby vacated. The remainder of this order reflects the parties' stipulated agreement including complainant's withdrawal of the alleged violation of Section 21(p)(2) of the Act.

This matter originally came before the Board upon a September 13, 1993 filing of an Administrative Citation pursuant to Section 31.1 of the Illinois Environmental Protection Act (Act) by Sangamon County. A copy of that Administrative Citation is attached hereto, but will not be printed in the Board's Opinion Volumes. Service of the Administrative Citation was made upon Stanley Ray Stewart on September 21, 1993. Sangamon County alleges that on August 25, 1993, Stanley Ray Stewart, present

owner and/or operator of a facility located in Sangamon County and commonly known to the Agency as Springfield Township/Stewart, violated Sections 21(p)(1) and 21(p)(3) of the Act. The **statutory penalty established for each of these violations is \$500.00 pursuant to Section 42(b)(4) of the Act.** Respondent admits to these violations.

Stanley Ray Stewart did not file a Petition for Review with the Clerk of the Board within 35 days of the date of service as allowed by Section 31.1(d)(2) of the Act. Therefore, pursuant to Section 31.1(d)(1), the Board finds that Stanley Ray Stewart has violated the provisions alleged in the Administrative Citation. Since there are two (2) such violations, the total penalty to be imposed is set at \$1,000.00.

1. It is hereby ordered that, unless the penalty has already been paid, within 30 days of the date of this order Stanley Ray Stewart shall, by certified check or money order payable to the Sangamon County Public Health Department, pay a **penalty in the amount of \$1,000.00, which is to be sent to:**

James D. Stone
Director of Public Health
Sangamon County Department of Public Health
200 South Ninth Street - Room 301
Springfield, Illinois 62701

2. Respondents shall include the remittance form and write the case name and number and their social security or federal Employer Identification Number on the certified check or money order.
3. Penalties unpaid after the due date shall accrue interest pursuant to Section 42(g) of the Illinois Environmental Protection Act.
4. Payment of this penalty does not prevent future prosecution if the violation continues.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 6th day of January, 1994, by a vote of 7-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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SEP 13 1993
STATE OF ILLINOIS
POLLUTION CONTROL BOARD

Respondent

DOE AC 93-41
Administrative Citation
SCDPE-93-AC-8

1. That the Respondent, Stanley Ray Stewart, is the present owner and operator of a facility located in the County of Sangamon, State of Illinois.
2. That said facility is an open dump, operating without an Illinois Environmental Protection Agency Operating Permit, and designated with Site Code No. 1678220067. Said facility is commonly known to the Agency as Springfield Township/Stewart.
3. That the Respondent, Stanley Ray Stewart, has owned and operated said facility at all times pertinent hereto.
4. That on August 25, 1993, Jerry Ferguson and Brian Wood, Waste Management Specialists with the Sangamon County Department of Public Health, inspected the above described facility. A copy of the inspection report setting forth the results of such inspection is attached hereto and made a part hereof.

VIOLATIONS

On the basis of the direct observations of Jerry Ferguson and Brian Wood, Sangamon County has determined that Respondent has caused or allowed open dumping at the above described facility in a manner which resulted in the following occurrences:

A. That on August 25, 1993, an on-site inspection of said facility disclosed the following:

- X Causing or allowing litter (415 ILCS 5/21 (p) (1) (1993)).
- X Causing or allowing scavenging operations (415 ILCS 5/21 (p) (2) (1993)).
- X Causing or allowing open burning (415 ILCS 5/21 (p) (3) (1993)).
- Causing or allowing the deposition of waste in standing or flowing waters (415 ILCS 5/21 (p) (4) (1993)).
- Causing or allowing proliferation of disease vectors (415 ILCS 5/21 (p) (5) (1993)).
- Causing or allowing the generation of standing or flowing liquid discharge from the open dump site (415 ILCS 5/21 (p) (6) (1993)).

CIVIL PENALTY

Pursuant to 415 ILCS 5/42 (b) (4) (1993), the Respondent herein is subject to a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each violation specified above in Paragraph A and subparagraphs thereunder, for a total of \$1,500.00. Additionally, should Respondent elect to petition the Illinois Pollution Control Board under the review process described herein below, and if there is a finding of the violations alleged herein, after an adjudicatory hearing, Respondent shall be assessed the associated hearing costs incurred by Sangamon County and the Illinois Pollution Control Board, in addition to the One Thousand Five Hundred Dollars (\$1,500.00) statutory penalty for each finding of violation.

If you acknowledge the violations cited hereinabove, the civil penalty specified above shall be due and payable no later than 35 days from the date of service of this Administrative Citation. If you do not petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of service hereof or if you elect to contest this Administrative Citation, any judgment rendered against you shall specify the due date of the statutory civil penalty and any costs assessed against you.

When payment is made, your check should be made payable to the Sangamon County Public Health Department and mailed to the attention of James D. Stone, Director of Public Health, Sangamon County Department of Public Health, 200 South Ninth Street, Room 301, Springfield, Illinois, 62701. Also, please complete and return the enclosed Remittance Form, along with your payment, to assure proper documentation of payment.

If any civil penalty imposed by the Illinois Pollution Control Board is not paid within the time prescribed in the order, interest on such penalty will be assessed for the period from the date payment is due until the date payment is received. If any civil penalty, by reason of acknowledgement, default or finding after adjudicatory hearing is not paid when due, the Office of the Illinois Attorney General or the Office of the Sangamon County State's Attorney shall be requested to initiate proceedings in Circuit Court to collect said civil penalty. In addition to the previously assessed civil penalty, interest, and hearing costs of Sangamon County Agency and the Illinois Pollution Control Board, if any, the Attorney General's Office or the Sangamon County State's Attorney will seek to recover their costs of litigation.

PROCEDURE FOR CONTESTING THIS
ADMINISTRATIVE CITATION

You have the right to contest this Administrative Citation. If you elect to contest this Administrative Citation, you must file a Petition for Review with the Clerk of the Illinois Pollution Control Board. A copy of the Petition for Review should be filed with the Sangamon County Department of Public Health. Such Petition for Review must be filed within thirty-five (35) days of the date of service of this Administrative Citation, or a default judgment shall be entered by the Pollution Control Board. The Petition for Review may be filed with the Clerk of the Illinois Pollution Control Board at the State of Illinois Center, 100 West Randolph, Suite 11-500, Chicago, Illinois, 60601; and a copy of said Petition for Review filed with the Sangamon County Department of Public Health, 200 South Ninth Street, Room 301, Springfield, Illinois, 62701. The procedure for filing a Petition for Review can be found in 415 ILCS 5/31.1 (1993), and Part 101 of Title 35 of Illinois Administrative Code.

Date: September 8, 1993

JAMES D. STONE, DIRECTOR
SANGAMON COUNTY
DEPARTMENT OF PUBLIC HEALTH

BY: _____

ROBERT L. SMITH

Prepared by: Robert L. Smith
200 South Ninth Street, Room 402
Springfield, Illinois 62701
(217)753-6690

JDS/RLS/AA/BW/JF:vah

REMITTANCE FORM

SANGAMON COUNTY,)
)
 Complainant,)
)
 -vs-)
)
 STANLEY RAY STEWART,)
)
 Respondent.)

PCB AC- 93-41
Administrative Citation
SODPH-93-AC-8

FACILITY: SPRINGFIELD TWP./STEWART

SITE CODE NO.: 1678220067

COUNTY: SANGAMON

CIVIL PENALTY: \$1,500.00

DATE OF INSPECTION: AUGUST 25, 1993

DATE REMITTED: _____

S.S.#/F.E.I.N.: _____

SIGNATURE: _____

NOTE

Please enter the date of your remittance, your Social Security number (S.S.#) if an individual, or your Federal Employer Identification Number (F.E.I.N.) if a corporation, and sign this Remittance Form. Be sure that your check is enclosed and mail, along with this form, to James D. Stone, Director, Sangamon County Department of Public Health, 200 South 9th Street, Room 301, Springfield, Illinois, 62701.

JDS:vh