

ILLINOIS POLLUTION CONTROL BOARD  
June 7, 2007

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 05-70  
 ) (IEPA No. 145-05-AC)  
JAMES STUTSMAN, ) (Administrative Citation)  
 )  
Respondent. )

MICHELLE M. RYAN, SPECIAL ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT; and

JAMES STUTSMAN APPEARED *PRO SE*.

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

In an interim opinion and order on September 21, 2006, the Board found that the respondent, Mr. James Stutsman, allowed the open dumping of waste resulting in litter and in the deposition of general construction or demolition debris in violation of Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (7) (2004)) at a site located at 8443 County Road 1100E in Bath, Mason County. Having found that Mr. Stutsman committed the violations alleged in the administrative citation, the Board assessed the statutory civil penalty of \$3,000 and hearing costs. The Board directed the Illinois Environmental Protection Agency (Agency) and the Clerk of the Board to file documentation of their hearing costs and provided Mr. Stutsman the opportunity to respond to those filings.

In a final opinion and order dated November 16, 2006, the Board noted that, on September 25, 2006, the Clerk of the Board submitted an affidavit of hearing costs totaling \$297.25. The Board further noted that the Agency had not filed a statement of hearing costs and that Mr. Stutsman had not responded to the Board's filing. The Board found those hearing costs reasonable and stated that Mr. Stutsman would be responsible for paying them, in addition to the statutory civil penalty of \$3,000.

On December 1, 2006, the Board received from the Agency a statement of hearing costs in the amount of \$75.50. Although the envelope in which the Agency mailed that statement showed no specific postmark date, the proof of service filed with the statement showed that the Agency timely filed it by placing it in the U.S. Mail on October 11, 2006. Due to the delay of seven weeks between service of the Agency's statement and its arrival in the Board's office, the Board on its own motion reconsidered its final opinion and order of November 16, 2006, and vacated that order. The Board allowed the respondent 21 days, or until Friday, December 22, 2006, to file a response limited to the issue of the Agency's claimed costs. The Board also

allowed the Agency 14 days after service of the response to file any reply. The Board stated that, when that reply period had elapsed, it would issue a final opinion and order restating a finding of violations and assessing the civil penalty and appropriate hearing costs.

Mr. Stutsman has not responded to the Agency's statement of hearing costs. The Board finds those hearing costs to be reasonable and orders Mr. Stutsman to pay those costs under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2004)), in addition to the statutory civil penalty of \$3,000 and the Board's hearing costs.

The Board incorporates by reference the findings of fact and conclusions of law from its September 21, 2006 interim opinion and order. Under Section 31.1(d)(2) of the Act (415 ILCS 5/31.1(d)(2) (2004)), the Board attaches the administrative citation and makes it part of the Board's final order.

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

### **ORDER**

1. The Board finds that respondent Mr. James Stutsman violated Sections 21(p)(1) and (7) of the Environmental Protection Act at a site located at 8443 County Road 1100E in Bath, Mason County. 415 ILCS 5/21(p)(1), (p)(7) (2004).
2. The Board assesses the civil penalty of \$3,000 for the violations, as well as hearing costs totaling \$372.75, for a total amount due of \$3,372.75. Mr. Stutsman must pay \$3,372.75 no later than Monday, July 23, 2007, which is the first business day following the 45th day after the date of this order. Mr. Stutsman must pay this amount by certified check, money order or electronic funds transfer, made payable to the Environmental Protection Trust Fund. The case numbers, case name, and Mr. Stutsman's social security number or federal employer identification number must be included on the certified check, money order or electronic funds transfer.
3. Mr. Stutsman must send the certified check, money order, or electronic funds transfer to:

Illinois Environmental Protection Agency  
Fiscal Services  
1020 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).

5. Payment of this penalty does not prevent future prosecution if the violations continue.

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) (2004); 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, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 7, 2007, by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board

ADMINISTRATIVE CITATION

MAY 23 2005

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)   
Complainant, )  
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v. )  
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JAMES STUTSMAN, )  
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AC 05-70  
(IEPA No. 145-05-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 (2002).

FACTS

1. That James Stutsman ("Respondent") is the present owner and operator of a facility located at 8443 County Road 1100E, Bath, Mason County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Bath/Stutsman.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 1250055002.
3. That Respondent has owned and operated said facility at all times pertinent hereto.
4. That on April 1, 2005, Michelle E. 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 April 1, 2005 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) (2002).
  
- (2) 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) (2002).

## CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2002), 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 Three Thousand Dollars (\$3,000.00). 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 June 15, 2005, 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 (2002), 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) (2002), 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 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 (2002). 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.

Renee Cipriano

Renee Cipriano, Director  
Illinois Environmental Protection Agency

Date: 5/18/05

Prepared by: Susan E. Konzelmann, Legal Assistant  
Division of Legal Counsel  
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