ILLINOIS POLLUTION CONTROL BOARD
May 15, 2008

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Complainant,	)	
v.	)	AC 08-12
	)	(IEPA No. 1-08-AC)
NORMA EDDINGTON and CECIL EDDINGTON,	)	(Administrative Citation)
Respondents.	)	

ORDER OF THE BOARD (by G.T. Girard):

On April 28, 2008, respondents Norma Eddington and Cecil Eddington (respondents) filed a letter with the Board. For the reasons below, the Board construes the letter as a motion to reconsider the Board's final order of March 20, 2008, and denies the motion. This administrative citation proceeding concerns respondents' property located at 4954 U.S. Highway 67 in Beardstown, Cass County. The property is commonly known to complainant, the Illinois Environmental Protection Agency (Agency), as "Hagener Township/Eddington #2" and is designated with Site Code No. 0178055002.

In this order, the Board sets forth the procedural history of this case before discussing and ruling on respondents' motion.

PROCEDURAL HISTORY

On January 18, 2008, the Agency filed an administrative citation against respondents. The citation was based on a December 6, 2007 Agency inspection of respondents' site. Respondents were served with the administrative citation on January 18, 2008. Respondents did not file a petition to contest the administrative citation. Accordingly, on March 20, 2008, the Board entered a default order against respondents, finding that respondents violated Section 21(p)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) (2006)) as alleged and imposing the statutory civil penalty of $1,500 for the one violation. The order required payment of the civil penalty by April 21, 2008, the first business day following the 30th day after the date of the order. On April 28, 2008, respondents filed a letter with the Board. The Agency has not filed any response to the letter.

MOTION TO RECONSIDER

In their letter filed on April 28, 2008, respondents assert that while they have already "sent in two separate checks in the amount of $750.00 each," their "rights" were violated when they were "fined . . . that much money." Letter at 1. Respondents maintain that their property is

"zoned farm" and that they grow trees, recycle, and "keep the environment as clean as [they] can." *Id*. Respondents claim to "know that the state is broke," but argue that "this is a poor way of getting money." *Id*.

The Board construes respondents' letter as a motion to reconsider the Board's final order of March 20, 2008. Any motion to reconsider was due to be filed within 35 days after receipt of the Board's March 20, 2008 final order. *See* 35 Ill. Adm. Code 101.520(a). Respondents received the Board's order on March 27, 2008. Respondents' letter, filed April 28, 2008, was therefore timely filed.

A motion to reconsider may be brought "to bring to the [Board's] attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the [Board's] previous application of existing law." Citizens Against Regional Landfill v. County Board of Whiteside County, PCB 92-156, slip op. at 2 (Mar. 11, 1993), citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1991); *see also* 35 Ill. Adm. Code 101.902. In addition, a motion to reconsider may specify "facts in the record which were overlooked." Wei Enterprises v. IEPA, PCB 04-23, slip op. at 3 (Feb. 19, 2004).

As explained below, because respondents failed to timely contest the administrative citation, the Board, in its order of March 20, 2008, was required by the Act to find that respondents committed the violation alleged by the Agency. Having found the violation, the Board was required by the Act to impose the corresponding statutory penalty on respondents. The Act affords the Board no discretion to take any potentially mitigating circumstances into account to reduce an administrative citation penalty.

The Board stated in its March 20, 2008 order that 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 Act requires the Board to find that the respondent committed the violation alleged and impose the corresponding civil penalty. The Act states:

> If the person named in the administrative citation fails to petition the Board for review within 35 days from the date of service, the Board shall adopt a final order, which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) or (b)(4-5) of Section 42. 415 ILCS 31.1(d)(1) (2006); *see also* 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406.

In this case, the Agency alleged that respondents violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2006)) by causing or allowing the open dumping of waste in a manner resulting in litter. Any petition for review was due by February 22, 2008. Respondents failed to timely file a petition. The Board therefore found in its March 20, 2008 order that respondents violated Section 21(p)(1) of the Act on December 6, 2007, the date of the Agency inspection of respondents' site.

Section 42(b)(4-5) of the Act states that the civil penalty for violating any provision of subsection (p) of Section 21 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) (2006); 35 Ill. Adm. Code 108.500(a). Here, because there was one violation of Section 21(p) and no allegations of any second or subsequent adjudicated violation, the Board was required by the Act to impose a total civil penalty of $1,500 on respondents.

When the Board finds a violation in an enforcement action brought under Section 31 of the Act, the Board has the discretion to impose a penalty and if the Board decides to impose one, the Board may consider factors that mitigate the amount of penalty. *See* 415 ILCS 5/31, 33(c), 42(h) (2002). The Board has no such discretion after finding a violation in an administrative citation action brought under Section 31.1 of the Act. *See* Miller v. PCB, 267 Ill. App. 3d 160, 167, 642 N.E.2d 475, 482 (4th Dist. 1994). Accordingly, the Board was statutorily required to impose a civil penalty on respondents and, further, the amount of that penalty, $1,500, is fixed by the Act.

The Board finds that respondents' motion fails to identify any newly-discovered evidence, changes in the law, errors in the Board's application of the law, or overlooked facts in the record. The Board therefore denies respondents' motion to reconsider.

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) (2006); *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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 15, 2008, by a vote of 4-0.

John Therriault, Assistant Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Complainant,	)	AC 08-12
v.	)	(IEPA No. 1-08 -AC)
NORMA EDDINGTON and CECIL EDDINGTON,	)	
Respondents.	)	

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 Norma Eddington is the present owner and Cecil Eddington is the operator (collectively "Respondents") of a facility located at 4954 U.S. Highway 67, Beardstown, Cass County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Hagener Township/Eddington #2.

2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 0178055002.

3. That Respondents have owned/operated said facility at all times pertinent hereto.

4. That on December 6, 2007, Charles W. King, Jr. of the Illinois Environmental Protection Agency's Springfield Regional Office inspected the above-described facility. A copy of

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

VIOLATIONS

Based upon direct observations made by Charles King during the course of his December 6, 2007 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).

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 One Thousand Five Hundred Dollars ($1,500.00). 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 February 15, 2008, 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, 1021North 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 by AK Date: 1/10/2008

Douglas P. Scott, Director
Illinois Environmental Protection Agency

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

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,) ORIGINAL
)
Complainant,) AC 08-12
)
v.) (IEPA No. 1-08-AC)
)
NORMA EDDINGTON and CECIL EDDINGTON,)
)
)
)
Respondents.)

FACILITY: Hagener Township/Eddington #2 SITE CODE NO.: 0178055002

COUNTY: Cass CIVIL PENALTY: $1,500.00

DATE OF INSPECTION: December 6, 2007

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.