

ILLINOIS POLLUTION CONTROL BOARD
July 7, 2011

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 11-25
)	(IEPA No. 112-11-AC)
DIANE TIMPE and JIMMY TIMPE,)	(Administrative Citation)
)	
Respondent.)	

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

On May 12, 2011, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Diane Timpe and Jimmy Timpe (Timpes). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns the Timpes' open dump located at 10805 Cordum Road, Henderson, Macoupin County. The property is commonly known to the Agency as the "Henderson/Timpe" site and is designated with Site Code No. 1178055001. For the reasons below, the Board finds that the Timpes violated the Environmental Protection Act (Act) (415 ILCS 5 (2010)) and orders the Timpes to pay \$3,000.00 in civil penalties.

Under the Act, an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations. *See* 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2010); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on March 15, 2011, the Timpes violated Sections 21(p)(1) and 55(k)(1) of the Act (415 ILCS 5/21(p)(1) and 55(k)(1) (2010)) by: 1) causing or allowing the open dumping of waste in a manner resulting in litter, and 2) causing or allowing the open dumping of waste in a manner resulting in used tires, not altered, covered or otherwise prevented from accumulating water. The Agency asks the Board to impose the statutory \$1,500.00 civil penalty per violation on the Timpes, for a total civil penalty of \$3,000.00. As required, the Agency served the administrative citation on the Timpes within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2010); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b).

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 Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, any petition for review was due by June 16, 2011. The Timpes

failed to timely file a petition. Accordingly, the Board finds that the Timpes violated Sections 21(p)(1) and 55(k)(1) of the Act.

The civil penalty for violating any provision of Section 21(p) or 55(k) is \$1,500.00 for each violation. *See* 415 ILCS 5/42(b)(4-5) (2010); 35 Ill. Adm. Code 108.500(a). Because there are two violations, one of Section 21(p) and one of 55(k), and no indication in the record that either of these is a second or subsequent adjudicated violation], the total civil penalty is \$3,000.00. Under Section 31.1(d)(1) of the Act, the Board attaches the administrative citation and makes it part of the order below.

This opinion constitutes the Board's finding of fact and conclusions of law.

ORDER

1. The Board finds that the Timpes violated Sections 21(p)(1) and 55(k)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and 55(k)(1) (2010)).
2. The Timpes must pay a civil penalty of \$3,000.00 no later than August 8, 2011, which is the first business day following the 30th day after the date of this order. The Timpes must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and the Timpes' social security numbers or federal employer identification numbers must be included on the certified check or money order.
3. The Timpes must send the certified check or money order and the remittance form to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 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 Environmental Protection Act (415 ILCS 5/42(g) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
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) (2010); *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 opinion and order on July 7, 2011, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John Therriault, Assistant Clerk
Illinois Pollution Control Board

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CLERK'S OFFICE
MAY 12 2011
STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
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Complainant,)
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v.)
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DIANE TIMPE and JIMMY TIMPE,)
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)
Respondents.)

AC 11-25
(IEPA No. 112-11-AC)

ORIGINAL

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 Diane Timpe is the current owner and Jimmy Timpe is the operator ("Respondents") of a facility located at 10805 Cordum Road, Henderson, Macoupin County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Henderson\Timpe.

2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 1178055001.

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

4. That on March 15, 2011, Charlie King of the Illinois Environmental Protection Agency's ("Illinois EPA") 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.

5. That on 5-10-11, Illinois EPA sent this Administrative Citation via Certified Mail No. 7007 0220 0000 0162 3465
7004 2510 0001 8619 1432

VIOLATIONS

Based upon direct observations made by Charlie King during the course of his March 15, 2011 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) (2008).
- (2) That Respondents caused or allowed the open dumping of waste in a manner resulting in used tires, at this site, not altered, covered or otherwise prevented from accumulating water, a violation of Section 55(k)(1) of the Act, 415 ILCS 55(k)(1) (2008).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2008), 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 June 15, 2011, 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 (2008), 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) (2008), 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, 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, 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 (2008). 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 Respondents.

 *BY SOP*

Date: 5/9/11

Lisa Bonnett, Interim, 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

RECEIVED
CLERK'S OFFICE
MAY 12 2011
STATE OF ILLINOIS
Pollution Control Board

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PROTECTION AGENCY,)
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(IEPA No. 112-11-AC)

ORIGINAL

FACILITY: Henderson/Timpe SITE CODE NO.: 1178055001
COUNTY: Macoupin CIVIL PENALTY: \$3,000.00
DATE OF INSPECTION: March 15, 2011

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.