

ILLINOIS POLLUTION CONTROL BOARD
June 7, 2012

COUNTY OF SANGAMON,)
)
Complainant,)
)
v.) AC 12-49
) (Administrative Citation)
MICHAEL HOYLE,) (SCDPH 12-AC-1)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by T.A. Holbrook):

On April 20, 2012, the County of Sangamon (the County) timely filed an administrative citation against Michael Hoyle (Hoyle). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Hoyle’s operable wall manufacturing facility located in Gardner Township, Sangamon County. The property is commonly known by its parcel number 13-04.0-126-005, with the legal description of PT W 1/2, NE 1/4, NW 1/4 4-16-6 & PT S 1/2, SE 1/4, SW 1/4, 33-17-6. For the reasons below, the Board finds that Hoyle violated the Environmental Protection Act (Act) (415 ILCS 5 (2010)) and orders Hoyle 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 Illinois Environmental Protection 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 County alleges that, on February 2, 2012, and March 19, 2012, Hoyle violated Section 21(p)(1) and (p)(3) of the Act (415 ILCS 5/21(p)(1), (p)(3) (2010)) by causing or allowing the open dumping of waste in a manner resulting in litter and open burning. The County asks the Board to impose the statutory \$1,500.00 civil penalty per violation on Hoyle, for a total civil penalty of \$3,000.00. As required, the County served the administrative citation on Hoyle 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). The Board notes that the administrative citation was served on April 24, 2012, which is more than 60 days after the February 2, 2012 inspection. However, the administrative citation was served within 60 days of the March 19, 2012 inspection. Sangamon County is alleging that violations occurred on both dates, but is not alleging two separate occurrences of the violations. Therefore, the service is timely based upon the March 19, 2012 inspection.

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 May 29, 2012. Hoyle failed to timely file a petition. Accordingly, the Board finds that Hoyle violated Section 21(p)(1) and (3) of the Act.

The civil penalty for violating any provision of Section 21(p) 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) (2010); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(p) and no indication in the record that any 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 Michael Hoyle violated 21(p)(1) and (p)(3) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(3) (2010)).
2. Hoyle must pay a civil penalty of \$3,000.00 no later than July 9, 2012, which is the first business day following the 30th day after the date of this order. Hoyle must pay the civil penalty by certified check or money order, made payable to the Sangamon County Department of Public Health. The case number, case name, and Hoyle's social security number or federal employer identification number must be included on the certified check or money order.
3. Hoyle must send the certified check or money order and the remittance form to:

James D. Stone
Sangamon County Department of Public Health
2833 South Grand Avenue East
Springfield, Illinois 62703
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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 7, 2012 by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

ADMINISTRATIVE CITATION

COUNTY OF SANGAMON,)
)
 Complainant,)
)
 v.)
)
 Michael Hoyle,)
)
 Respondent.)

AC 12-49
 ADMINISTRATIVE CITATION
 SCDPH 12-AC-1

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 ("Act"), 415 ILCS 5/31.1, (2008) and delegated to the County of Sangamon pursuant to Section 4(r) of the Act, 415 ILCS 5/4(r) (2008).

FACTS

1. Michael Hoyle ("Respondent") conducts a business that manufactures operable walls. Because of the nature of his products, he uses wood pallets to construct these walls. He is operating this business within Sangamon County, Illinois.

2. That the Respondent is the owner of real property, with parcel number 13-04.0-126-005, with a legal description of PT W 1/2, NE 1/4, NW 1/4 4-16-6 & PT S 1/2, SE1/4, SW 1/4, 33-17-6, located in Gardner Township, Sangamon County, Illinois.

3. That said property is an open dump operating without an Illinois Environmental Protection Agency ("IEPA") Operating Permit and is designated with IEPA Land Pollution Control #167811509

THIS FILING IS SUBMITTED ON RECYCLED PAPER

4. That Respondent has owned said property at all times pertinent hereto.

5. That on February 2, 2012, Kathy Bardoel of the Sangamon County Department of Public Health ("SCDPH") inspected the above-described property. A copy of her inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

6. That on March 19, 2012, Kathy Bardoel of the Sangamon County Department of Public Health ("SCDPH") re-inspected the above-described property. 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 Kathy Bardoel during the course of her February 2, 2012 and March 19, 2012 inspections of Respondent's property, the County of Sangamon has determined that Respondent has violated 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) (2008); and

2. That Respondent caused or allowed open burning, a violation of Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2008).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2008), 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 May 24, 2012, 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 (2008), 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 County of Sangamon 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 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 Sangamon County Department of Public Health and mailed to the attention of James D. Stone, Director of the Sangamon County Department of Public Health, 2833 South Grand Avenue East, Springfield, Illinois 62703. 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 Respondent from the date payment is due up to and including the date that payment is received. The State's Attorney of Sangamon County may be requested to initiate proceedings against Respondent in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued. In addition to the previously assessed civil penalty and/or hearing costs and/or interest, the State's Attorney of Sangamon County will seek to recover his costs of litigation.


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 (2008). If Respondent elects to contest this Administrative Citation, then Respondent shall file a Petition for Review with the Clerk of the Illinois Pollution Control Board, 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601. A copy of said Petition for Review shall be filed with the Sangamon County State's Attorney, Attention: Sheri L. Carey, Sangamon County Complex, Rm 402, 200 South Ninth Street, Springfield, Illinois 62701. Section 31.1 of the Act, 415 ILCS 5/31.1 (2008),

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 Respondent.


James D. Stone, M.A.
Director
Sangamon County Department of Public Health

Date: 4/17/12

BY: 
Sheri L. Carey
Assistant State's Attorney

Prepared by: Sheri L. Carey
Assistant State's Attorney
Sangamon County
Room 402 County Complex
200 South Ninth Street
Springfield, IL 62702
(217) 753-6690

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STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

COUNTY OF SANGAMON,)
)
 Complainant,)
)
 v.)
)
 Michael Hoyle,)
)
 Respondent.)

AC 12-49
ADMINISTRATIVE CITATION
SCDPH 12-AC-1

FACILITY: Hoyle
LPC SITE CODE: 1678115019
COUNTY: Sangamon
DATE OF INSPECTION: February 2, 2012 and March 19, 2012
CIVIL PENALTY: \$3,000.00
DATE REMITTED: _____
SSN: _____
SIGNATURE: _____

Please enter the date of your remittance, your Social Security Number, and sign this Remittance Form. Be sure your check is enclosed and mail, along with Remittance Form, to Sangamon County Department of Public Health, James D. Stone, Director, 2833 South Grand Avenue East, Springfield, Illinois 62703.