

ILLINOIS POLLUTION CONTROL BOARD

March 21, 2013

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 13-23
	)	IEPA No. 275-12-AC
IL VALLEY URBAN LUMBERJACKS, LLC,	)	(Administrative Citation)
	)	
Respondent.	)	

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

On December 5, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against IL Valley Urban Lumberjacks, LLC (respondent). *See* 415 ILCS 5/31.1(c) (2010); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerned respondent's facility located at 1538 N 2725 Road, Ottawa, LaSalle County. The property is commonly known to the Agency as the "Ottawa/IL Valley Urban Lumberjacks" site. The Agency alleged that, on October 12, 2012, respondent violated Section 55(k)(1) of the Act (415 ILCS 5/55(k)(1) (2010)) by causing or allowing water to accumulate in used or waste tires. On December 11, 2012, the Agency filed proof that it had served the citation on the respondent on December 3, 2012, causing the 35-day appeal period to end on January 7, 2013. *See* 415 ILCS 31.1(d)(1) (2010); 35 Ill. Adm. Code 101.300(b), 108.204(b).

On January 24, 2013, the Board entered a default order finding that respondent had failed to file a timely petition for review and that respondent had violated Section 55(k)(1) of the Act (415 ILCS 5/55(k)(1) (2010)). The Board assessed the statutory penalty of \$1,500. *See* 415 ILCS 5/42(b)(4-5) (2010); 35 Ill. Adm. Code 108.500(a).

On February 5, 2013, the respondent filed a motion to reconsider (Mot.) submitted by Sheila R. Bray as owner. *See* 35 Ill. Adm. Code 101.520(a). However, respondent's motion did not include an affidavit or certificate of service, and it did not provide any other indication that respondent had served the motion on the Agency. In response to this motion, the Board entered an order on February 21, 2013, directing the respondent to provide proof of service of its motion to reconsider on the Agency on or before March 7, 2013.

The Board has received no affidavit, certificate of requisite proof of service, or other filing from respondent in response to the Board's February 21, 2013 order. Under the Board's procedural rules, "[p]roof of proper service is the responsibility of the party filing and serving the document. An affidavit of service or certificate of service must accompany all filings of all parties." 35 Ill. Adm. Code 101.304(d). Due to the respondent's failure to file a proof of service, the Board denies the motion to reconsider and affirms its order of January 24, 2013. As

the January 24, 2013 order included a due date for penalty payment which has passed, the Board's order below adjusts the due date.

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

### **ORDER**

1. The Board denies IL Valley Urban Lumberjacks' motion to reconsider.
2. The Board affirms its finding that IL Valley Urban Lumberjacks violated Section 55(k)(1) of the Environmental Protection Act (415 ILCS 5/(k)(1) (2010)).
3. If it has not already done so, IL Valley Urban Lumberjacks must pay a civil penalty of \$1,500.00 no later than April 22, 2013, which is the first business day following the 30th day after the date of this order. IL Valley Urban Lumberjacks 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 IL Valley Urban Lumberjacks' social security number or federal employer identification number must be included on the certified check or money order.
4. IL Valley Urban Lumberjacks 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

5. 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)).
6. Payment of this penalty does not prevent future prosecution if the violation continues.

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 March 21, 2013 by a vote of 5-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is fluid and cursive, with a long horizontal stroke at the end.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
ADMINISTRATIVE CITATION

RECEIVED  
CLERK'S OFFICE  
DEC 05 2012  
STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )  
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Complainant, )  
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v. )  
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IL VALLEY URBAN LUMBERJACKS, LLC, )  
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Respondent. )

AC 13-23  
(IEPA No. 275-12-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 (2010).

FACTS

1. That IL Valley Urban Lumberjacks, LLC is the property owner and operator ("Respondent") of a facility located at 1538 N 2725 Road, Ottawa, LaSalle County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Ottawa/IL Valley Urban Lumberjacks.

2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 0990808157.

3. That Respondent has owned and operated said facility at all times pertinent hereto.

4. That on October 12, 2012, Donna Shehane of the Illinois Environmental Protection Agency's ("Illinois EPA") Rockford 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.

5. That on 11-29-12, Illinois EPA sent this Administrative Citation via Certified Mail No. 7010 2780 0002 1167 5171.

#### VIOLATIONS

Based upon direct observations made by Donna Shehane during the course of her October 12, 2012 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 water to accumulate in used or waste tires, a violation of Section 55(k)(1) of the Act, 415 ILCS 55(k)(1) (2010).

#### CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2010), 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 One Thousand Five Hundred (\$1,500.00). 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 December 30, 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 (2010), 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) (2010), 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 (2010). 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.

  
\_\_\_\_\_  
John J. Kim, Interim Director  
Illinois Environmental Protection Agency

Date:

11/24/2012

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

RECEIVED  
CLERK'S OFFICE

DEC 05 2012

STATE OF ILLINOIS  
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL PROTECTION )  
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(IEPA No. 275-12-AC)

FACILITY: Ottawa/IL Valley Urban Lumberjacks  
SITE CODE NO.: 0990808157  
COUNTY: LaSalle  
CIVIL PENALTY: \$1,500.00  
DATE OF INSPECTION: October 12, 2012

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.