

ILLINOIS POLLUTION CONTROL BOARD
July 9, 2015

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 12-18
) (IEPA No.343-11-AC)
F.I.M., INC.,) (Administrative Citation)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by D. Glosser):

For the reasons below, the Board accepts the proposed settlement and dismissal of this administrative citation enforcement action. On November 23, 2011, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against F.I.M., Inc. (respondent). The Agency alleges that, on September 29, 2011, respondent violated Sections 21(p)(1), (p)(3), and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2014)) by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the deposition of general or clean construction or demolition debris. The violations allegedly took place at respondent's facility located at North 30th Street, Quincy, Adams County. The property is commonly known to the Agency as the "Quincy/FIM, Inc." site and is designated with Site Code No. 0010655313.

Respondent timely filed a petition to contest the administrative citation, which the Board accepted on January 5, 2012. On July 1, 2015, the parties filed a "stipulation of settlement and dismissal of respondent's petition for administrative review." Under its terms, respondent admits that it violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2014)) by open dumping resulting in litter at the facility, and agrees to pay the statutory civil penalty of \$1,500 for this violation. Stipulation at 2. Respondent also agrees to the dismissal of its petition contesting the administrative citation. *Id.* at 3. The stipulation further states that "violations observed during the September 29, 2011 inspection are not continuing at this time." *Id.* at 2. In addition, the Agency agrees not to refer the violations that are the subject of the administrative citation to the Office of the Illinois Attorney General or any other prosecuting authority to initiate a civil enforcement action. *Id.*

The Board accepts the stipulation and proposal for settlement. Under Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (2014)), the Board therefore finds that respondent violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2014)). Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2014)) establishes a civil penalty of \$1,500 for this violation. The Board accordingly assesses a civil penalty of \$1,500. To effectuate the parties' intent that respondent pay a total civil penalty of \$1,500, the Board dismisses the alleged violation of Section 21(p)(3) and (p)(7) of the Act (415 ILCS 5/21(p)(3) and (p)(7) (2014)).

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

ORDER

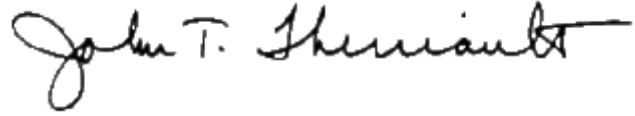
1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. The Board finds that F.I.M. Inc. violated Section 21(p)(1) of the Environmental Protection Act (415 ILCS 5/21(p)(1) (2014)).
3. F.I.M. Inc. must pay a civil penalty of \$1,500 no later than August 10, 2015, which is the first business day following the 30th day after the date of this order. F.I.M. Inc. 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 F.I.M. Inc.'s federal employer identification number must be included on the certified check or money order.
4. F.I.M. Inc. must send the certified check or money order 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) (2014)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2014)).
6. The Board dismisses the alleged violation of Section 21(p)(3) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(3) and (p)(7) (2014)) and F.I.M. Inc.'s petition to contest the administrative citation.

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) (2014); *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, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 9, 2015, 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 stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

ADMINISTRATIVE CITATION

NOV 23 2011

ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Complainant,)
)
 v.)
)
 F.I.M, INC.,)
)
)
 Respondent.)

STATE OF ILLINOIS
Pollution Control Board

AC 12-18
(IEPA No. 343-11-AC)

2 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 F.I.M., Inc. is the current owner and operator ("Respondent") of a facility located at North 30th Street, Quincy, Adams County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Quincy/FIM, Inc.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 0010655313.
3. That Respondent has owned and operated said facility at all times pertinent hereto.
4. That on September 29, 2011, Jan Mier 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 11-17-11, Illinois EPA sent this Administrative Citation via Certified Mail No. 7004 2510 0001 8588 4861 & 7004 2510 0001 8588.4854.

VIOLATIONS

Based upon direct observations made by Jan Mier during the course of her September 29, 2011 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) (2008).

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

- (3) 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 21(p)(7) (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 Four Thousand Five Hundred Dollars (\$4,500.00). 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 15, 2011, 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 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 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 (2008). 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: 11/9/11

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

NOV 23 2011

STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
))
Complainant,))
))
v.))
))
F.I.M., INC.))
))
))
Respondent.))

AC **12-18**
(IEPA No. 343-11-AC)

ORIGINAL

FACILITY: Quincy/F.I.M, Inc.

SITE CODE NO.: 0010655313

COUNTY: Adams

CIVIL PENALTY: \$4,500.00

DATE OF INSPECTION: September 29, 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.

AFFIDAVIT

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
 Illinois Environmental)
 Protection Agency,)
 Complainant)
 vs.)
)
 F.I.M., Inc.)
 Respondent)
)
)

IEPA DOCKET NO.

AC12-18

ORIGINAL

Affiant, *Jan Mier*, being first duly sworn, voluntarily deposes and states as follows:

1. Affiant is a field inspector employed by the Division of Land Pollution Control/Field Operations Section of the Environmental Protection Agency and has been so employed at all times pertinent hereto.
2. On September 29, 2011, between 12:05 p.m. and 12:30 p.m., Affiant conducted an inspection of an open dump, located in Adams County, Illinois and known as *F.I.M., Inc.* by the Illinois Environmental Protection Agency. Said site has been assigned site code number LPC #0010655313 by the Agency.
3. Affiant inspected said site by an on-site inspection, which included walking and photographing the site.
4. As a result of the activities referred to in Paragraph 3 above, Affiant completed the Inspection Report form attached hereto and made a part hereof, which, to the best of Affiant's knowledge and belief, is an accurate representation of Affiant's observations and factual conclusions with respect to said open dump.

Jan Mier

Jan Mier

Subscribed and Sworn to Before Me
this 19 day of October, 2011

Charlene K. Powell

Notary Public

