

ILLINOIS POLLUTION CONTROL BOARD

June 19, 2014

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 14-48
) (IEPA No. 110-14-AC)
BEST ONE TIRE & SERVICE)
OF FAIRFIELD, INC. and)
ROGERS & ASSOCIATES,)
)
Respondents.)

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

On April 25, 2014, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Best One Tire & Service of Fairfield, Inc. and Rogers & Associates (collectively, respondents). The administrative citation concerns respondents' facility located at 1619 West Main Street in Fairfield, Wayne County. The property is commonly known to the Agency as the "Best One Tire & Service of Fairfield, Inc." site and is designated with Site Code No. 1910105057. For the reasons below, the Board finds that respondents violated the Environmental Protection Act (Act) (415 ILCS 5 (2012)) and orders respondents to pay \$3,000 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) (2012); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on April 10, 2014, respondents violated Section 55(k)(1) of the Act (415 ILCS 5/55(k)(1) (2012)) by causing or allowing water to accumulate in used or waste tires. Claiming that this would be respondents' second or subsequent adjudicated violation of Section 55(k)(1), the Agency asks the Board to impose the statutory \$3,000 civil penalty per violation for a second or subsequent violation of that provision on respondents, for a total civil penalty of \$3,000. As required, the Agency served respondents with the administrative citation on April 24, 2014, which is within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2012); *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) (2012); 35 Ill. Adm. Code 101.300(b),

108.204(b), 108.406. Here, any petition for review was due by May 29, 2014. Neither respondent timely filed a petition. Accordingly, the Board finds that respondents violated Section 55(k)(1) of the Act.

The civil penalty for violating any provision of Section 55(k) 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) (2012); 35 Ill. Adm. Code 108.500(a). As the citation states, the Board previously found that respondents violated Section 55(k)(1) of the Act. *See* IEPA v. Best One Tire & Service of Fairfield, Inc. and Rogers & Associates, AC 12-32 (May 3, 2012) (violation on Jan. 30, 2012). Because the violation of Section 55(k)(1) found today is respondents' second or subsequent adjudicated violation of that provision, the total civil penalty imposed in the order below is \$3,000. Under Section 31.1(d)(1) of the Act, the Board attaches the administrative citation and makes it part of this order.

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

ORDER

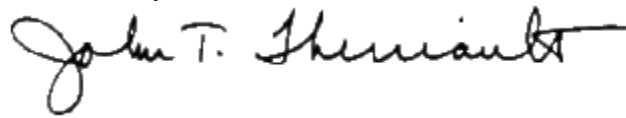
1. The Board finds that respondents violated Section 55(k)(1) of the Environmental Protection Act (415 ILCS 5/55(k)(1) (2012)).
2. Respondents must pay a civil penalty of \$3,000 no later than July 21, 2014, which is the first business day following the 30th day after the date of this order. Respondents 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 respondents' respective federal employer identification numbers must be included on the certified check or money order.
3. Respondents 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) (2012)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2012)).
5. 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) (2012); *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 June 19, 2014, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

RECEIVED
CLERK'S OFFICE

APR 25 2014

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
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v.)
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BEST ONE TIRE & SERVICE OF)
FAIRFIELD, INC. and ROGERS &)
ASSOCIATES,)
)
Respondents.)

AC 14-48
(IEPA No. 110-14-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 (2012).

FACTS

1. That Rogers & Associates are the current property owners and Best One Tire & Service of Fairfield, Inc. is the current operator ("Respondents") of a facility located at 1619 West Main Street, Fairfield, Wayne County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Best One Tire & Service of Fairfield, Inc.
2. That said facility is designated with Site Code No. 1910105057.
3. That Respondents have owned/operated said facility at all times pertinent hereto.
4. That on April 10, 2014, Garrison Gross of the Illinois Environmental Protection Agency's ("Illinois EPA") Marion 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 4-21-14, Illinois EPA sent this Administrative Citation via Certified Mail No. 7012 0470 0001 3000 8159 - Best One Tire
7012 0470 0001 3000 8135 - Rogers & Assoc.

VIOLATIONS

Based upon direct observations made by Garrison Gross during the course of his April 10, 2014 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 water to accumulate in used or waste tires, a violation of Section 55(k)(1) of the Act, 415 ILCS 55(k)(1) (2012).

CIVIL PENALTY

On May 3, 2012, the Board found Best One Tire & Service Of Fairfield, Inc. and Rogers & Associates in violation of Section 55(k)(1) of the Act in AC 12-32.

Because this Administrative Citation addresses a second or subsequent violation of Section 55(k)(1) of the Act, pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2012), Respondents are subject to a civil penalty of Three Thousand Dollars (\$3,000.00) for each violation, 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 25, 2014, 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 (2012), 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 Three Thousand Dollar (\$3,000.00) statutory civil penalty for each violation.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2012), 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 (2012). 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.



Date:

4-21-14

Lisa Bonnett, 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

RECEIVED
CLERK'S OFFICE

APR 25 2014

STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL PROTECTION)
 AGENCY,)
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 BEST ONE TIRE & SERVICE OF)
 FAIRFIELD, INC. and ROGERS &)
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)
 Respondents.)

AC 14-48
 (IEPA No. 110-14-AC)

FACILITY: Best One Tire & Service of Fairfield, Inc.
 SITE CODE NO.: 1910105057
 COUNTY: Wayne
 CIVIL PENALTY: \$3,000.00
 DATE OF INSPECTION: April 10, 2014

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.