

ILLINOIS POLLUTION CONTROL BOARD

January 8, 2004

OGLE COUNTY,)	
)	
Complainant,)	
)	AC 04-24
v.)	(Ogle County No. 1418005001)
)	(Administrative Citation)
KENNETH GILLAND,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by J.P. Novak):

On November 25, 2003, Ogle County filed an administrative citation against Kenneth Gilland. *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). Ogle County alleged that Kenneth Gilland violated Section 21(p)(1), (p)(3) and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(3) and (p)(7) (2002)) (Act). Based on inspection conducted August 15, 2003 and September 24, 2003, Ogle County further alleges that Kenneth Gilland violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) litter; (2) open burning of waste; and (3) accumulation of clean or general construction or demolition debris at Ogle County.

As required, Ogle County served the administrative citation on Kenneth Gilland within "60 days after the date of the observed violation" during the September 24, 2003 inspection. 415 ILCS 5/31.1(b) (2002); *see also* 35 Ill. Adm. Code 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. 415 ILCS 31.1(d)(1) (2002); 35 Ill. Adm. Code 108.204(b), 108.406. Here, Kenneth Gilland failed to timely file a petition. Accordingly, the Board finds that Kenneth Gilland violated Section 21(p) of the Act.

The civil penalty for violating Section 21(p) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500(a). Because there are three violations of Section 21(p) and these violations are first offenses, the total civil penalty is \$4,500. 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. Kenneth Gilland must pay a civil penalty of \$4,500 no later than February 7, 2004, which is the 30th day after the date of this order.

2. Kenneth Gilland 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 Kenneth Gilland's social security number or federal employer identification number must be included on the certified check or money order.
3. Kenneth Gilland must send the certified check or money order and the remittance form to:

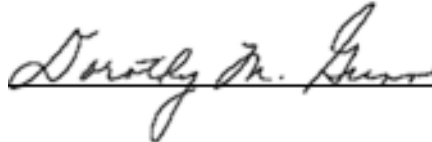
Ogle County State's Attorney Office
Ogle County Courthouse
110 South Fourth Street
P.O. Box 395
Oregon, IL 61061-0395

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
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) (2002); *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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 8, 2004, by a vote of 5-0.

A handwritten signature in dark ink, appearing to read "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board