

ILLINOIS POLLUTION CONTROL BOARD

April 20, 2006

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 04-77
)	(IEPA No. 265-04-AC)
FRANK BENCIE,)	(Administrative Citation)
)	
Respondent.)	

MS. MICHELLE M. RYAN, SPECIAL ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT; and

MR. FRANK BENCIE APPEARED *PRO SE*.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On February 16, 2006, the Board issued an interim opinion and order, finding Frank Bencie (respondent) violated Section 21(p)(1) and (p)(4) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) and (p)(4) (2004)) at a site located at 10220 Bencie Lane south of West Frankfort, Franklin County. These violations were alleged in an administrative citation issued by the Illinois Environmental Protection Agency (Agency). Having received documentation of hearing costs in this administrative citation enforcement action, the Board today issues its final opinion and order.

In the interim opinion and order the Board found that respondent violated Section 21(p)(1) and (4) of the Act (415 ILCS 5/21(p)(1) and (4) (2004)) by causing or allowing the open dumping of wastes on his property resulting in litter and the deposition of waste in flowing or standing water. The allegation arose from a March 23, 2004 inspection by the Agency.

Because there are two violations of Section 21(p) of the Act (415 ILCS 5/21(p) (2004)) and these violations are the first offense, the total civil penalty is \$3,000. Further, because a hearing was held in this proceeding and respondent did not prevail, respondent is also liable for hearing costs. 35 Ill. Adm. Code 108.502, 108.504. The hearing was held on November 17, 2005, at Benton City Hall, Benton, Franklin County.

On February 16, 2006, the Clerk of the Board submitted an affidavit of the Board's hearing costs totaling \$172.90. On March 6, 2006, the Agency filed a statement of hearing costs totaling \$102.03. Respondent has not responded to either statement of costs.

The Board finds the hearing costs of the Board and the Agency reasonable and orders respondent to pay those costs under Section 42(b)(4-5) of the Act. 415 ILCS 5/42(b)(4-5)

(2004). The Board incorporates by reference the findings of fact and conclusions of law from its February 16, 2006 interim opinion and order. Under Section 31.1(d)(2) of the Act, the Board attaches the administrative citation and makes it part of the Board's final order.

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

ORDER

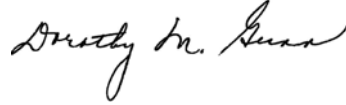
1. The Board finds that respondent Mr. Frank Bencie violated Section 21(p)(1) and (4) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (4) (2004)) at his property in located at 10220 Bencie Lane, south of West Frankfort in Franklin County.
2. The Board assesses the civil penalty of \$3,000 for the violations, as well as hearing costs totaling \$274.93 for a total amount of \$3,274.93. Respondent must pay \$3,274.93 no later than June 5, 2006, which is the 45th day after the date of this order. Respondent must pay this amount by certified check or money order, made payable to the Environmental Protection Trust Fund. The case numbers, case name, and Respondent's social security number or federal employer identification number must be included on the certified check or money order.
3. Respondent must send the certified check or money order to:

 Illinois Environmental Protection Agency
 Fiscal Services
 1020 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 Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
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) (2004); *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 April 20, 2006, by a vote of 4-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board