

ILLINOIS POLLUTION CONTROL BOARD
August 6, 2009

COUNTY OF JACKSON,)
)
Complainant,)
)
v.) AC 09-08
) (Site Code: 0778035009)
DAN KIMMEL,) (Administrative Citation)
)
Respondent.)

DANIEL W. BRENNER, ASSISTANT STATE'S ATTORNEY, APPEARED ON BEHALF OF COMPLAINANT; and

DAN KIMMEL APPEARED *PRO SE*

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

In its June 4, 2009 interim opinion and order, the Board found that the respondent, Dan Kimmel, allowed the open dumping of waste in a manner resulting in litter, and in the deposition of construction or demolition debris in violation of Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) and (7) (2006)) at his property located north of De Soto in a rural, unincorporated portion of Jackson County. Having found that the respondent committed these violations, the Board assessed the statutory civil penalty of \$4,500¹ and hearing costs. The Board directed the County of Jackson (County) and the Clerk of the Board to file documentation of their hearing costs on or before July 8, 2009, and provided the respondent an opportunity to respond to those filings within 21 days of receipt of the filings.

The County has submitted no cost documentation. On June 17, 2009, the Clerk of the Board submitted an affidavit of hearing costs totaling \$120.93. Dan Kimmel has not filed a response to this affidavit, which would have been due on or about July 12, 2009. *See* 35 Ill. Adm. Code 108.506(a) (setting 21-day deadline for response) and 101.300(c) (mail service is presumed complete after four days of mailing).

The Board finds the hearing costs of the Board are reasonable and orders the respondent Dan Kimmel to pay those costs under Section 42(b)(4-5) of the Act. 415 ILCS 5/42(b)(4-5) (2006). The Board incorporates by reference the findings of fact and conclusions of law from its

¹ This is Mr. Kimmel's second adjudicated violation of Section 21 (p)(1) only. County of Jackson v. Dan Kimmel, PCB 06-21(Nov. 2, 2006). So, under Section 21 (p)(1), the statutory penalty is \$3,000 for this violation. As to Section 21 (p)(7), because this is respondent's first adjudicated violation, the statutory penalty is \$1,500. Accordingly, the total statutory penalty is \$4,500.00 plus costs.

June 4, 2009 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 the respondent, Dan Kimmel, violated Sections 21(p)(1) and (7) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (7) (2006)) at property located in Jackson County.
2. The Board assesses the civil penalty of \$4,500.00 for the violations, as well as hearing costs totaling \$120.93 for a total amount of \$4,620.93. Dan Kimmel must pay \$4,620.93 no later than September 21, 2009, which is the first business day after the 45th day from the date of this order. The respondent must pay this amount by certified check or money order, made payable to the Environmental Protection Trust Fund. The case number, case name, and the respondent's social security number or federal employer identification number must be included on the certified check or money order.
3. The respondent Dan Kimmel 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) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
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) (2006); *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 August 6, 2009 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 flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board