

ILLINOIS POLLUTION CONTROL BOARD

August 8, 2002

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 01-29
) (Administrative Citation)
LESSLIE YOCUM, SANDRA YOCUM,) (IEPA No. 063-01-AC)
RICK L. YOCUM, and SHAWNA B.)
YOCUM (BIRMINGHAM YOCUM #1),)
)
Respondents.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
) AC 01-30
v.) (Administrative Citation)
) (IEPA No. 062-01-AC)
LESSLIE YOCUM and SANDRA YOCUM) (Consolidated)
(BIRMINGHAM/YOCUM #2),)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

On March 6, 2001, pursuant to Section 31.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/31.1(b) (2000)), the Illinois Environmental Protection Agency (Agency) filed an administrative citation against Lesslie Yocum, Sandra Yocum, Rick L. Yocum, and Shawna B. Yocum (docket AC 01-29). The Agency alleged that respondents were operating an unpermitted open dump in unincorporated Birmingham, Schuyler County (Yocum #1) in violation of Sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act (Act). 415 ILCS 5/21(p)(1) and 21(p)(7) (2000) *amended* by P.A. 92-0574, eff. June 26, 2002.

On the same date, the Agency filed an administrative citation against Lesslie Yocum and Sandra Yocum (docket AC 01-30), alleging that they were also operating an unpermitted open dump northeast of unincorporated Birmingham, Schuyler County (Yocum #2). The Agency alleged that the respondents violated Sections 21(p)(1) and 21(p)(7) of the Act at Yocum #2 as well. 415 ILCS 5/21(p)(1) and 21(p)(7) (2000) *amended* by P.A. 92-0574, eff. June 26, 2002. The Agency sought a penalty of \$1,500 for each alleged violation of the Act at

both Yocum properties for a total of \$6,000. Agency Field Inspector William E. Zierath based the administrative citations on inspections done January 11, 2001.

On June 6, 2002, the Board entered an interim opinion and order, which it incorporates here by reference, finding that respondents violated Sections 21(p)(1) and 21(p)(7) of the Act at both Yocum properties in Schuyler County. The Board found that the Agency and the Board were entitled to hearing costs under Section 42(b)(4-5) of the Act. 415 ILCS 5/42(b)(4-5)(2000). The Board directed the Agency and the Clerk of the Board to file affidavits of costs with the Board and to serve the affidavits upon respondents. The Board granted respondents 14 days from the date of receipt of the affidavits to file a reply to the statements of hearing costs. The Board stated that it would then issue a final order assigning the statutory penalty and assessing the appropriate costs. *See* 35 Ill. Adm. Code 108.500(b).

On June 12, 2002, the Clerk of the Board filed an affidavit stating that the Board's hearing costs were \$281.10 and served respondents with the affidavit on the same day by first-class mail. On June 20, 2002, the Agency filed a statement of hearing costs claiming \$69.33 in mileage and clerical costs, and also served respondents on the same day. Respondents did not respond to either the Clerk's affidavit or the Agency's statement of hearing costs.

Accordingly, the Board orders respondents to pay the statutory penalty of \$6,000 for violating Sections 21(p)(3) and 21(p)(7) of the Act (415 ILCS 5/21(p)(3) and 21(p)(7)(2000)) *amended by* P.A. 92-0574, eff. June 26, 2002; and to pay Board and Agency hearing costs in the amount of \$281.10 and \$69.33, respectively. Pursuant to Section 31.1(d)(2) of the Act (415 ILCS 5/31.1(d)(2)(2000)), the Board attaches the administrative citation and makes it part of the order below.

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

ORDER

1. Respondents must pay a penalty of \$6,069.33 (\$6,000 in statutory penalty plus \$69.33 in reimbursement to the Agency for hearing costs) no later than September 7, 2002, which is 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' social security numbers or federal employer identification numbers must be included on the certified check or money order. 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

2. Respondents must also reimburse the Board for hearing costs in the amount of \$281.10 no later than September 7, 2002, which is the 30th day after the date of this order. Respondents must pay this penalty by certified check or money order made payable to the General Revenue Fund. The case number, case name, and respondents' social security number or federal employer identification number must be included on the certified check or money order. Respondents must send the certified check or money order and the remittance form to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

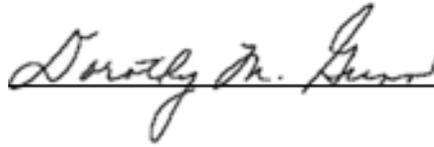
3. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2000)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2000)).
4. Payment of this penalty does not prevent future prosecution if the violation continues.

IT IS SO ORDERED.

Board Members T.E. Johnson and G.T. Girard dissented.

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) (2000); *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 August 8, 2002, by a vote of 5-2.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board