

ILLINOIS POLLUTION CONTROL BOARD  
January 10, 2002

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 02-23
	)	(IEPA No. 440-01-AC)
KIM JOINES,	)	(Administrative Citation)
	)	
Respondent.	)	

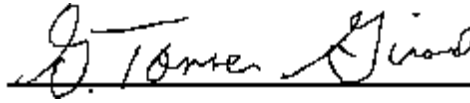
DISSENTING OPINION (by G. T. Girard):

I respectfully dissent from the Board's opinion and order issued today in this matter. Although I agree that the respondent should be found in violation of Sections 21(p)(1) and 21(p)(3) of the Environmental Act (Act) (415 ILCS 5/21(p)(1) and (p)(3) (2000)), I disagree with the assessed penalty.

In July 1999, the General Assembly adopted and the Governor signed HB 2011, which became Public Act 91-82. Among other things, Public Act 91-82 amended Section 42(b) of the Environmental Protection Act (415 ILCS 5/1 *et seq.* 2000) (Act) to raise the penalty for violations of Section 21(p) of the Act. Prior to the amendment, Section 42(b)(4) provided in part that, "any person found to have violated any provision of subsection (o) or (p) of Section 21 of this Act shall pay civil penalty of \$500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency." 415 ILCS 5/42(b)(4) (1998). The amendment in Public Act 91-82 deleted "or (p)" from Section 42(b)(4) of the Act and added Section 42(b)(4-5). Section 42(b)(4-5) of the Act provides in part that, "any person found to have violated any provision of subsection (p) of Section 21 of this Act shall pay a civil penalty of \$1,500 for a first offense and \$3,000 for a second or subsequent offense, plus any hearing costs incurred by the Board and the Agency." 415 ILCS 5/42(b)(4-5) (2000). Significant in this change is the decision not to carry forward the phrase "for each violation of each such provision".

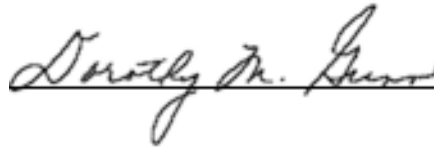
Section 42(b)(4-5) provides that the civil penalty of \$1,500 is for "a first offense" for violating "any provision of subsection (p) of Section 21." The common definition of any is an indeterminate number or amount, or, in other words, one or several. The common definition of each is one of two or more considered individually. By leaving out the phrase, "for each violation of each such provision", the appropriate penalty is \$1,500 for violations of any of the provisions of Section 21(p) of the Act and not \$1,500 for a violation of each provision of Section 21(p) of the Act. Therefore, the appropriate penalty in this case should be \$1,500.

For these reasons, I respectfully dissent.

A handwritten signature in cursive script, reading "G. Tanner Girard", written over a horizontal line.

G. Tanner Girard  
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was submitted on January 16, 2002.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board