

ILLINOIS POLLUTION CONTROL BOARD
October 3, 2002

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 03-7
)	(IEPA No. 310-02-AC)
HERB FLANNEL and WALLACE)	(Administrative Citation)
EXCAVATING COMPANY, an Illinois)	
corporation,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

On August 14, 2002, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Herb Flannel and Wallace Excavating Company (respondents). *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleges that respondents violated Sections 21(p)(1), (p)(3), and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2000) *as amended by* P.A. 92-0574, eff. June 26, 2002). The Agency further alleges that respondents violated these provisions by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and deposition of construction or demolition debris at a facility located at the southwest corner of county roads 1175E and 1125N in Sullivan Township, Moultrie County. The administrative citation meets the content requirements of 35 Ill. Adm. Code 108.202(b).

As required, the Agency served the administrative citation on respondents within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2000); *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) (2000); 35 Ill. Adm. Code 108.204(b), 108.406. Here, respondents failed to timely file a petition. Accordingly, the Board finds that respondents violated Sections 21(p)(1), (p)(3), and (p)(7) 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) (2000); 35 Ill. Adm. Code 108.500(a). Because there are three violations of Section 21(p) and these violations are a first offense, 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. Herb Flannel and Wallace Excavating Company (respondents) must pay a civil penalty of \$4,500 no later than November 3, 2002.
2. 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 number or federal employer identification number must be included on the certified check or money order.
3. Respondents must send the certified check or money order and the remittance form to:

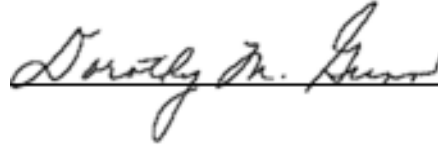
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2000)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2000)).
5. Payment of this penalty does not prevent future prosecution if the violations continue.

IT IS SO ORDERED.

Board Member 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 October 3, 2002, by a vote of 4-1.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board