

ILLINOIS POLLUTION CONTROL BOARD
December 2, 2004

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 04-61
) (IEPA No. 125-04-AC)
) (Administrative Citation)
FLORENCE PROPHETER and PROPHETER)
CONSTRUCTION CO.,)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by J.P. Novak):

On April 6, 2004, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Florence Propheter and Propheter Construction Co. (respondents). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that the respondents violated Section 21(p)(1, (p)(4), and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(4), and (p)(7) (2002)). The Agency further alleges that the respondents violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) litter; (2) deposition of waste in standing or flowing waters; and (3) deposition of general construction or demolition debris or clean construction or demolition debris at a property in Hopkins Township, Whiteside County, that is bounded on the north and west by West Lincoln Highway (Illinois Route 2), on the south by the Chicago and Northwestern Railroad tracks, and on the east by a residential property at 4509 West Lincoln Highway.

As required, the Agency served the administrative citation on the respondents within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2002); *see also* 35 Ill. Adm. Code 108.202(b). On May 10, 2004, the respondents timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). The respondents alleged that they did not cause or allow the alleged violations, and that the alleged violations were the result of uncontrollable circumstances. *See* 35 Ill. Adm. Code 108.206. The Board accepted the petition for hearing by an order dated May 20, 2004.

On November 18, 2004, the Agency and the respondents filed a stipulation and proposed settlement. *See* 35 Ill. Adm. Code 108.208 and 108.500(c). The respondents admit the alleged violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2002)) and agree to pay a civil penalty of \$1,500. The stipulation and proposed settlement is silent as to the alleged violations of Sections 21(p)(4) and (p)(7) of the Act (415 ILCS 5/21(p)(4) and (p)(7) (2002)).

The Board accepts the stipulation and proposed settlement agreement. To effectuate the parties’ agreement, the Board dismisses the alleged violations of Sections 21(p)(4) and (p)(7) of the Act (415 ILCS 5/21(p)(4) and (p)(7) (2002)). The Board directs the respondents to pay a

civil penalty in the amount of \$1,500 and diligently comply with and cease and desist from further violation of the Act (415 ILCS 5 (2002)) and Board regulations.

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

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. The alleged violations of Section 21(p)(4) and (p)(7) of the Act are dismissed. The Board finds that the respondents violated Section 21(p)(1) of the Act, and must pay a civil penalty of \$1,500 no later than January 5, 2005, which is the first business day after the 30th day after the date of this order.
3. The respondents must pay the civil penalty by certified check or money order, made payable to the Environmental Protection Trust Fund. The number, case name, and the respondents' social security numbers or federal employer identification number must be included on the certified check or money order.
4. The respondents must send the certified check or money order and the remittance form to the following person at the indicated address:

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

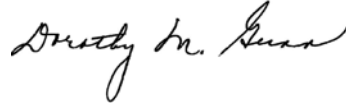
5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
6. Payment of this penalty does not prevent future 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) (2002); *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 December 2, 2004, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board