

ILLINOIS POLLUTION CONTROL BOARD
February 3, 2005

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 05-32
) (IEPA No. 532-04-AC)
JAMES A. HAAS, JR.,) (Administrative Citation)
)
Respondent.)

ORDER OF THE BOARD (by G.T. Girard):

By this order, the Board vacates its December 16, 2004 order, in which the Board found the respondent, James A. Haas, Jr., in default for violation of Section 21(p)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) (2002)). In that order, the Board also assessed a civil penalty of \$3,000. Today's order accepts a settlement agreement reached by the parties and filed with the Board in a Joint Motion to Vacate Board Order (Joint Mot.) on January 19, 2005. To implement that agreement, this order grants voluntary withdrawal of the administrative citation.

On October 22, 2004, the Environmental Protection Agency (Agency) timely filed an administrative citation against James A. Haas, Jr. *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Haas violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2002)). The Agency further alleges that Haas violated this provision on September 1, 2004 by causing or allowing the open dumping of waste resulting in litter at a site located on the north side of Davis Road in or near Mt. Carroll, Carroll County.

As required, the Agency served the administrative citation on Haas 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). To contest an administrative citation, a respondent must file a petition for review 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 violation alleged and impose the corresponding civil penalty. 415 ILCS 5/31.1(d)(1) (2002); 35 Ill. Adm. Code 108.204(b), 108.406. Although Haas filed a petition for review on November 30, 2004, that filing did not occur on or before the 35-day deadline established by the Board's procedural rules. *See* 35 Ill. Adm. Code 108.204(b). Accordingly, the Board in a December 16, 2004 order found Haas in default for the violation alleged in the citation.

On January 19, 2005, the parties filed a Joint Motion to Vacate Board Order. The parties state that they reached a settlement agreement providing that, if the site complied with the Act by December 16, 2004, the citation would be dismissed. Joint Mot. at 1. The parties further state

that, because of an emergency in Haas' attorney's family, Haas filed a petition for review one day late on November 30, 2004. Joint Mot. at 2.

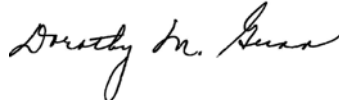
According to the joint motion, the parties met at Hass' site on December 6, 2004. Joint Mot. at 2. "At that time, the site was found to be compliant, but there was additional work to be done." *Id.* The Agency imposed a December 16, 2004 deadline on the removal of remaining debris. *Id.* The parties met again on December 16, 2004. *Id.* The Agency inspected the site and found that it no longer violated the Act. *Id.* Accordingly, "[t]he Respondent complied with the agreement that had been reached between the parties' attorneys." *Id.*

The Board accepts the parties' settlement agreement. To implement that agreement, the Board vacates the December 16, 2004 order directing Haas to pay a civil penalty of \$3,000. In addition, the Board grants voluntary withdrawal of the October 22, 2004 administrative citation.

IT IS SO ORDERED.

Section 41(a) of the 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 order on February 3, 2005, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board