

ILLINOIS POLLUTION CONTROL BOARD
April 21, 2005

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 05-49
)	(IEPA No. 685-04-AC)
LANDERS' CHILDREN FAMILY, LLC, and)	(Administrative Citation)
RAY LANDERS,)	
)	
Respondents.)	

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

On January 28, 2005, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against two respondents: Landers' Children Family, LLC, and Ray Landers (respondents). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleged that 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 on December 1, 2004 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 5000 and 5068 Dickey John Road, Auburn, Sangamon County.

On February 18, 2005, the Agency filed a motion to dismiss the administrative citation for failing to serve respondent Landers' Children Family, LLC within 60 days of the observed violation as required. *See* 415 ILCS 5/31.1(b) and 35 Ill. Adm. Code 108.402. The Board issued an order that granted that motion and dismissed the administrative citation on March 3, 2005, as to both respondents.

On April 6, 2005, the Agency filed a motion for reconsideration of the March 3, 2005 order. In that motion, the Agency points out that its February 18, 2005 motion sought dismissal of the administrative citation for lack of timely service on the respondent Landers' Children Family, LLC, and not as to the respondent Ray Landers. The record indicates that service on Ray Landers was completed on January 28, 2005. The Agency claims that the Board appropriately dismissed the administrative citation as to Landers' Children Family, LLC, but should have entered a default order against Ray Landers, finding that he committed the violations as alleged and assessing liability against him for the violations.

RECONSIDERATION OF THE MARCH 3, 2005 BOARD ORDER

The Board's procedural rules provide that motions for the Board to modify its final orders must be filed within 35 days after the order is received (35 Ill. Adm. Code 101.520), and the Board finds that the Agency's motion filed April 6, 2005, is timely. The Board grants the Agency's motion for reconsideration. The Board finds that, due to an inadvertent administrative error, the March 3, 2005 order dismissed the administrative citation as to respondent Ray Landers. The Board vacates the order that issued March 3, 2005, in this matter, reinstates the administrative citation, and orders as follows:

Dismissal of the Administrative Citation as to Landers' Children Family, LLC

On February 18, 2005, the Agency filed a motion to dismiss the administrative citation for failing to serve respondent Landers' Children Family, LLC within 60 days of the observed violation as required. *See* 415 ILCS 5/31.1(b) and 35 Ill. Adm. Code 108.402. The Board grants that motion and dismisses the administrative citation as to that respondent.

Default Judgment on the Administrative Citation as to Ray Landers

As required, the Agency served the administrative citation on respondent Ray Landers 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 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 5/31.1(d)(1) (2002); 35 Ill. Adm. Code 108.204(b), 108.406. Here, any petition for review was due on March 4, 2005. Ray Landers failed to timely file a petition. Accordingly, the Board finds that Ray Landers violated Section 21(p) 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) (2002); 35 Ill. Adm. Code 108.500(a). Because there are three violations of Section 21(p) and these violations are first offenses, 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. The Board hereby dismisses the administrative citation as to Landers' Children Family, LLC.
2. The Board finds that Ray Landers violated Sections 21(p)(1), (p)(4), and (p)(7) of the Act as alleged. Ray Landers must pay a civil penalty of \$4,500 no later than May 23, 2005, which is the first business day after the 30th day after the date of this order.

3. Ray Landers 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 Ray Landers' social security number or federal employer identification number must be included on the certified check or money order.
4. Ray Landers must send the certified check or money order and the remittance form to:

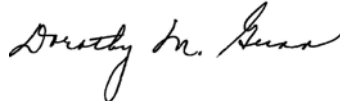
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the 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 April 21, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board