## ILLINOIS POLLUTION CONTROL BOARD July 21, 2005

| COUNTY OF VERMILION, ILLINOIS, |              | ) |                           |
|--------------------------------|--------------|---|---------------------------|
|                                |              | ) |                           |
| C                              | Complainant, | ) |                           |
|                                |              | ) |                           |
| v                              | · .          | ) | AC 05-28                  |
|                                |              | ) | (County No. 04-02)        |
| BILL WERNIGK,                  |              | ) | (Administrative Citation) |
|                                |              | ) |                           |
| F                              | Respondent.  | ) |                           |

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

Today the Board accepts a proposed settlement and dismissal of this administrative citation enforcement action. By way of background, complainant, the County of Vermilion (County), timely filed an administrative citation against respondent, Bill Wernigk (Wernigk), on September 27, 2004. The County alleged that Wernigk violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(7) (2004)) by causing or allowing the open dumping of waste resulting in litter and the deposition of general and clean construction and demolition debris at Wernigk's property, located at 3585 East 3200 North Road in Potomac, Vermilion County.

Wernigk timely filed a petition to contest the administrative citation, which the Board accepted on October 21, 2004. On July 5, 2005, the parties filed a proposed settlement agreement. Under the proposed settlement, Wernigk admits that he violated Section 21(p)(1) of the Act by causing or allowing open dumping resulting in litter, and agrees to pay a civil penalty of \$3,000. Settlement at 1. In addition, the County agrees to the dismissal of its administrative citation with respect to the alleged violation of Section 21(p)(7) of the Act. *Id*.

The Board accepts the proposal for settlement. Under Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (2004)), the Board therefore finds that Wernigk violated Section 21(p)(1) of the Act. The civil penalty for violating any provision of Section 21(p) is \$1,500 for each violation of each such provision. However, if a violation is the person's second or subsequent adjudicated violation of that provision of Section 21(p), the civil penalty amount is \$3,000 for the second or subsequent violation. *See* 415 ILCS 5/42(b)(4-5) (2002); 35 III. Adm. Code 108.500.

In the County's administrative citation alleging Wernigk's violation of Section 21(p)(1) of the Act, the County states that Wernigk had also previously violated Section 21(p)(1). On September 18, 2003, in another administrative citation case, the Board did find that Wernigk violated Section 21(p)(1). See County of Vermilion v. Wernigk, AC 04-10 (Sept. 18, 2003). The Board accordingly now assesses a civil penalty of \$3,000 for Wernigk's subsequent violation of Section 21(p)(1). The Board also dismisses the County's alleged violation of Section 21(p)(7) of the Act and Wernigk's petition to contest the administrative citation.

Finally, the Board notes that under terms of the settlement agreement, Wernigk is to pay the \$3,000 civil penalty in monthly installments of \$125, with final payment due by June 15, 2007. Though the parties filed the proposed settlement agreement on July 5, 2005, the agreement makes the first \$125 installment payment due "on or before July 15, 2005." Settlement at 1. The due date for the first installment payment therefore precedes the date of this Board opinion and order. There is no indication in the record whether Wernigk has made the first installment payment. Accordingly, the Board finds that the first installment will be considered timely paid if Wernigk *either* made a \$125 payment on or before July 15, 2005, *or* makes a \$250 payment on or before August 15, 2005.

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

## <u>ORDER</u>

- 1. The Board accepts and incorporates by reference the proposed settlement agreement.
- The Board finds that Wernigk violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2004)) by causing or allowing the open dumping of waste resulting in litter.
- 3. Wernigk must pay a total civil penalty of \$3,000 in installments of no less than \$125 per month, due on or before the 15th of each month, with the final payment due on or before June 15, 2007. Payment must be made by certified check or money order, made payable to the County of Vermilion, Illinois. The case number, case name, and Wernick's social security number must be included on the certified check or money order.
- 4. Wernigk must send the certified check or money order to:

Vermilion County Health Department 200 South College Street Danville, Illinois 61832

- 5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
- 6. The Board dismisses the alleged violation of Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2004)) and Wernigk's petition to contest the administrative citation.

## 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) (2004); *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 July 21, 2005, by a vote of 5-0.

Drietly Mr. Sunn

Dorothy M. Gunn, Clerk Illinois Pollution Control Board