

ILLINOIS POLLUTION CONTROL BOARD  
August 4, 2005

COUNTY OF KANKAKEE, )  
 )  
 Complainant, )  
 )  
 v. ) AC 05-78  
 ) (Administrative Citation)  
 JAMES R. VINING, )  
 )  
 Respondent. )

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

On June 16, 2005, the County of Kankakee timely filed an administrative citation against Municipal Trust & Savings Bank Trust # 1605. *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The County of Kankakee alleged that Municipal Trust & Savings Bank Trust # 1605 violated Section 21(p)(1), (p)(3), and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2004)). The County of Kankakee further alleged that on April 25, 2005, Municipal Trust & Savings Bank Trust # 1605 violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) litter; (2) open burning; and (3) deposition of general construction or demolition debris or clean construction or demolition debris at East North Street, Bradley, Kankakee County.

On June 27, 2005, the County of Kankakee filed a motion to amend the caption to delete Municipal Trust & Savings Bank Trust # 1605 and name James R. Vining as the respondent. In support of this motion, the County of Kankakee states that the Bank has informed it that Trust #1605 has been closed. The motion's certificate of service dated June 22, 2005, stated that James R. Vining was served with the motion and administrative citation by certified mail. The "green card" filed by the County of Kankakee on July 19, 2005 indicates that James R. Vining received the motion and administrative citation on June 23, 2005.

Since James R. Vining has not filed a response to the motion, the Board deems any objection to the motion waived. *See* 35 Ill. Adm. Code 101.500(d). As required, the County of Kankakee served the administrative citation on James R. Vining within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2004); *see also* 35 Ill. Adm. Code 108.202(b). The Board grants the motion to remove the Bank as respondent and to add James R. Vining as sole respondent. The caption above reflects the change.

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) (2004); 35 Ill. Adm. Code 108.204(b), 108.406. Here, any petition for review was due on July 28, 2005. James R. Vining failed to

timely file a petition. Accordingly, the Board finds that James R. Vining 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) (2004); 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.

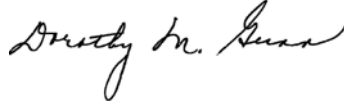
### **ORDER**

1. The Board finds that James R. Vining violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act as alleged. James R. Vining must pay a civil penalty of \$4,500 no later than September 5, 2005, which is the first business day after the 30th day after the date of this order.
2. James R. Vining must pay the civil penalty by certified check or money order, made payable to the County of Kankakee. The case number, case name, and James R. Vining's social security number must be included on the certified check or money order.
3. James R. Vining must send the certified check or money order and the remittance form to:  
  
County of Kankakee  
Planning Department, Solid Waste Division  
189 East Court Street, Suite 200  
Kankakee, Illinois 60901
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection 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)).
5. 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. 415ILCS 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.2dR.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 August 4, 2005, by a vote of 5-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board