

ILLINOIS POLLUTION CONTROL BOARD

October 6, 2005

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 05-2
)	(IEPA No. 229-04-AC)
LESTER SMITH,)	(Administrative Citation)
)	
Respondent.)	

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

On July 1, 2004, complainant, the Illinois Environmental Protection Agency (Agency), timely filed an administrative citation against respondent, Lester Smith. See 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns alleged open dumping at Mr. Smith’s property, which is located at 3913 Upper Salem Road, northwest of Metropolis, in Massac County. For the reasons below, the Board finds that Mr. Smith violated the Environmental Protection Act (Act) (415 ILCS 5 (2004)) and orders Mr. Smith to pay a \$1,500 civil penalty.

Under the Act, an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. See 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2004); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that Mr. Smith violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2004)) by causing or allowing the open dumping of waste in a manner resulting litter. The Agency asks the Board to impose a \$1,500 civil penalty on Mr. Smith. As required, the Agency served the administrative citation on Mr. Smith 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). On August 17, 2004, Mr. Smith timely filed a petition to contest the administrative citation. See 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 101.300(b)(2), 108.204(b). The Board accepted Mr. Smith’s petition for hearing in an August 19, 2004 order. The case has not yet been to hearing.

On October 3, 2005, Mr. Smith filed a document withdrawing his petition to contest. See 35 Ill. Adm. Code 108.208. The administrative citation is therefore “non-contested” (35 Ill. Adm. Code 108.406) and the Board must find that respondent committed the violation alleged and impose the corresponding civil penalty (415 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 108.500(a)). Accordingly, the Board finds that Mr. Smith 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, except that the penalty increases to \$3,000 for each second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500(a)(2). Because there is one violation of Section 21(p) and nothing in this record suggests that this is a second or subsequent adjudicated violation for Mr. Smith, the total civil penalty is \$1,500. 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. Mr. Smith must pay a civil penalty of \$1,500 no later than November 7, 2005, which is the first business day following the 30th day after the date of this order.
2. Mr. Smith 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 Mr. Smith's social security number or federal employer identification number must be included on the certified check or money order.
3. Mr. Smith 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

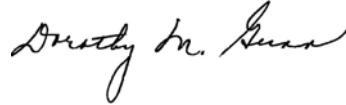
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
5. Payment of this penalty does not prevent future prosecution if the violation continues.

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 October 6, 2005, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board