

ILLINOIS POLLUTION CONTROL BOARD
March 16, 2006

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 05-33
) (IEPA No. 538-04-AC)
LEO HARN,) (Administrative Citation)
)
Respondent.)

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

On October 25, 2004, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Leo and Debra Harn. *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The Agency alleges that respondents on September 29, 2004, violated sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), 21(p)(7) (2004)). The Agency further alleges that respondent violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) litter and (2) deposition of general and/or clean construction or demolition debris at 601 Osborn Street in Bushnell, McDonough County.

As required, the Agency served the administrative citation on Leo and Debra Harn 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 November 18, 2004, Leo and Debra Harn timely filed a petition to contest the administrative citation (Pet. Review). *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). The respondents stated that they did not cause the alleged violations to occur and that the violations resulted from uncontrollable circumstances. Pet. Review at 1; *see* 35 Ill. Adm. Code 108.206. The Board accepted the petition for hearing in an order dated December 2, 2004.

On February 22, 2006, the parties filed a stipulation of settlement and dismissal of respondents’ petition for administrative review (Stip.). *See* 35 Ill. Adm. Code 108.208 and 108.500(c). Leo Harn “admits that he caused or allowed open dumping resulting in litter.” Stip. at 2, citing 415 ILCS 5/21(p)(1) (2004). He also agrees to pay the statutory penalty of \$1,500. Stip. at 2; *see* 415 ILCS 5/42(b)(4-5) (2004).

The Board notes that the stipulation refers to the July 20, 2005, death of Debra Harn. Stip. at 2. The Board further notes that the stipulation names Leo Harn as “the only remaining Respondent in this action.” *Id.* The Board accepts the parties’ stipulation of settlement and the Agency’s agreement with Leo Harn. *See* Stip. at 3. To effectuate that agreement, the Board (1) directs Leo Harn to pay a civil penalty in the amount of \$1,500 for violation of section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2004)); (2) dismisses that portion of the October 22, 2004

administrative citation pertaining to an alleged violation of section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2004)); (3) dismisses the petition for review filed by the respondents on November 18, 2004; and (4) amends the caption to reflect Leo Harn's status as "the only remaining Respondent in this action." Stip. at 2.

ORDER

1. The Board accepts and incorporates by reference the parties' stipulation and proposed settlement.
2. Pursuant to the stipulated agreement, the alleged violation of section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2004)) is dismissed. The Board finds that Leo Harn violated section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2004)) and must pay a civil penalty of \$1,500 no later than April 17, 2006, which is the first business day after the 30th day after the date of this order.
3. The respondent must pay the civil penalty by certified check or money order, made payable to the Environmental Protection Trust Fund. The number, case name, and the respondent's social security numbers or federal employer identification number must be included on the certified check or money order.
4. The respondent must send the certified check or money order and the remittance form to the following address:

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 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)).
6. Payment of this penalty does not prevent future prosecution if the violations continue.

IT IS SO ORDERED.

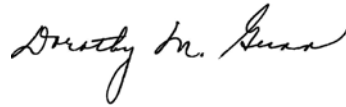
Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2004); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706.

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.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 16, 2006, 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