

ILLINOIS POLLUTION CONTROL BOARD
November 16, 2006

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 05-70
) (IEPA No. 145-05-AC)
JAMES STUTSMAN,) (Administrative Citation)
)
Respondent.)
)

MICHELLE M. RYAN, SPECIAL ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT; and

JAMES STUTSMAN APPEARED *PRO SE*.

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

On September 21, 2006, the Board issued an interim opinion and order, finding that respondent Mr. James Stutsman violated two open dumping provisions of the Environmental Protection Act (Act) (415 ILCS 5 (2004)) at a site in Bath, Mason County. Having received documentation of hearing costs in this administrative citation enforcement action, the Board today issues its final opinion and order.

In the interim opinion and order, the Board found that Mr. Stutsman violated Sections 21(p)(1) and (7) of the Act by allowing the open dumping of waste resulting in litter and the deposition of general construction or demolition debris at 8443 County Road 1100E in Bath, Mason County. 415 ILCS 5/21(p)(1), (7) (2004).

The site has been inspected by the Agency eight times altogether; the first inspection was in July of 1999. IEPA v. Stutsman, PCB AC 05-70, slip op. at 3 (Sept. 21, 2006) citing Tr. at 9; Exh. 1, Memo at 1; Exh. 2 at 1-3. The Agency issued an Administrative Citation Warning Notice on September 17, 1999, which directed Mr. Stutsman to remove all general refuse from the site. Stutsman, PCB AC 05-70, slip op. at 3 citing Exh. 1, Memo at 1; Exh. 2 at 1-3. Mr. Stutsman failed to remove a substantial amount of materials over the course of the eight inspections spanning well over five years. Stutsman PCB AC 05-70, slip op. at 3 citing Exh. 1, Memo at 4. An April 1, 2005 inspection of the site was the basis for the Agency's issuance of the immediate administrative citation. Stutsman, PCB AC 05-70 slip op. at 3. The current administrative citation is a first offense.

Because there were two violations of Section 21(p) and the violations are first offenses, the Board found that, under Section 42(b)(4-5) of the Act, the total civil penalty was \$3,000. 415

ILCS 5/42(b)(4-5) (2004). In addition, because Mr. Stutsman did not succeed at hearing, he must pay the hearing costs of both the Agency and the Board that are submitted to the Board. In its interim opinion and order, the Board ordered the Agency and the Clerk of the Board to submit hearing costs by October 11, 2006. 35 Ill. Adm. Code 108.502, 108.504. The hearing in this administrative citation was held on May 10, 2006 at the Mason County Courthouse in Havana.

On September 25, 2006, the Clerk of the Board submitted an affidavit of the Board's hearing costs totaling \$297.25. The Agency has not filed a statement of hearing costs. Mr. Stutsman has not responded to the Board's statement of costs. Consequently Mr. Stutsman will only be responsible for the hearing costs submitted by the Board, in addition to the statutory civil penalty of \$3,000.

The Board finds the hearing costs of the Board reasonable and orders Mr. Stutsman to pay those costs under Section 42(b)(4-5) of the Act. 415 ILCS 5/42(b)(4-5) (2004). The Board incorporates by reference the findings of fact and conclusions of law from its September 21, 2006 interim opinion and order. Under Section 31.1(d)(2) of the Act, the Board attaches the administrative citation and makes it part of the Board's final order.

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

ORDER

1. The Board finds that respondent Mr. James Stutsman violated Section 21(p)(1) and (7) of the Environmental Protection Act at his property in Bath, Mason County. 415 ILCS 5/21(p)(1), (7) (2004).
2. The Board assesses the civil penalty of \$3,000 for the violations, as well as hearing costs totaling \$296.25, for a total amount due of \$3,296.25. Mr. Stutsman must pay \$3,296.25 no later than January 2, 2007, which is the first business day following the 45th day after the date of this order. Mr. Stutsman must pay this amount by certified check, money order or electronic funds transfer, made payable to the Environmental Protection Trust Fund. The case numbers, case name, and Mr. Stutsman's social security number or federal employer identification number must be included on the certified check, money order or electronic funds transfer.
3. Mr. Stutsman must send the certified check, money order or electronic funds transfer to:

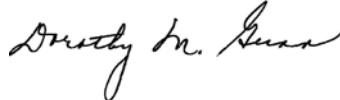
Illinois Environmental Protection Agency
Fiscal Services
1020 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the 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. 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 November 16, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board