

ILLINOIS POLLUTION CONTROL BOARD
December 21, 2006

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 07-15
) (IEPA No. 252-06-AC)
GLENN and BRENDA YORK,) (Administrative Citation)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On September 18, 2006, complainant, the Illinois Environmental Protection Agency (Agency), timely filed an administrative citation against respondents, Glenn and Brenda York. *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a site located at 1847 S. Main Street in Jacksonville, Morgan County. The site has been designated with the Agency site code number 1370200046. For the reasons below, the Board finds that the Yorks violated the Environmental Protection Act (Act) (415 ILCS 5 (2004)) and orders them to pay a \$1,500 in 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 the Yorks 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. The Agency asks the Board to impose on the Yorks the statutorily-fixed civil penalty of \$1,500 for the alleged violation. As required, the Agency served the administrative citation on the Yorks within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2004); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Specifically, the Agency inspected the site on July 26, 2006, and served the administrative citation on September 16, 2006.

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. *See* 415 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406. Here, the Yorks failed to file any petition for review by October 23, 2006, the first business day following the 35th day after service. Accordingly, the Board finds that the Yorks violated Section 21(p)(1) of the Act as alleged.

The civil penalty for violating any provision of Section 21(p) of the Act is \$1,500 for each violation of each provision, though the penalty amount increases to \$3,000 per violation for a second or subsequent adjudicated violation of such provision. *See* 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500. Because there is one violation of Section 21(p)(1) and no indication that it is a second or subsequent adjudicated violation of that provision, the total civil penalty here 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 findings of fact and conclusions of law.

ORDER

1. The Yorks 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.
2. The Yorks must pay a total civil penalty of \$1,500 by January 22, 2007, which is the first business day following the 30th day after the date of this order. Payment must be made by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and the Yorks' federal employer identification numbers or social security numbers must be included on the certified check or money order.
3. The Yorks must send the certified check or money order to:

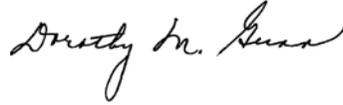
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 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 December 21, 2006, by a vote of 4-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board