

ILLINOIS POLLUTION CONTROL BOARD
April 3, 2008

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 06-49
)	(IEPA No. 96-06-AC)
MICHAEL GRUEN AND JON ERIC)	(Administrative Citation)
GRUEN, d/b/a JON'S TREE SERVICE,)	
)	
Respondents.)	

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

PHILLIP H. HAMILTON, FARRELL, HAMILTON & JULIAN, P.C., APPEARED ON BEHALF OF RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

Having received documentation of hearing costs in this administrative citation enforcement action, the Board today issues its final opinion and order. On January 24, 2008, the Board issued an interim opinion and order, finding that Michael Gruen and Jon Eric Gruen, doing business as Jon's Tree Service (respondents), violated Section 21(p)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1)) (2006) at a site located at the conjunction of Route 66 and Old Route 66, south of Mount Olive, in Macoupin County. The April 20, 2006 violation was alleged in an administrative citation issued by the Illinois Environmental Protection Agency (Agency). The site is known to the Agency as "Mount Olive/Gruen" and is designated with Site Code No. 1178135010.

In its January 24, 2008 decision, after the Board found the violation, the Board held that under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2006)), respondents were subject to the statutorily-fixed \$1,500 civil penalty. In addition, the Board held that respondents, by unsuccessfully contesting the administrative citation at hearing, also must pay the hearing costs of the Agency and the Board. The hearing in this case was held on March 14, 2007, at the Carlinville City Hall Council Chambers.

Because no information on hearing costs was in the record, the Board directed the Agency and the Clerk of the Board each to file documentation of the respective hearing costs, supported by affidavit, and to serve the filing on respondents. The Board also gave respondents an opportunity to respond to the requests for hearing costs and noted that after the time periods for these filings had expired, the Board would issue a final opinion and order assessing the civil penalty and any appropriate hearing costs.

On February 25, 2008, the Board received the Agency's statement of hearing costs, supported by affidavit, which the Agency served on respondents. The Agency's hearing costs total \$83.06, consisting of mileage and clerical costs. On January 30, 2008, the Clerk of the Board submitted an affidavit of the Board's hearing costs totaling \$344.50, the entirety of which reflects the costs of court reporting. The Clerk served this documentation on respondents, who did not respond to either the Agency's statement of hearing costs or the Clerk's affidavit.

The Board finds the hearing costs of the Agency and the Board reasonable and below orders respondents to pay those costs under Section 42(b)(4-5) of the Act. The Board incorporates by reference the findings of fact and conclusions of law from its January 24, 2008 interim opinion and order. Under Section 31.1(d)(2) of the Act (415 ILCS 5/31.1(d)(2) (2006)), the Board attaches the administrative citation and makes it part of the Board's final order.

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

ORDER

1. The Board finds that respondents violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2006)) by causing or allowing the open dumping of waste in a manner resulting in litter.
2. The Board assesses the statutory civil penalty of \$1,500 for the violation, as well as hearing costs totaling \$427.56, for a total amount due of \$1,927.56. Respondents must pay \$1,927.56 no later than May 19, 2008, which is the first business day following the 45th day after the date of this order. Respondents must pay this amount by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and respondents' social security numbers or federal employer identification number must be included on the certified check or money order.
3. Respondents must send the certified check or money order to:

Illinois Environmental Protection Agency
Attn.: Fiscal Services
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) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
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) (2006); *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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 3, 2008, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board