

ILLINOIS POLLUTION CONTROL BOARD

June 5, 2003

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 01-37
)	(IEPA No. 141-01-AC)
MARSHALL PEKARSKY,)	(Administrative Citation)
)	
Respondent.)	

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

This matter is before the Board on an April 18, 2003 mandate from the Illinois Appellate Court Second District (IEPA v. Marshall Pekarsky and IPCB, 2-02-0281, April 18, 2003), reversing and remanding the Board's February 7, 2002 order in this case. For the reasons discussed below, the Board finds that Marshall Pekarsky (Pekarsky) violated Section 21(p)(1) of the Act, and imposes a civil penalty of \$1,500.

Pekarsky is the operator of Kishwaukee Auto Parts, a salvage yard where automobiles are scrapped for parts to be sold to auto stores. IEPA v. Pekarsky, AC01-37 (Feb. 7, 2003), slip op. at 2. Pekarsky is also the co-executor of the estate that owns the site. *Id.* The site is located at 601 Harrison Avenue, Rockford, Winnebago County. *Id.* On November 22, 2000, the Illinois Environmental Protection Agency (Agency) issued an administrative citation warning notice that stated Pekarsky could be subject to substantial civil penalties if he failed to comply with the terms of the warning notice and stated that Pekarsky had until February 20, 2001 to clean up the site.

On March 7, 2001, the Agency again inspected the site and observed a number of violations. Following this inspection, the Agency issued the administrative citation. On May 18, 2001, Pekarsky filed a petition contesting the administrative citation. The Board accepted the case for hearing on June 7, 2001. On October 18, 2001, the Board held a hearing in the matter.

On February 7, 2003, the Board issued an order finding that Pekarsky allowed open dumping resulting in litter under the Illinois Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) (2002)). However, the Board found that Pekarsky was not in violation of the Act because the violation resulted from "uncontrollable circumstances" that estopped the Agency from bringing the administration citation. The Agency appealed the Boards decision to the Illinois Appellate Court's Second District. The Appellate Court found that the Board erred in applying estoppel because the record does not contain evidence that Pekarsky detrimentally relied upon the administrative citation warning notice. The Appellate Court found that complying with a duty or satisfying an already existing obligation cannot constitute detrimental

reliance, and remanded the case for further proceedings consistent with the opinions expressed in the Appellate Court order.

The Board has previously found that Pekarsky allowed open dumping resulting in litter under the Act. Pekarsky, AC01-37, slip op. at 1. As estoppel does not apply in this matter, the Board finds that Pekarsky violated Section 21(p)(1) of the Act.

The civil penalty for violating Section 21(p) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500(a). Because there is one violation of Section 21(p) and this violation is a first offense, 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. Marshall Pekarsky must pay a civil penalty of \$1,500 no later than July 7, 2003, which is the first business day after the 30th day following the date of this order.
2. Marshall Pekarsky 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 Marshall Pekarsky's social security number or federal employer identification number must be included on the certified check or money order.
3. Marshall Pekarsky must send the certified check or money order and the remittance form to:

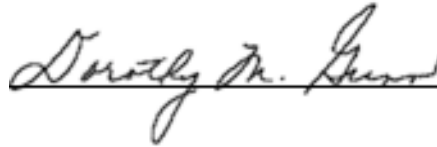
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
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) (2002); *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 June 5, 2003, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board