

ILLINOIS POLLUTION CONTROL BOARD
May 15, 1997

COUNTY OF WILL,)
)
 Complainant,)
) AC 97-17
 v.) (Administrative Citation)
)
 MITCH PINNICK,)
)
 Respondent.)
)

DAWN R. UNDERHILL APPEARED ON BEHALF OF COMPLAINANT; MITCH PINNICK APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by K.M. Hennessey):

This matter comes before the Illinois Pollution Control Board (Board) on an administrative citation filed by the County of Will (County) against respondent Mitch Pinnick (Pinnick). The administrative citation alleges that on August 22, 1996, Pinnick caused or allowed open burning and open dumping in a manner that resulted in violations of the Illinois Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (1994)) and Board regulations. The County and Pinnick have reached a settlement agreement, which the Board approves and incorporates into this order. The Board also orders the Clerk of the Board to file an affidavit of costs and to serve that affidavit on Pinnick. After review of that affidavit and any response filed by Pinnick, the Board will enter a final order.

The administrative citation states that Pinnick is the owner or operator of a facility in Will County, Illinois (the site). (AC at 1.)¹ On August 22, 1996, Will County inspectors inspected the site and observed open burning and open dumping at the site. In the administrative citation, the County states that based on this inspection, it determined that on that date Pinnick caused or allowed open burning and open dumping at the site in a manner that resulted in: open burning in violation of Sections 9(a), 9(c) and 21(p)(3) of the Act; open dumping in violation of Sections 21(d)(1) and 21(p)(1) of the Act; the conduct of a waste-disposal operation in violation of Sections 21(d)(1) and (d)(2) of the Act; open burning of refuse in violation of Section 21(o)(4) of the Act; and operation of a solid waste management site without a permit in violation of 35 Ill. Adm. Code 807.201 and 807.202. (AC at 1-2.) Although the County alleged a total of ten violations in the administrative citation, and Section 42(b)(4) of the Act requires a \$500 penalty per violation, the civil penalty section of the administrative citation provides: "Pursuant to 415 ILCS 5/42(b)(4), Respondent herein is subject to a civil penalty of One Thousand Dollars (\$1000.00) for each violation specified above in Paragraph (A), open dumping and open burning for a total of \$1000.00." (AC at 2.)

¹ The administrative citation is cited as "AC ___."

Under Section 31.1 of the Act, Pinnick filed a petition for review with the Board on October 7, 1996. A hearing on the administrative citation was held on March 4, 1997.

At the hearing, Pinnick and the County² entered into a settlement agreement on the record in which Pinnick admitted to the open burning and open dumping violations. (Tr. at 6-7.) He further agreed to pay a total penalty of \$1,000 for these violations, to be paid in five equal monthly installments of \$200, beginning on March 1, 1997 and ending on July 1, 1997. (*Id.*)

The Board notes that neither the settlement agreement nor the penalty originally requested in the administrative citation addresses the County's determination that Pinnick violated the eight other statutes or regulations listed in paragraph (A) of the administrative citation. The Board deems those allegations withdrawn.³

The Board accepts the settlement agreement outlined in the transcript. The attached order therefore finds that Pinnick has engaged in open burning in violation of Section 21(p)(3) of the Act and open dumping in violation of Sections 21(p)(1) of the Act. The Board also will assess Pinnick the statutory penalty of \$500 for each violation, for a total penalty of \$1000, in accordance with the settlement agreement.

Although Section 42(b)(4) of the Act provides that the County and the Board are entitled to have hearing costs assessed against Pinnick if a hearing is held and a finding of violation results, the settlement agreement does not address hearing costs. Accordingly, the Board will not award hearing costs to the County. However, the Board will order Pinnick to reimburse the Board for its hearing costs. Within 14 days of the date of this Order, the Clerk of the Board is ordered to file with the Board a statement of costs, supported by affidavit, and to serve the affidavit upon Pinnick. After review of that affidavit and Pinnick's response, if any, the Board will issue a final order.

ORDER

1. The Board finds that Pinnick has violated Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (1994)) and Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (1994)).
2. Within the 14 days of the date of this Order, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service on Pinnick.

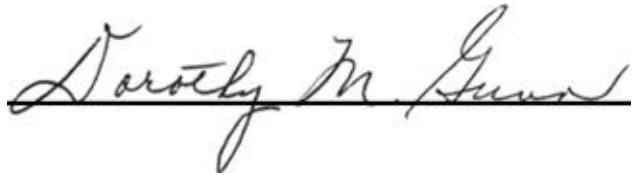
² The transcript of the March 4, 1997 hearing is cited as "Tr. ___."

³ The Board further notes that the County may enforce only violations of Sections 21(o) and (p) of the Act in an administrative citation. (See 415 ILCS 5/31.1 (1994).) Therefore, if the County had not withdrawn these violations, the Board would have stricken all violations based on statutes other than Sections 21(p) or (o).

3. Pinnick is given leave to file a reply to the filing ordered in paragraph 2 of this order within 14 days of receipt of that information, but in no event later than 40 days after the date of this Order.
4. No earlier than 40 days after the date of this order, the Board will issue a final order assessing a statutory penalty of \$500 per violation, for a total penalty of \$1000, and awarding appropriate costs.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the 15th day of May, 1997, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board