

ILLINOIS POLLUTION CONTROL BOARD
March 21, 2002

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 02-36
) (IEPA No. 560-01-AC)
TREVOR PEARCE d/b/a PEARCE FARM) (Administrative Citation)
STORE,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

On January 28, 2002, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Trevor Pearce d/b/a Pearce Farm Store (Pearce). *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Pearce violated Sections 21(p)(1) and 21(p)(3) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3) (2000)). The Agency further alleges that Pearce violated these provisions by causing or allowing the open dumping of waste in a manner resulting in litter and open burning at his facility located on the south side of Route 50, approximately 1/4 mile west of Clay City, Clay County. The administrative citation meets the content requirements of 35 Ill. Adm. Code 108.202(b).

As required, the Agency served the administrative citation on Pearce within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2000); *see also* 35 Ill. Adm. Code 108.202(b). 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. 415 ILCS 31.1(d)(1) (2000); 35 Ill. Adm. Code 108.204(b), 108.406. Here, Pearce failed to timely file a petition. Accordingly, the Board finds that Pearce violated Sections 21(p)(1) and (p)(3) 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) (2000); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(p) and these violations are first offenses, the total civil penalty is \$3,000. Under Section 31.1(d)(1) of the Act, the Board attaches the administrative citation and makes it part of the order below.

ORDER

1. Trevor Pearce d/b/a Pearce Farm Store (Pearce) must pay a civil penalty of \$3,000 no later than April 22, 2002.

2. Pearce 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 Pearce's social security number or federal employer identification number must be included on the certified check or money order.
3. Pearce must send the certified check or money order and the remittance form to:

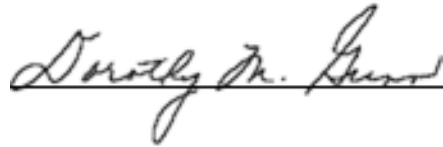
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2000)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2000)).
5. Payment of this penalty does not prevent future prosecution if the violations continue.

IT IS SO ORDERED.

Board Member G.T. Girard dissented.

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) (2000); *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 March 21, 2002, by a vote of 6-1.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board