

ILLINOIS POLLUTION CONTROL BOARD

July 22, 2004

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 03-32
)	(IEPA No. 250-03-AC)
CARL BENEDICT d/b/a BENEDICT AUTO)	(Administrative Citation)
SALES,)	
)	
Respondent.)	

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

On June 2, 2003, the Illinois Environmental Protection Agency (the Agency) timely filed an administrative citation against Carl Benedict (Benedict). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Benedict violated Section 21(p)(1) of the Environmental Protection Act (Act). 415 ILCS 5/21(p)(1) (2002). The Agency further alleges that Benedict violated this provision by causing or allowing open dumping of waste in a manner that resulted in litter at Pottstown Road and Kickapoo Creek Road, Kickapoo Township, Peoria County.

On June 30, 2003, Benedict timely filed a petition to contest the administrative citation. The Board accepted the petition for hearing on July 10, 2003.

On July 19, 2004, the parties filed a stipulation of settlement and dismissal of respondent's petition for review. Pursuant to the terms of the stipulation and proposal for settlement, Benedict does not admit that he caused or allowed open dumping resulting in litter, but agrees to pay a civil penalty of \$1,500.

The parties agree that Benedict has removed approximately 900 tires from the property; including tires that he does not believe he was responsible for removing.

The Board accepts the stipulation and proposal for settlement. Pursuant to Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (2002)), the Board finds that Benedict has violated Section 21(p)(1) of the Act. 415 ILCS 5/21(p)(1) (2002). Under Section 42(b)(4-5), the statutory established penalty is \$1,500 for a first-time violation. 415 ILCS 5/42(b)(4-5) (2002). The Board accordingly assesses a civil penalty of \$1,500. The Board notes that the parties' stipulation and proposal for settlement provides that Benedict will pay the penalty in monthly installments of \$200 commencing on August 1, 2004, and continuing the first of each month thereafter until paid. The eighth and final payment will be for \$100.

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

ORDER

Pursuant to the stipulated agreement, the Board finds that Carl Benedict d/b/a Benedict Auto Sales (Benedict) violated Section 21(p) (1) of the Act. 415 ILCS 5/21(p)(1) (2002).

1. Benedict must pay a civil penalty of \$1,500 pursuant to 415 ILCS 5/42(b)(4-5) (2002).
2. Benedict must pay the civil penalty in monthly installments of \$200, the first being due on August 1, 2004; the remaining payments being due on the first day of each month thereafter until paid. The final payment will be for \$100. Each installment must be made by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and Benedict's federal employer identification number must be included on the certified check or money order.
3. Benedict must send the certified check or money order and the remittance form to:

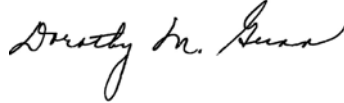
Illinois Environmental Protection Agency Fiscal Services Division
 1021 North Grand Avenue East
 P.O. Box 19276
 Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act. 35 ILCS 5/1003(a) (2002).
5. Benedict's petition for review filed on June 30, 2003, is dismissed.
6. Benedict must diligently comply with, and cease and desist from further violations of, the Act (415 ILCS 5/1 et seq. (2002)), and the Board's rules and regulations. 35 Ill. Adm. Code Subtitles A through H.
7. The Agency will not refer the violations that are the subject of this administrative citation to the Office of the Illinois Attorney General or any other prosecuting authority for the initiation of a criminal or civil action.

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 July 22, 2004, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board