

ILLINOIS POLLUTION CONTROL BOARD
September 19, 2002

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 02-2
)	(IEPA No. 292-01-AC)
NORDEAN AND SUSAN SIMON d/b/a)	(Administrative Citation)
BERMAN AUTO PARTS,)	
)	
Respondents.)	

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

On July 16, 2001, pursuant to Section 31.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/31.1(b) (2000)), the Illinois Environmental Protection Agency (Agency) filed an administrative citation against Nordean and Susan Simon d/b/a/ Berman Auto Parts (respondents). *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleged that respondents violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2000) *as amended by* P.A. 92-0574, eff. June 26, 2002) by causing or allowing the open dumping of waste resulting in litter on their property in Belvidere, Boone County.

On August 8, 2002, the Board entered an interim opinion and order, which it incorporates here by reference, finding that respondents violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2000) *as amended by* P.A. 92-0574, eff. June 26, 2002). The Board found that the Agency and the Board were entitled to hearing costs under Section 42(b)(4-5) of the Act. 415 ILCS 5/42(b)(4-5) (2000). The Board directed the Agency and the Clerk of the Board to file affidavits of costs with the Board, and to serve the affidavits upon respondents. The Board granted respondents 14 days from the date of receipt of the affidavits to file a reply to the statements of hearing costs. The Board stated that it would then issue a final order assigning the statutory penalty and assessing the appropriate costs. *See* 35 Ill. Adm. Code 108.500(b).

On August 9, 2002, the Clerk of the Board filed an affidavit stating that the Board's hearing costs were \$576.25, and served respondents with the affidavit on the same day by first-class mail. On August 16, 2002, the Agency filed a statement of hearing costs claiming \$244.25 in mileage, lodging, and clerical costs. The Agency served respondents on August 14, 2002, by first-class mail. Respondents filed a motion for reconsideration on September 6, 2002, which did not respond to the Clerk's affidavit, but disputed the Board's finding and the Agency's statement of hearing costs.

Respondents argue that the citation must be dismissed because (1) the Agency "concedes" that "tires off the rims were not the subject of the citation; (2) the citation "was issued solely because [of] tires which were off rims; (3) the May 2001 citation was based on a

law that was not effective until June 2002; and (4) there were less expensive hotels in Belvidere, referencing a hotel at \$56.20 per night.

The Board denies respondents' motion for reconsideration. Respondents ignore the fact that the Board's finding of violation considered not only the tires, but landscape waste and building debris. Additionally, while the statutory citation in the Board's order reflects the most current law, the provisions under which the respondents were charged existed during the relevant times in these proceedings.

On the cost issue, the Board is not persuaded by respondents' argument that the Agency was obligated to reduce costs by staying in a hotel that charged only \$16 less than the hotel it chose for \$72.80. The Board finds the Agency's lodging cost reasonable, and will order reimbursement of those costs as well as the unchallenged costs incurred by the Board.

Accordingly, the Board orders respondents to pay the statutory penalty of \$1,500 for violating Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2000) *as amended by* P.A. 92-0574, eff. June 26, 2002), and to pay Board and Agency hearing costs in the amount of \$576.25 and \$244.25 respectively. Pursuant to Section 31.1(d)(2) of the Act (415 ILCS 5/31.1(d)(2) (2000)), the Board attaches the administrative citation and makes it part of the order below.

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

ORDER

1. Nordean and Susan Simon d/b/a Berman Auto Parts (respondents) must pay a penalty of \$1,744.24 (\$1,500 in statutory penalty plus \$244.25 in reimbursement to the Agency for hearing costs) no later than October 19, 2002. Respondents 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 respondents' social security numbers or federal employer identification numbers must be included on the certified check or money order. Respondents 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

2. Respondents must also reimburse the Board for hearing costs in the amount of \$576.25 no later than October 19, 2002. Respondents must pay this penalty by certified check or money order made payable to the General Revenue Fund. The case number, case name, and respondents' social security numbers or federal employer identification numbers must be included on the certified check or money order. Respondents must send the certified check or money order and the remittance form to:

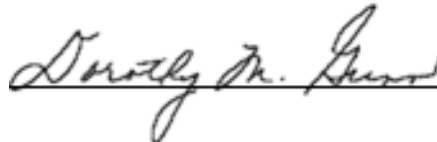
Illinois Environmental Protection Agency
Fiscal Services Division
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3. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2000)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2000).
4. 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) (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 September 19, 2002, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board