

ILLINOIS POLLUTION CONTROL BOARD

August 8, 2002

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 01-42
)	(IEPA No. 171-01-AC)
ALAN K. SMITH,)	(Administrative Citation)
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

The Illinois Environmental Protection Agency (Agency) filed an administrative citation against Alan K. Smith on May 11, 2001, alleging that Mr. Smith was operating an unpermitted open dump in Urbana, Champaign County in violation of Section 21(p)(3) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(3)(2000) *amended by* P.A. 92-0574, eff. June 26, 2002).¹ The Agency sought a penalty of \$1,500 for the alleged violation of the Act. The administrative citation was based on an inspection by Agency Field Inspector Kenneth Keigley on March 27, 2001.

On June 6, 2002, the Board entered an interim opinion and order, which it incorporates here by reference, finding that Mr. Alan K. Smith violated Section 21(p)(3) of the Act at the Alagna property in Urbana, Champaign County. 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 Mr. Smith. The Board granted Mr. Smith 14 days from the date of his 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 hearing costs. *See* 35 Ill. Adm. Code 108.500(b).

On June 12, 2002, the Clerk of the Board filed an affidavit stating that the Board's hearing costs were \$335.25, and served Mr. Smith with the affidavit on the same day by first-class mail. On June 20, 2002, the Agency filed a statement of hearing costs claiming \$88.65 in mileage and clerical costs, and also served Mr. Smith on the same day. Mr. Smith did not respond to either the Clerk's affidavit or the Agency's statement of hearing costs.

¹ The Agency alleges violations of both Section 21(p)(1) of the Act (litter) and Section 21(p)(3) of the Act in its post-hearing brief. The Board only addressed a violation of Section (p)(3) because it was the only allegation in the original administrative citation and was the only allegation discussed at hearing.

Accordingly, the Board orders Mr. Smith to pay the statutory penalty of \$1,500 for violating Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3)(2000) *amended by* P.A. 92-0574, eff. June 26, 2002), and to pay Board and Agency hearing costs in the amount of \$335.25 and \$88.65, 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. Alan K. Smith must pay a civil penalty of \$1,588.65 (\$1,500 in statutory penalty plus \$88.65 in reimbursement to the Agency for hearing costs) no later than September 7, 2002, which is the 30th day after the date of this order. Mr. Smith must pay this penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and Mr. Smith's social security number or federal employer identification number must be included on the certified check or money order. Mr. Smith 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. Alan K. Smith must also reimburse the Board for hearing costs in the amount of \$335.25 no later than September 7, 2002, which is the 30th day after the date of this order. Mr. Smith must pay this penalty by certified check or money order made payable to the General Revenue Fund. The case number, case name, and Mr. Smith's social security number or federal employer identification number must be included on the certified check or money order. Mr. Smith must send the certified check or money order and the remittance form to:

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

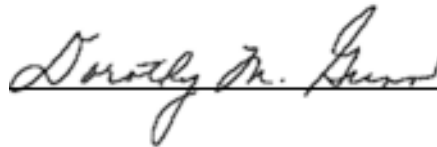
3. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2000)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2000)).

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 August 8, 2002, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board