

ILLINOIS POLLUTION CONTROL BOARD
September 20, 2001

COUNTY OF LASALLE,)
)
Complainant,)
)
v.) AC 02-5
) (IEPA 099195001)
MR. and MRS. GARY KEMPIAK,) (Administrative Citation)
)
Respondents.)

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

On August 20, 2001, County of LaSalle (County) timely filed an administrative citation against Mr. and Mrs. Gary Kempiak (Kempiaks). *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The County alleges that the Kempiaiks violated Section 21(p)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) (2000)). The County further alleges that the Kempiaiks violated this provision by causing or allowing open dumping resulting in litter. The property is located at 3574 East 27th Road, Miller Township, LaSalle County. The administrative citation meets the content requirements of 35 Ill. Adm. Code 108.202(b).

As required, County served the administrative citation on the Kempiaiks 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 violation alleged and impose the corresponding civil penalty. 415 ILCS 31.1(d)(1) (2000); 35 Ill. Adm. Code 108.204(b), 108.406. Here, the Kempiaiks failed to timely file a petition. Accordingly, the Board finds that the Kempiaiks violated Section 21(p)(1) of the Act.

The civil penalty for violating Section 21(p) is \$1500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b)(4) (2000); 35 Ill. Adm. Code 108.500(a). Because there is one violation of Section 21(p) and this violation is a first offense, the total civil penalty is \$1,500. 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. Mr. and Mrs. Gary Kempiak (Kempiaks) must pay a civil penalty of \$1,500 no later than October 20, 2001, which is the 30th day after the date of this order.

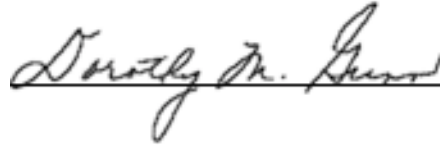
2. The Kempiaiks must pay the civil penalty by certified check or money order, made payable to the LaSalle County Department of Environmental Services and Land Use. The case number, case name, and the Kempiaiks' social security number or federal employer identification number must be included on the certified check or money order.
3. The Kempiaiks must send the certified check or money order and the remittance form to:

LaSalle County
Department of Environmental Services and Land Use
119 West Madison Street
Room 400
Ottawa, Illinois 61350
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 this 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 above opinion and order was adopted on September 20, 2001, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board