

ILLINOIS POLLUTION CONTROL BOARD

June 17, 2004

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 04-45
	)	(IEPA No. 34-04-AC)
HERBERT LUST,	)	(Administrative Citation)
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

Today the Board accepts a proposed settlement and dismissal of this administrative citation enforcement action. By way of background, complainant, the Illinois Environmental Protection Agency (Agency), timely filed an administrative citation against respondent, Mr. Herbert Lust, on January 30, 2004. The Agency alleged that Mr. Lust violated Sections 21(p)(1) and (p)(3) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3) (2002)) by causing or allowing the open dumping of waste in a manner that resulted in litter and open burning at 200 W. Franklin Street, Bement, Piatt County.

Mr. Lust timely filed a petition to contest the administrative citation, which the Board accepted on March 4, 2004. On June 1, 2004, the parties filed a "stipulation of settlement and dismissal of respondent's petition for review." Under its terms, Mr. Lust admits he violated Section 21(p)(1) of the Act by causing or allowing the open dumping of waste resulting in litter, agrees to pay the statutory civil penalty of \$1,500 for the violation, and agrees to the dismissal of his petition to contest the administrative citation. The stipulation further states that the waste that was the subject of the administrative citation has been removed from the site and properly disposed. Stipulation at 2-3. In addition, the Agency agrees not to refer the violations that are the subject of the administrative citation to the Office of the Illinois Attorney General or any other prosecuting authority to initiate a criminal or civil action. *Id.* at 3.

The Board accepts the stipulation and proposal for settlement. To effectuate the parties' intent that Mr. Lust pay a total civil penalty of \$1,500, the Board dismisses the alleged violation of Section 21(p)(3) of the Act. Under Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (2002)), the Board therefore finds that Mr. Lust violated Section 21(p)(1) of the Act. Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2002)) establishes a civil penalty of \$1,500 for this violation. The Board accordingly assesses a civil penalty of \$1,500.

The Board notes that the parties' stipulation and proposal for settlement provides that Mr. Lust will pay the penalty in 15 monthly installments of \$100 beginning June 10, 2004, and continuing the first of each month thereafter until the \$1,500 penalty is paid in full. Stipulation

at 2. Because the date on which the first payment is due precedes today's order, the Board will grant Mr. Lust until July 10, 2004, to pay the first installment.

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

### **ORDER**

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. The Board finds that Mr. Lust violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2002)) by causing or allowing the open dumping of waste resulting in litter.
3. Mr. Lust must pay a total civil penalty of \$1,500. Mr. Lust must pay the civil penalty in 15 monthly installments of \$100, the first installment being due on July 10, 2004, and continuing the first of each month thereafter until paid in full. 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 Mr. Lust's federal employer identification number or social security number must be included on each certified check or money order.
4. Mr. Lust must send each certified check or money order to:
 

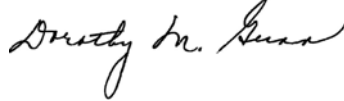
Illinois Environmental Protection Agency  
 Fiscal Services Division  
 1021 North Grand Avenue East  
 P.O. Box 19276  
 Springfield, Illinois 62794-9276
5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
6. The Board dismisses the alleged violation of Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2002)) and Mr. Lust's petition to contest the administrative citation.

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 June 17, 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