

ILLINOIS POLLUTION CONTROL BOARD
July 8, 2004

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 03-13
) (IEPA No. 565-02-AC)
DAN CADWALLADER,) (Administrative Citation)
)
Respondent.)

MICHELLE RYAN, SPECIAL ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT; and

JOHN GRIVETTI APPEARED ON BEHALF OF RESPONDENT.

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

Having received documentation of hearing costs in this administrative citation enforcement action, the Board today issues its final opinion and order. On May 20, 2004, the Board issued an interim opinion and order, finding that respondent Dan Cadwallader violated Section 21(p)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) (2002)) at a site in Granville, Putnam County. The Board held that Mr. Cadwallader caused or allowed the open dumping of waste resulting in litter, as alleged in an administrative citation issued by the Illinois Environmental Protection Agency (Agency).

In its May 20, 2004 decision, after the Board found the violation, the Board held that under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2002)), Mr. Cadwallader was subject to the statutorily-fixed \$1,500 civil penalty. In addition, the Board held that Mr. Cadwallader, by unsuccessfully contesting the administrative citation at hearing, also must pay the hearing costs of the Agency and the Board. The hearing in this case was held on October 29, 2003, at the Putnam County Courthouse in Hennepin.

Because no information on hearing costs was in the record, the Board directed the Agency and the Clerk of the Board each to file documentation of the respective hearing costs, supported by affidavit, and to serve the filing on Mr. Cadwallader. The Board also gave Mr. Cadwallader an opportunity to respond to the requests for hearing costs and noted that after the time periods for these filings had run, the Board would issue a final opinion and order assessing the civil penalty and any appropriate hearing costs.

On June 10, 2004, the Board received the Agency's statement of hearing costs, supported by affidavit, which the Agency served on Mr. Cadwallader. The Agency's hearing costs total \$125.04, consisting of mileage and clerical costs. On May 25, 2004, the Clerk of the Board

submitted an affidavit of the Board's hearing costs totaling \$259.25, the entirety of which reflects the costs of court reporting. The Clerk served this documentation on Mr. Cadwallader, who did not respond to either the Agency's statement of hearing costs or the Clerk's affidavit.

The Board finds the hearing costs of the Agency and the Board reasonable and below orders Mr. Cadwallader to pay those costs under Section 42(b)(4-5) of the Act. The Board incorporates by reference the findings of fact and conclusions of law from its May 20, 2004 interim opinion and order. Under Section 31.1(d)(2) of the Act (415 ILCS 5/31.1(d)(2) (2002)), the Board attaches the administrative citation and makes it part of the Board's final order below. This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board finds that Mr. Cadwallader 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.
2. The Board assesses the statutory civil penalty of \$1,500 for the violation, as well as hearing costs totaling \$384.29, for a total amount due of \$1,884.29. Mr. Cadwallader must pay \$1,884.29 no later than August 23, 2004, which is the first business day following the 45th day after the date of this order. Mr. Cadwallader must pay this amount by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and Mr. Cadwallader's social security number or federal employer identification number must be included on the certified check or money order.
3. Mr. Cadwallader must send the certified check or money order to:

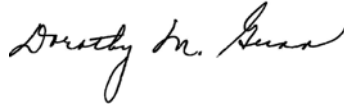
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
5. 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) (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 8, 2004, by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board