

ILLINOIS POLLUTION CONTROL BOARD
July 8, 1998

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 98-22
)	(IEPA No. 103-98-AC)
TERRY WINGERT,)	(Administrative Citation)
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD: (By. J. Yi):

On March 9, 1998, the Illinois Environmental Protection Agency (Agency) filed an administrative citation with the Board naming Terry Wingert (Wingert) as respondent. The administrative citation was filed in response to observed violations that occurred on January 28, 1998, and alleges that respondent caused or allowed litter in violation of Sections 21(p)(1) of the Environmental Protection Act (Act). 415 ILCS 5/21(p)(1) (1996). The Board received respondent's petition for review on April 15, 1998, and accepted this case for hearing on May 7, 1998.

On June 25, 1998, the Board received a joint stipulation of settlement and dismissal of respondent's petition for administrative review. In the stipulation, Wingert admits that he caused or allowed litter in violation of Section 21(p)(1) of the Act, and agrees to pay the statutory civil penalty of \$500 on or before December 1, 1998.

Respondent also agrees to diligently comply with, and cease and desist from violation of, the Act (415 ILCS 5/1 et seq. (1996)), the Board's rules and regulations (35 Ill. Adm. Code Subtitles A through H), and any and all applicable federal laws and regulations. Finally, both parties agree that, contingent upon the Board's acceptance and adoption of the terms and conditions of the joint stipulation, the petition for review shall be dismissed.

Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (1996)) authorizes the Board to impose a civil penalty pursuant to Section 42(b)(4) of the Act (415 ILCS 5/42(b)(4) (1996)) for a violation of the Act as alleged in an administrative citation. However, Section 31.1(d) of the Act limits the relief the Board can order in an administrative citation action, and the compliance conditions as outlined by the parties in the joint stipulation are not within the Board's authority.

The Board order therefore includes that portion of the stipulation which finds a violation of Section 21(p)(1) of the Act and imposes a \$500.00 penalty. The additional terms of the stipulation will not be included in the Board order. These agreements may be

enforceable as a matter of contract law or be alleged as aggravating factors in any future enforcement action brought pursuant to Section 31 of the Act. However, this settlement agreement in no way affects respondent's responsibility to comply with any federal, state, or local regulations including, but not limited to, the Act and the Board's pollution control regulations.

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

ORDER

1. The Board finds that the respondent, Terry Wingert, caused or allowed litter in violation of 415 ILCS 5/21(p)(1) (1996).
2. Respondent shall pay a civil penalty in the sum of five hundred dollars (\$500) on or before December 1, 1998. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Illinois Environmental Protection Trust Fund, and shall be sent by first class mail to:

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

The certified check or money order shall clearly indicate on its face respondent's Federal Employer Identification Number or Social Security Number, and that the payment is directed to the Environmental Protection Trust Fund.

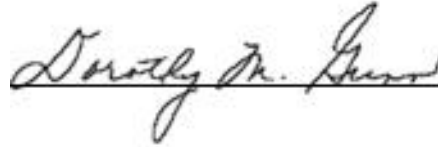
Any such penalty not paid within the time prescribed shall accrue interest pursuant to Section 42(g) of the Act. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

3. Respondent's petition for review is hereby dismissed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Cod 101.246, Motions For Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 8th day of July 1998 by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board