

ILLINOIS POLLUTION CONTROL BOARD

July 7, 2005

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 04-82
)	(IEPA No. 270-04-AC)
JOHN BROWN d/b/a JOHN BROWN)	(Administrative Citation)
PAINTING,)	
)	
Respondent.)	

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

JOHN BROWN APPEARED *PRO SE*.

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 19, 2005, the Board issued an interim opinion and order, finding that respondent John Brown d/b/a John Brown Painting (Brown) violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(7) (2004)) at a site just north of Metropolis, in Massac County. The Board held that Brown violated the Act by causing or allowing the open dumping of waste resulting in litter and the deposition of general construction or demolition debris. The violations were alleged in an administrative citation issued by the Illinois Environmental Protection Agency (Agency).

In its May 19, 2005 decision, after the Board found the violations, the Board held that under Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2004)), Brown was subject to the statutorily-fixed \$1,500 civil penalty per violation, for a total civil penalty of \$3,000. In addition, the Board held that Brown, 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 November 9, 2004, at the Metropolis City Hall.

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 Brown. The Board also gave Brown an opportunity to respond to the requests for hearing costs and noted that after the time periods for these filings had expired, the Board would issue a final opinion and order assessing the civil penalty and any appropriate hearing costs.

On June 10, 2005, the Board received the Agency's statement of hearing costs, supported by affidavit, which the Agency served on Brown. The Agency's hearing costs total \$207.50, 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 \$197.33, the entirety of which reflects the costs of court reporting. The Clerk served this documentation on Brown, 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 Brown 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 19, 2004 interim opinion and order. Under Section 31.1(d)(2) of the Act (415 ILCS 5/31.1(d)(2) (2004)), the Board attaches the administrative citation and makes it part of the Board's final order.

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

ORDER

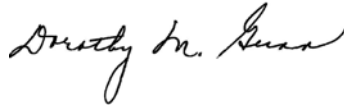
1. The Board finds that Brown violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2004)) by causing or allowing the open dumping of waste resulting in litter and the deposition of general construction or demolition debris.
2. The Board assesses the statutory civil penalty of \$3,000 for the violations, as well as hearing costs totaling \$404.83, for a total amount due of \$3,404.83. Brown must pay \$3,404.83 no later than August 22, 2005, which is the first business day following the 45th day after the date of this order. Brown 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 Brown's social security number or federal employer identification number must be included on the certified check or money order.
3. Brown 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) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
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) (2004); *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 7, 2005, by a vote of 4-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board