

ILLINOIS POLLUTION CONTROL BOARD
August 17, 2006

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 06-13
) (IEPA No. 408-05-AC)
LYNDELL HEINZMANN,) (Administrative Citation)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On October 21, 2005, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Lyndell Heinzmann (Heinzmann). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Heinzmann violated Sections 21(p)(1), 21(p)(2), and 21(p)(3) of the Environmental Protection Act (Act). 415 ILCS 5/21(p)(1), 21(p)(2), 21(p)(3) (2004). The Agency further alleges that Heinzmann violated these provisions on September 15, 2005, by causing or allowing the open dumping of a waste in a manner resulting in litter, scavenging, and open burning at a facility located on Highway 51 west of the town of Iuka, Marion County.

On November 28, 2005, Heinzmann timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). Heinzmann alleges that, when he purchased property in March 2005, it included a dumping area used and left by the previous owner. Heinzmann further alleges that he has been cleaning the property since the date of purchase, that he is not guilty of any violation under Section 21 of the Act (415 ILCS 5/21 (2004)), and that the amount of the fine imposed is arbitrary, capricious, and inappropriate for any violation for which he may be responsible. *See* 35 Ill. Adm. Code 108.206. The Board accepted the petition for hearing on December 1, 2005.

On July 31, 2006, the parties filed a stipulation of and proposal for settlement and dismissal of the respondents' petition for review. Pursuant to the terms of the stipulation and proposal for settlement, Heinzmann admits he caused or allowed open dumping resulting in burning, but neither admits nor denies that he caused or allowed open dumping resulting in litter or scavenging. Heinzmann agrees to pay a civil penalty of \$1,500.

The Board accepts the stipulation and proposal for settlement. Pursuant to Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (2004)), the Board finds that Heinzmann violated Section 21(p)(3) of the Act. 415 ILCS 5/21(p)(3) (2004). Under Section 42(b)(4-5), the statutorily established penalty is \$1,500 for the first-time violation. 415 ILCS 5/42(b)(4-5) (2004). The Board accordingly assesses a civil penalty of \$1,500. To effectuate the parties' intent that

Heinzmann pay a total civil penalty of \$1,500, the Board dismisses the alleged violations of Sections 21(p)(1) and 21(p)(2).

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

ORDER

Pursuant to the stipulated agreement, the Board finds that Lyndell Heinzmann (Heinzmann) violated Section 21(p)(3) of the Act. 415 ILCS 5/21(p)(3) (2004).

1. The Board accepts and incorporates by reference, the stipulation and proposal for settlement. Heinzmann must pay a civil penalty of \$1,500 pursuant to 415 ILCS 5/42(b)(4-5) (2004).
2. Heinzmann must pay the civil penalty on or before September 18, 2006, the first business day after the thirtieth day following the date of this order. The payment must be made by certified check, money order or electronic funds transfer, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and Heinzmann's social security number or federal employer identification number must be included on the certified check or money order. If submitting an electronic funds transfer to the Agency, the electronic funds transfer must be made in accordance with the specific instructions provided to Heinzmann.
3. Heinzmann must send the certified check, money order, or electronic funds transfer, and the remittance form to:

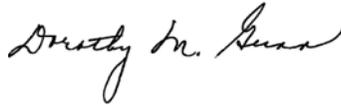
Illinois Environmental Protection Agency Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (Act) (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
5. The Board dismisses the alleged violation of Sections 21(p)(1) and 21(p)(2) of the Act. 415 ILCS 5/21(p)(1), and 21(p)(2) (2004).
6. Heinzmann's November 28, 2005 petition for review is dismissed.
7. Heinzmann must diligently comply with, and cease and desist from further violations of, the Act (415 ILCS 5/1 *et seq.* (2004)), and the Board's rules and regulations. 35 Ill. Adm. Code Subtitles A through H.

8. The Agency will not refer the violations that are the subject of this administrative citation to the Office of the Illinois Attorney General or any other prosecuting authority for the initiation of a criminal or civil action.

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, hereby certify that the Board adopted the above opinion and order on August 17, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board