

ILLINOIS POLLUTION CONTROL BOARD
November 2, 2006

COUNTY OF JACKSON,)
)
Complainant,)
)
v.) AC 06-21
) (Jackson County No. 0778035009)
DAN KIMMEL,) (Administrative Citation)
)
Respondent.)

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

On January 30, 2006, the County of Jackson (the County) filed a timely administrative citation against Mr. Dan Kimmel. *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The County alleges that Mr. Kimmel violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(7) (2004)). The County further alleges that Mr. Kimmel violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in litter and in the deposition of general or clean construction or demolition debris. Mr. Kimmel's facility is located at 1065 Dumaroc Road, DeSoto, Jackson County.

As required, the County served the administrative citation on Mr. Kimmel within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2004); *see also* 35 Ill. Adm. Code 108.202(b). To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. If the respondent fails to do so, the Board must find that the respondent committed the violation alleged and impose the corresponding civil penalty. 415 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b), 108.406.

On February 2, 2006, Mr. Kimmel timely filed with the Board a letter construed as a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). In an order dated February 16, 2006, the Board accepted the petition as timely filed but found that the petition did not satisfy the content requirements of the Board's procedural rules because it did not include any reason why Kimmel believed the County had improperly issued the citation. In the same order, the Board directed Kimmel to file an amended petition. On March 10, 2006, Kimmel timely filed an amended petition, which the Board accepted for hearing in an order dated March 16, 2006.

On October 18, 2006, the County and Mr. Kimmel filed a stipulation of settlement and dismissal of respondent's petition for administrative review. Pursuant to the terms of the proposed settlement, Mr. Kimmel admits the alleged violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2004)) and agrees to pay the statutory civil penalty of \$1,500. *See* 415 ILCS 5/42(b)(4-5) (2004). To effectuate the parties' intent that Mr. Kimmel pays a total penalty of \$1,500, the Board dismisses the alleged violation of Section 21(p)(7) of the Act (415 ILCS

5/21(p)(7) (2004)). The stipulation of settlement requires Mr. Kimmel to pay the statutory civil penalty by December 31, 2006. The stipulation of settlement also provides that Mr. Kimmel agrees to bring his site into compliance with Section 21 of the Act (415 ILCS 5/21 (2004)) by December 31, 2006. The Board accepts the stipulation and proposed settlement.

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

ORDER

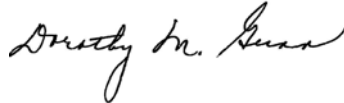
1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. Pursuant to the stipulated agreement, the Board dismisses Mr. Dan Kimmel's amended petition for review filed March 10, 2006.
3. Pursuant to the stipulated agreement, the alleged violation of Section 21(p)(7) is dismissed. The Board finds that Mr. Kimmel violated Section 21(p)(1) of the Act, and must pay the statutory civil penalty of \$1,500 by Tuesday, January 2, 2007, which is the first business day after the stipulated payment deadline of Sunday, December 31, 2006.
4. Mr. Kimmel must pay the civil penalty by certified check or money order, payable to the County of Jackson as payee. The case number, case name, and Mr. Kimmel's social security number or federal employer identification number must be included on the certified check or money order.
5. Mr. Kimmel must send the certified check or money order to:

Jackson County Treasurer
Jackson County Courthouse
Murphysboro, Illinois 62966
6. Pursuant to the stipulated settlement agreement, Mr. Kimmel must bring his site into compliance with Section 21 of the Act (415 ILCS 5/21 (2004)) on or before December 31, 2006.
6. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection 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)).
7. 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 November 2, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board