

ILLINOIS POLLUTION CONTROL BOARD
December 7, 2006

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 05-70
)	(IEPA No. 145-05-AC)
JAMES STUTSMAN,)	(Administrative Citation)
)	
Respondent.)	

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

On November 16, 2006, the Board issued a final opinion and order finding that the respondent, James Stutsman, had violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(7) (2004)). For the reasons stated below, the Board vacates that order in light of receiving a subsequent filing.

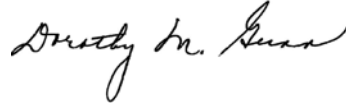
In the interim opinion and order dated September 21, 2006, the Board directed the Clerk of the Board and the Illinois Environmental Protection Agency (Agency) to submit statements of hearing costs by October 11, 2006. *See* 415 ILCS 5/42(b)(4-5) (2004), 35 Ill. Adm. Code 108.500(b)(3). The Clerk of the Board on September 25, 2006, timely filed an affidavit of hearing costs in the amount of \$297.25. In the interim opinion and order, the Board also allowed the respondent a 21-day period in which to respond to those statements of costs. In the final opinion and order, the Board noted that the Agency had filed no statement of its costs, noted that the respondent had filed no response to the Board's statement, and assessed \$297.25 in hearing costs against the respondent. IEPA v. Stutsman, AC 05-70, slip op. at 2 (Nov. 16, 2006). Accordingly, the final order assessed a total amount of \$3,297.25 due from the respondent no later than January 2, 2007. *Id.*

On December 1, 2006, the Board received from the Agency a statement of hearing costs in the amount of \$75.50. Although the mailing envelope shows no specific postmarked date, the proof of service filed with that statement shows that the Agency timely filed it by placing it in the U.S. Mail on October 11, 2006.

Due to the delay of seven weeks between service of the Agency's statement and its arrival in the Board's office, the Board on its own motion reconsiders its final opinion and order of November 16, 2006, and vacates that order. *See* 35 Ill. Adm. Code 101.902. The Board allows the respondent 21 days, or until Friday, December 22, 2006, to file a response limited to the issue of the Agency's claimed costs. *See* 35 Ill. Adm. Code 108.506(a). The Agency then has 14 days after service of the response to file any reply. *See* 35 Ill. Adm. Code 108.506(b). When that reply period has elapsed, the Board will issue a final opinion and order restating a finding of violations and assessing the civil penalty and appropriate hearing costs.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 7, 2006, by a vote of 4-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board