

ILLINOIS POLLUTION CONTROL BOARD
October 16, 2008

CITY OF CHICAGO DEPARTMENT OF)
ENVIRONMENT,)
)
Complainant,)
)
v.) AC 08-17
) (Administrative Citation)
CRYSTAL IL 98, L.L.C.,)
)
Respondent.)

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

Today the Board accepts a proposed settlement and dismissal of this administrative citation enforcement action. By way of background, the City of Chicago Department of Environment (City) timely filed an administrative citation against Crystal IL 98, L.L.C. (Crystal) on February 21, 2008. *See* 415 ILCS 5/31.1(c) (2006); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns a property located at 1300 West 35th Street in Chicago, Cook County, and assigned Illinois Environmental Protection Agency Site Code No. 0316615233.

Crystal timely filed a petition to contest the administrative citation, which the Board accepted on April 3, 2008. On October 3, 2008, the parties filed a “stipulation of settlement and dismissal of respondent’s petition for administrative review” (Stip.). The terms of the stipulation provide that Crystal violated Sections 21(p)(1) and (p)(4) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(4) (2006)) by causing or allowing open dumping resulting in litter and the deposition of waste in standing or flowing waters. Stip. at 2. Crystal agrees to pay the statutory civil penalty of \$3,000 for the two violations. *Id.* The City agrees to the dismissal of the alleged violation of Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2006)). *Id.* at 3. The stipulation also provides for the dismissal of Crystal’s petition for review. *Id.*

The Board accepts the stipulation and proposal for settlement, with one exception. The stipulation states that:

Crystal agrees to erect a permanent fence along the perimeter of its facility, or otherwise located so as to prevent debris from its facility being blown into the Chicago River, by no later than thirty (30) days after entry of the final order in this case. Stip. at 2-3.

The Board’s authority in administrative citation proceedings is limited. Under Sections 31.1(d) and 42(b)(4-5) of the Act (415 ILCS 5/31.1(d), 42(b)(4-5) (2006)), the Board is authorized to impose a fixed civil penalty upon finding a violation and, where applicable, assess hearing costs. The Board lacks the authority to order Crystal to perform the fence work described in the stipulation “as the Board could if it were issuing an order pursuant to Section 33(c) in a Section

31(d) enforcement action.” IEPA v. Frank A. Olson, AC 98-2, slip op. at 2 (Nov. 6, 1997) (citing 415 ILCS 5/31(d), 33(c) (2006)).

Under Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (2006)), the Board finds that Crystal violated Sections 21(p)(1) and (p)(4) of the Act. Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2006)) establishes a civil penalty of \$1,500 for each violation of subsection (p) of Section 21. The Board accordingly assesses a civil penalty of \$3,000. The Board dismisses Crystal’s petition for review and the administrative citation’s alleged violation of Section 21(p)(7) of the Act.

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

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement, with the exception of the provisions concerning Crystal’s agreement to erect a fence.
2. The Board finds that Crystal violated Sections 21(p)(1) and (p)(4) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(4) (2006)) by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of waste in standing or flowing waters.
3. Crystal must pay a total civil penalty of \$3,000 by November 17, 2008, which is the first business day following the 30th day after the date of this order. Payment must be made by certified check or money order, made payable to the City of Chicago. The case number, case name, and Crystal’s federal employer identification number must be included on the certified check or money order.
4. Crystal must send the certified check or money order to:

City of Chicago Department of Environment
Permitting and Enforcement Division
30 North LaSalle Street
Suite 2500
Chicago, Illinois 60602
5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
6. The Board dismisses the alleged violation of Section 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(7) (2006)) and Crystal’s petition to contest the administrative citation.

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) (2006); *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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 16, 2008, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long, sweeping tail on the final letter.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board