

ILLINOIS POLLUTION CONTROL BOARD

August 8, 2002

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	AC 02-18
v.)	(IEPA No. 431-01-AC)
)	(Administrative Citation)
BRADNEY LUCKHART,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

On October 22, 2001, the Illinois Environmental Protection Agency (Agency) filed a timely administrative citation against Bradney Luckhart (respondent). *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Mr. Luckhart violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002). The Agency further alleges that Mr. Luckhart violated these provisions because he caused or allowed the open dumping of waste that resulted in litter, open burning, and the deposition of construction or demolition debris at an unpermitted site. The site at issue is adjacent to Kickapoo Creek in West Lincoln Township, Logan County.

As required, the Agency served the administrative citation on Mr. Luckhart within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2000); *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) (2000); 35 Ill. Adm. Code 108.204(b), 108.406.

On November 27, 2001, Mr. Luckhart timely filed a petition for review. *See* 415 ILCS 5/31.1(d) (2000); 35 Ill. Adm. Code 108.204(b). On August 1, 2002, the Agency and Mr. Luckhart filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002). *See* 35 Ill. Adm. Code 103.300(a). Pursuant to the terms of the proposed settlement, Mr. Luckhart admits a violation of Section 21(p)(3) of the Act, agrees to pay a \$1,500 civil penalty, and agrees to dismissal of his petition for review. The Board accepts the stipulation and proposed settlement. The stipulation and proposal for settlement does not dispose of the alleged

violations of Sections 21(p)(1) and 21(p)(7) of the Act. The Board dismisses these charges to effectuate the parties' intent that Luckhart pay a total penalty of \$1,500.

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 November 27, 2001 petition for review is dismissed. Mr. Luckhart admits that he caused or allowed open dumping resulting in open burning, a violation of 415 ILCS 5/21(p)(3) (2000) *amended by P.A. 92-0574, eff. June 26, 2002*, and agrees to pay a civil penalty of \$1,500 pursuant to 415 ILCS 5/42(b)(4-5) (2000). The Board dismisses the alleged violations of Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and (p)(7) (2000) *amended by P.A. 92-0574, eff. June 26, 2002*).
3. Mr. Luckhart agrees to pay the statutory penalty in ten monthly installments of \$150, beginning on August 1, 2002, and continuing on the first of each month until paid in full.
4. Mr. Luckhart must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and Mr. Board's social security number or federal employer identification number must be included on the certified checks or money orders.
5. Mr. Luckhart must send the certified checks or money orders to:

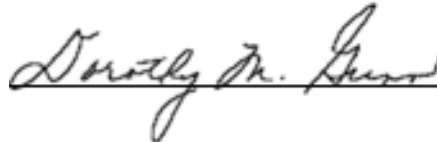
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
6. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2000)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2000)).
7. Mr. Luckhart agrees to diligently comply with, and shall cease and desist from further violation of the Act, 415 ILCS 5/1 *et seq.* (2000) *amended by P.A. 92-0574, eff. June 26, 2002*, and the Board's rules and regulations, 35 Ill. Adm. Code Subtitles A through H.

8. 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) (2000); *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 August 8, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board