

ILLINOIS POLLUTION CONTROL BOARD
June 6, 1996

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 95-11
)	(IEPA NO. 42-95-AC)
)	(Administrative Citation)
GORDON MCCANN,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board upon a "Motion to Voluntarily Dismiss Respondent Larson Foundation From the Administrative Citation Action and Assess Penalty Against Respondent Gordon McCann" filed by the Illinois Environmental Protection Agency (Agency) on May 24, 1996. The pertinent administrative citation was filed by the Agency pursuant to Section 31.1 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/31.1 (1994)) on February 3, 1995. The administrative citation alleges that respondents Gordon McCann and the Larson Foundation violated the open dumping (415 ILCS 5/21(p)(1)) provision of the Act. The statutory penalty established for this violation is \$500.00 pursuant to Section 42(b)(4) of the Act. A hearing was not held.

The Larson Foundation and Gordon McCann were served with the administrative citation on January 30, 1995 and February 6, 1995, respectively. The Larson Foundation filed a timely petition for review and response with the Board on March 2, 1995. Gordon McCann did not file a petition for review and as a result on February 1, 1996 the Board found that, pursuant to Section 31.1(d)(1) of the Act, Gordon McCann had violated Section 21(p)(1) of the Act. The Board at that time reserved issuing an order assessing penalties. The Board also reserved ruling on the liability of the Larson Foundation.

The Agency now claims that the issue of the Larson Foundation's liability is currently being addressed in another civil enforcement action in the Logan County Circuit Court. Therefore the Agency voluntarily moves to dismiss the Larson Foundation from this administrative citation action. The Board hereby grants the Agency's motion to dismiss the Larson Foundation from this matter.

In accordance with the Board's February 1, 1996 order granting the Agency's motion for default judgment against Gordon McCann and today's action dismissing respondent Larson Foundation, the Board hereby orders the following.

1. It is hereby ordered that, unless the penalty has already been paid, within 30 days of the date of this order, Gordon McCann shall, by certified check or money order payable to the Illinois Environmental Protection Trust Fund, pay a penalty in the amount of \$500.00, which is to be sent to:

Fiscal Services
Illinois Environmental Protection Agency
2200 Churchill Road, P. O. Box 19276
Springfield, Illinois 62794-9276

2. Gordon McCann shall include the remittance form and write the case name and number and his social security or federal Employer Identification Number on the certified check or money order.
3. Penalties unpaid after the due date shall accrue interest pursuant to Section 42(g) of the Illinois Environmental Protection Act.
4. Payment of this penalty does not prevent future prosecution if the violation continues.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration".)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the _____ day of _____, 1996, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board