

ILLINOIS POLLUTION CONTROL BOARD
August 9, 2001

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
) AC 01-22
v.) (IEPA No. 547-00-AC)
) (Enforcement – Air)
LEROY P. DAVID,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by S.T. Lawton):

On December 21, 2000, the Illinois Environmental Protection Agency (Agency) filed with the Board an administrative citation against respondent, Leroy David, pursuant to Section 31.1 of the Environmental Protection Act (Act). See 415 ILCS 5/31.1 (2000). The Agency filed the administrative violation in response to an inspection conducted by Agency inspector Ron Mehalic at the facility owned and operated by David at 1713 North Oesterle Avenue, Norwood, Peoria County, Illinois. The Agency alleges that David violated Sections 21(p)(1) and (4) of the Act by causing or allowing open dumping at his facility on October 24, 2000, in a manner resulting in litter and waste deposited in standing or flowing waters. David filed a petition for review with the Board on January 16, 2001. The Board accepted this matter for hearing on February 1, 2001.

On July 27, 2001, the Agency and David filed a Joint Stipulation and Settlement and Dismissal of Respondent's Petition for Administrative Review. In the stipulation and proposed settlement, David admits that he caused or allowed open dumping resulting in litter, in violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2000)). David agrees to pay a \$1,500 penalty and moves to dismiss the petition for review. The Board grants the stipulation and dismisses David's petition for review.

In consideration of David's admission of litter and agreement to pay the penalty, the Agency dismisses the alleged violation of open dumping resulting in waste deposited in standing or flowing waters under Section 21(p)(4) of the Act. See 415 ILCS 5/21(p)(4) (2000). The parties also stipulate to the fact that David "has removed and properly disposed of the waste located at the site that was the subject of this administrative citation" in the conditions section of the proposed settlement. Stip. at 2.¹ David must cease and desist from further violations of the Act and the Board's regulations. Both the Agency and David agree that, contingent upon the

¹ The parties filed a joint stipulation and proposed settlement with the Board on July 27, 2001, which will be referred to as "Stip. at ____."

acceptance and adoption of the terms and conditions of the stipulation, David's petition for review will be dismissed.

Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (2000)) authorizes the Board to impose a civil penalty for a violation of the Act as alleged in an administrative citation. However, Section 31.1(d) of the Act limits the relief that the Board can order in this type of action. The compliance conditions as outlined by the parties in the joint stipulation are not within the Board's authority. See IEPA v. Gordon (January 18, 2001), AC 01-12, slip op. at 2.

The Board therefore includes the part of the stipulation and settlement agreement that finds a violation of Section 21(p)(1) of the Act and imposes a \$1,500 penalty in accordance with Section 42(b)(4-5) of the Act. 415 ILCS 5/42(b)(4-5) (2000). The Board does not include additional terms of the stipulation and settlement in the order below. Specifically, the Board does not include the statement that David has cleaned up the site. See Stip. at 2. The Board also excludes the condition in the joint stipulation that states "[t]he [Agency] agrees not to refer the violations that are the subject of this administrative citation to the Office of the Illinois Attorney General or any other prosecuting authority for the initiation of a criminal or civil enforcement action." Stip. at 2. This agreement may be enforceable as a matter of contract law or be alleged as aggravating factors in any future enforcement action brought pursuant to Section 31 of the Act. See 415 ILCS 5/31 (2000). The Board notes that this settlement agreement in no way affects the respondent's ability to comply with any federal, state, or local regulations, including the Act and Board's regulations.

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

ORDER

1. The Board hereby accepts the stipulation and settlement agreement in part as executed by the Illinois Environmental Protection Agency (Agency) and Leroy David. The Board finds that David caused or allowed open dumping resulting in litter in violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2000)). David caused this violation at a site that he owned and operated at 1713 North Oesterle Avenue, in Norwood, Peoria County, Illinois. The stipulation and settlement agreement is incorporated by reference as though fully set forth as modified herein.
2. It is hereby ordered that David must, by certified check or money order, pay a penalty in the amount of \$1,500, by no later than September 1, 2001. The certified check or money order must be payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and must be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East

P.O. Box 19276
Springfield, Illinois 62794-9276

A copy of the payment transmittal and check or money order must be simultaneously submitted to:

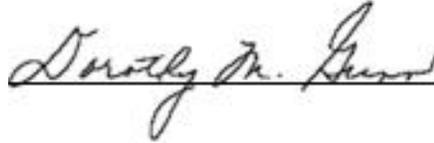
Christopher Grant
Assistant Attorney General
Illinois Attorney General's Office
Environmental Bureau
180 W. Randolph Street, 20th Floor
Chicago, Illinois 60601

3. The certified check or money order must clearly indicate on its face the case number, case name, the federal employer identification number, and that payment is directed to the Environmental Protection Trust Fund.
4. Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003 (2000)), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.
5. David shall cease and desist all future violations of any federal, State, or local statutes and regulations.
6. The Board dismisses David's petition for review.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (2000)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.520, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 9th day of August 2001 by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board