

ILLINOIS POLLUTION CONTROL BOARD
April 20, 1995

COUNTY OF OGLE,)
)
 Complainant,)
)
 v.) AC 94-37
) (SA-R-1002)
 CITY OF ROCHELLE AND) (Administrative Citation)
 ROCHELLE DISPOSAL)
 SERVICE, INC.)
)
 Respondent.)

INTERIM OPINION AND ORDER OF THE BOARD (by J. Yi):

On June 13, 1994, the complainant County of Ogle (County) filed an administrative citation against the City of Rochelle (City) and Rochelle Disposal Inc. (Disposal). The administrative citation alleges that the City and Disposal violated Sections 21(o)(1), (5) and (12) of the Environmental Protection Act (Act). (415 ILCS 5/21(o)(1), (5) and (12) (1992).) The County is vested with the authority to bring such a citation pursuant to Section 31.1 of the Act (415 ILCS 5/31.1) and a delegation of authority agreement with the Illinois Environmental Protection Agency statutorily authorized in Section 4(r) of the Act. (415 ILCS 5/4(r).) Respondent, Disposal, filed a timely petition for review on June 27, 1994. No hearings have been held in this matter.

On March 22, 1995, the County and Disposal filed a "Stipulated Settlement" pursuant to 35 Ill. Adm. Code 103.180(a). In the proposed settlement, the County would withdraw one count of the administration citation, Disposal would admit to the other two alleged violations, and pay a \$1,200 fine. The Stipulated Settlement requests "...that Board order Respondents to pay six hundred dollars (\$600.00) for each violation for a total of twelve hundred dollars (\$1,200.00)."

Section 42(b)(4) of the Act establishes a set civil penalty per violation brought under an administrative citation. Section 42(b)(4) states in particular "[i]n an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision ... shall pay a civil penalty of \$500 for each violation of each such provision ..." (415 ILCS 5/42(b)(4) (1992).) The proposed Stipulated Settlement requests the Board to assess a six hundred dollar (\$600.00) civil penalty for each violation. The Board is without statutory authority to find a violation and assess discretionary civil penalties for any amount other than five hundred dollars (\$500.00) per violation. Therefore the Board cannot issue an order finding the respondents

in violation of Sections 21(o)(5) and (12) of the Act and assess a twelve hundred dollar (\$1,200.00) civil penalty. Additionally the proposed Stipulated Settlement does not have any indication that respondent, City of Rochelle, was a party to this agreement. As the Board has previously found, both the City and Disposal are jointly and severally liable for any finding of violation. (See County of Ogle v. Rochelle Disposal, Inc. and City of Rochelle, (August 26, 1993), AC 92-64, and Sangamon County v. The Illinois National Bank of Springfield, n/k/a First of America Trust Co. and Ray Landers, (April 21, 1994), AC 93-30.)

For these reasons, the Board will propose a revised Stipulated Settlement pursuant to 35 Ill. Adm. Code 103.180(c) which states in pertinent part:

c) The Board shall consider such proposed settlement and stipulation and the hearing record. **The Board may accept, suggest revisions in, reject the proposed settlement and stipulation, or direct further hearings as it appears appropriate.** (Emphasis added.)

The parties may accept the Board's revised Stipulated Settlement as suggested in the order or renegotiate a new Stipulated Settlement that is consistent with this order. If the parties do not accept the revised Stipulated Settlement, they shall file with the Board a new Stipulated Settlement which is consistent with this order, or any other appropriate motion, on or before May 5, 1995. If the parties accept the revised Stipulated Settlement they shall file jointly with the Board a signed agreement of that fact on or before May 12, 1995.

The Board rejects the proposed Stipulated Settlement and hereby proposes a revised Stipulated Settlement as follows:

1. The complainant, County of Ogle, withdraws the alleged violation of Section 21(o)(1) of the Act, paragraph 5(c) of the administrative citation.
2. The respondents, the City of Rochelle and Rochelle Disposal Service, Inc. admit to violating Section 21(o)(5) and (12) of the Act, paragraph 5(a) and (b) of the administrative citation, and Rochelle Disposal, Inc. withdraws its petition for review.
3. It is hereby ordered that, unless the penalty has already been paid, respondents, which are jointly and severally liable, shall pay a penalty of \$1000.00 by certified check or money order, payable to the County of Ogle on or before May 31, 1995.
4. The respondents shall write the case name and number,

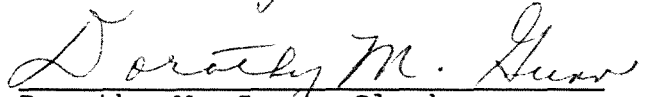
and its social security number or federal Employer Identification Number, on the certified check or money order.

5. Penalties unpaid after the due date shall accrue interest pursuant to Section 42(g) of the Environmental Protection Act.

6. Payment of this penalty does not prevent future prosecution if the violation continues.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the 20th day of April, 1995, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board