

ILLINOIS POLLUTION CONTROL BOARD
December 3, 1992

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 92-51 (Docket A & B)
) (IEPA No. 322-92-AC)
) (Administrative Citation)
)
JOHN McCULLUM and)
NINA J. McCULLUM)
)
Respondents.)

MR. DANIEL P. MERRIMAN, ESQ., APPEARED ON BEHALF OF THE
COMPLAINANT.

MR. JOHN McCULLUM AND MS. NINA McCULLUM APPEARED PRO SESE.

OPINION AND ORDER OF THE BOARD (by J.C. Marlin):

This matter comes before the Board upon a settlement agreement on a petition for review of an administrative citation filed with the Board on June 29, 1992, by the Illinois Environmental Protection Agency (complainant) pursuant to Section 31.1 of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1991, ch. 111½, pars. 1001, et seq.). The administrative citation alleges violation of Sections 21(p)(1) and (3) of the Act. Section 42(b)(4) of the Act establishes a civil penalty for each violation of \$500.00, plus any hearing cost incurred by the Board or the Agency.

The administrative citation named the following persons as respondents: John McCullum and Nina J. McCullum¹.

The administrative citation alleges violations of Sections 21(p)(1) and (3) of the Act, which prohibit actions which cause or allow open dumping of waste in a manner which results in litter or open burning.

The citation alleges that the violations took place on May 8, 1992, at a site, in Peoria County, owned by respondents. The site is described as Site Code No. 1430400001, commonly known as the "Hanna City/McCullum Property". Respondent John McCullum was

¹At the hearing, respondent indicated that her name was in fact Nina N. McCullum. (R. 7.)

served at 11501 W. Farmington Road, Hanna City, IL, which appears to be the address of the site. (Site sketch attached to Agency inspection report.)

Respondent filed a petition for review with the Board on August 4, 1992. On October 2, 1992, a hearing was held in Peoria, at which the Agency and respondents outlined a settlement agreement.

The parties agree that the open burning occurred off the respondents' property, and that the Section 21(p)(3) allegation should be dismissed. However, respondents admit that they caused or allowed open dumping so as to cause litter in violation of Section 21(p)(1) of the Act, and agree to pay a fine of five hundred dollars (\$500.00).

The Board accepts the settlement. The Board finds that respondents violated Section 21(p)(1) of the Act by causing or allowing open dumping so as to cause litter in violation of Section 21(p)(1) of the Act on May 8, 1992. Pursuant to Section 42(b)(4) of the Act, the Board will assess a civil penalty of five hundred dollars (\$500.00). For purpose of review, today's action (Docket A) constitutes the Board's final action on the matter of the civil penalty.

Pursuant to Section 42(b)(4) of the Act, respondents are also required to pay hearing costs incurred by the Board and the Agency. The Clerk of the Board and the Agency will therefore be ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon respondents. Upon receipt and subsequent appropriate review, the Board will issue a separate final order in which the issue of costs is addressed. Additionally, Docket B will be opened to treat all matters pertinent to the issue of costs.

A copy of the administrative citation will be attached to this Order, but will not be printed in the Opinion volumes. This Opinion constitutes the Board's findings of facts and conclusions of law in this matter.

ORDER

- 1) The Board finds that respondents John McCullum and Nina McCullum violated Section 21(p)(1) of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1021(p)(1)) by causing or allowing open dumping so as to cause litter.
- 2) It is hereby ordered that, unless the penalty has already been paid, within 30 days after the date of this order, Respondents John McCullum and Nina McCullum shall, by certified check or money order payable to the

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State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay a penalty in the amount of five hundred dollars (\$500.00), which is to be sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, IL 62706

Respondents shall include the remittance form and write the case name and number and their social security or federal employer identification number on the certified check or money order.


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

- 3) The administrative citation is dismissed with respect to the allegation of violation of Section 21(p)(3) of the Act.
- 4) Within 30 days after the date of this order, the Agency shall file a statement of its hearing costs, supported by an affidavit, with the Board and with service upon respondents. Within the same 30 days, the Clerk of the Board shall file a statement of the Board's costs, supported by affidavit and with service upon respondent. Such filings shall be entered in Docket B of this case.
- 5) Respondents are given leave to file a reply or objection to the filings as ordered in paragraph 4 of this order within 45 days after the date of this order.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1041, provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 30 day of December, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk,
Illinois Pollution Control Board

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