

ILLINOIS POLLUTION CONTROL BOARD
May 1, 2003

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 02-21
) (RCRA Enforcement)
J & F HAULING, INC.,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by M.E. Tristano):

Today, the Board issues its final order in this case. The Board orders J & F Hauling, Inc. (J & F) to reimburse the Office of the Attorney General, on behalf of the People of the State of Illinois (People), for reasonable costs and attorney fees incurred during the litigation of this enforcement action. Previously, the Board held that J & F must pay \$60,000 for violating numerous provisions of the Environmental Protection Act (Act) and Board regulations.

The Board finds that J & F's violations of the Act were "willful, knowing or repeated" and therefore awards to the People \$3,967.50 in costs and attorney fees. Before turning to the Board's assessment of the People's petition for costs and attorney fees, the Board summarizes its prior decisions in this case.

SUMMARY OF THE BOARD'S PRIOR DECISIONS

The complainant's seven count complaint, filed August 17, 2001, alleged (1) open dumping of waste; (2) causing or allowing litter; (3) open dumping of used and waste tires; (4) conducting a waste disposal operation without a permit; (5) waste disposal at an improper site; (6) failure to make a special waste determination; and (7) failure to make a hazardous waste determination. People v. J & F Hauling, Inc., PCB 02-21, slip op. at 6-8 (June 6, 2002). The complainant alleged that these violations of the Act and the Illinois Administrative Code occurred at J & F's demolition and waste hauling business located at 7753 West 47th Street, McCook, Cook County.

On November 9, 2001, the complainant filed a motion to deem facts admitted and for summary judgment. This motion was withdrawn on January 29, 2002, but the complainant filed a second motion to deem facts admitted and for summary judgment. On June 6, 2002, the Board granted the complainant's motion for summary judgment on all seven counts. Specifically, the Board found that J & F violated Sections 21(a), (d)(1) and (2)(e), and (p)(1); and 55(a) of the Act (415 ILCS 5/21(a), (d)(1) and (2), (e), (p)(1), and 55(a) (2002)) and 35 Ill. Adm. Code 722.11, 808.121, and 812.101(a).

On October 2, 2002, the Board held a hearing on the specific issue of remedy and reimbursement of costs and attorney fees. J & F did not appear at the hearing. In a February 6, 2003 interim opinion and order, the Board ordered respondent to pay a penalty in the amount of \$60,000. Additionally, the Board found that an award of attorney fees to complainant would be appropriate, and directed complainant to file an affidavit of costs.

The People's February 13, 2003 petition for costs and attorney fees and accompanying affidavit are now before the Board. J & F has failed to respond.

COSTS AND ATTORNEY FEES

Section 42(f) of the Act (415 ILCS 5/42(f) (2002)) provides in part:

Without limiting any other authority which may exist for the awarding of attorney fees and costs, the Board or a court of competent jurisdiction may award costs and reasonable attorney fees, including the reasonable costs of expert witnesses and consultants, to the State's Attorney or the Attorney General in case where he has prevailed against a person who has committed a willful, knowing or repeated violation of the Act. 415 ILCS 5/42(f) (2002).

J & F's infractions of the Act and Board regulations included open dumping of waste; causing or allowing litter; open dumping of used and waste tires; conducting a waste disposal operation without a permit; waste disposal at an improper site; failure to make a special waste determination; and failure to make a hazardous waste determination. The Board finds that respondent knowingly committed these violations.

The People request \$3,967.50 in attorney fees and costs. The requested attorneys fees are for 26 hours at \$150 an hour. Additional costs of \$67.50 are also requested, reflecting the copying costs at 25 cents per page. The requested attorney fees and costs are supported by affidavits.

J & F did not file a response to the People's submission of costs and fees. Therefore, pursuant to Section 101.500(d), the Board deems J & F to have waived objection to the costs and fees.

The Board finds that the hourly rate proposed by the People for attorneys fees is reasonable. *See People v. Panhandle Eastern Pipe Line Co.*, PCB 99-191, slip op. at 37 (Nov. 15, 2001). Consequently, the Board finds that the People are entitled to \$3,900 in attorney fees as requested. The Board also finds the coping costs reasonable and that the People are entitled to \$67.50 in costs. *See People v. D'Angelo Enterprises, Inc.*, PCB 97-66, slip op. at 2-3 (Nov. 7, 2002). Under Section 42(f), J & F must pay these attorney fees and costs to the Hazardous Waste Fund. *See* 415 ILCS 5/42(f)(2002).

CONCLUSION

The Board orders J & F to cease and desist further violations of the Act and Board regulations and to pay a civil penalty of \$60,000. The Board awards the People \$3,967.50 in costs and attorney fees.

In this final opinion and order, the Board incorporates the findings of fact and conclusions of law from its February 6, 2003 interim opinion and order.

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

ORDER

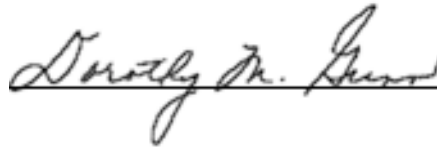
1. J & F violated Sections 21(a),(d)(1) and (2), (e), and (p)(1); and 55(a) of the Act and 35 Ill. Adm. Code 722.11, 808.121, and 812.101(a).
2. J & F must cease and desist from further violations.
3. J & F must pay a civil penalty of \$60,000 for committing violations of the Act and Board regulations.
4. The Board grants the People's petition for costs and attorney fees in the amount of \$3,967.50.
5. No later than June 1, 2003, which is 30 days after the date of this order, J & F must pay \$60,000 in civil penalties and \$3,967.50 in costs and attorney fees of the People of the State of Illinois. J & F must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. J & F must pay the costs and attorney fees by certified check or money order, payable to the Hazardous Waste Fund. The case number, case name, and J & F's social security number or federal employer identification number must be included on each certified check or money order.
6. J & F must send each certified check or money order to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
7. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a)(2002)).

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)(2002); 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 order may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.502; 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 May 1, 2003, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board