

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 15 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney)
General of the State of Illinois,)

Complainant,)

v.)

PCB No. 02-77

MILLENNIUM RECYCLING & SOLID WASTE)
CONSULTANTS, INC., an Illinois)
corporation, SHERRI CLEMENTI,)
individually and as President of)
MILLENNIUM RECYCLING & SOLID WASTE)
CONSULTANTS, INC., and MICHAEL)
LORENCE individually,)

Respondents.)

NOTICE OF FILING

TO: See attached Service List

PLEASE TAKE NOTICE that on December 15, 2003, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, filed before the Illinois Pollution Control Board, its **MOTION TO DEEM FACTS ADMITTED AND FOR SUMMARY JUDGMENT**, a true and correct copy of which is attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
By LISA MADIGAN, Attorney General
of the State of Illinois

BY: Mitchell L. Cohen
MITCHELL L. COHEN
Assistant Attorney General
Environmental Bureau
188 W. Randolph, Suite 2001
Chicago, Illinois 60601
(312) 814-5282

DATE: December 15, 2003

SERVICE LIST

Millenium Recycling & Solid Waste Consultants, Inc.
C/O Sherri Lynn Clementi Clementi
President and Registered Agent
1133 Hillcrest
Carol Stream, IL 60188

Sherri Lynn Clementi
1133 Hillcrest
Carol Stream, IL 60188

Michael Lorence
1133 Hillcrest
Carol Stream, IL 60188

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601

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PCB No. 02-77

MOTION TO DEEM FACTS ADMITTED AND FOR SUMMARY JUDGMENT

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Sections 103.204 and 101.516 of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204 and 101.516, and the October 2, 2003, Order of the Board, hereby moves for the entry of an order deeming all material facts in Complainant's Amended Complaint as admitted against Respondents, SHERRI CLEMENTI ("Clementi"), individually and as President of MILLENIUM RECYCLING & SOLID WASTE CONSULTANTS, INC., and MICHAEL LORENCE ("Lorence"), individually as to Counts I, II, III, and IV of The Amended Complaint. Further, Complainant moves this Board for Summary Judgment against all Respondents. In support thereof, Complainant states as follows:

1. On April 10, 2003, the Complainant filed its Amended

Complaint against Respondents MILLENIUM RECYCLING & SOLID WASTE CONSULTANTS, INC. ("Millenium"), an Illinois corporation, Clementi, and Lorence. Complainant alleged violations of Sections 21(a), 21(d)(1), 21(e), and 21(p)(1) of the Act, 415 ILCS 5/21(a), (d)(1), (e), and (p)(1) (2002). Specifically, the Amended Complaint alleges open dumping, conducting a waste disposal operation without a permit, disposal of waste at an unpermitted facility, and causing or allowing littering.

2. By Order of the Board on October 2, 2003, a default order was entered against Millenium for its repeated failure to comply with Board and hearing officer orders to appear and proceed with this case. The Board has already found that Millenium violated Sections 21(a), 21(d)(1), 21(e), and 21(p)(1) of the Act, 415 ILCS 5/21(a), (d)(1), (e), and (p)(1) (2002), as alleged in the Amended Complaint.

3. The Board's Order of October 2, 2003, required Complainant to provide proof of service of the April 10, 2003 Amended Complaint. Complainant complied with the Board's Order.

4. The Board's Order of October 2, 2003, required Respondent Lorence to answer The Amended Complaint within 60 days from the date of the Board's Order, that being December 1, 2003.

5. As of the date of the filing of this Motion, Respondent, Lorence, has not filed an answer, nor otherwise plead, to the Amended Complaint.

6. The Amended Complaint was served upon Clementi by certified mail on April 12, 2003.

7. Though Clementi has appeared, as of the date of the filing of this Motion, she has not filed an answer, nor otherwise plead, to the Amended Complaint.

8. Section 103.204(d) and (e) of the Board Procedural Rules, 35 Ill. Adm. Code 103.204, provides as follows:

(d) Except as provided in subsection (e) of this Section, the respondent may file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.

(e) If the Respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506, the 60-day period to file an answer described in subsection (d) of this Section will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion.

9. By failing to answer the Amended Complaint by December 1, 2003 and by failing to file a motion staying the 60-day period in which to file an answer as required by Sections 103.204(d) and (e) of the Board Procedural Rules, 35 Ill. Adm.

Code 103.204(d) and (e), Respondent, Lorence, has admitted the material allegations asserted in the Amended Complaint.

10. By failing to answer the Amended Complaint by June 11, 2003 and by failing to file a motion to stay the 60-day period in which to file an answer as required by Sections 103.204(d) and (e) of the Board Procedural Rules, 35 Ill. Adm. Code 103.204(d) and (e), Respondent, Clementi, has admitted the material allegations asserted in the Amended Complaint.

11. Complainant therefore requests that the Board find, pursuant to Section 103.204(d) and (e) of 35 Ill. Adm. Code 103.204(d) and (e), that Respondents, Lorence and Clementi, have admitted all material allegations asserted in the Amended Complaint.

12. Complainant's Amended Complaint sufficiently alleges the following violations of the Act and Board Regulations against the Respondents, Lorence and Clementi:

Count I: Open dumping

Violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2002);

Count II: Conducting a Waste Disposal Operation Without a Permit

Violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1)(2002);

Count III: Disposal, Treatment, Storage or Abandonment Of Waste

Violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2002);

Count IV: Causing or Allowing Littering
Violation of Section 21(p)(1) of the Act, 415 ILCS
5/21(p)(1) (2002).

13. Section 101.516(b) of the Board Procedural Rules, 35
Ill. Adm. Code 101.516(b), provides as follows:

b) If the record, including pleadings,
depositions and admissions on file,
together with any affidavits, shows that
there is no genuine issue of material
fact, and that the moving party is
entitled to judgement as a matter of
law, the Board will enter summary
judgement.

14. If the Board finds that the Respondents, Lorence and
Clementi, have admitted all material allegations asserted in
Complainant's Amended Complaint, then the record shows that there
is no genuine issue of material fact remaining for review.
Therefore, pursuant to Section 101.516(b) of the Board Procedural
Rules, 35 Ill. Adm. Code 101.516(b), Complainant is entitled to
summary judgment in its favor as a matter of law.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS,
respectfully requests that the Board issue an order in favor of
Complainant and against Respondents, SHERRI CLEMENTI,
individually and as President of MILLENIUM RECYCLING & SOLID
WASTE CONSULTANTS, INC., and MICHAEL LORENCE, individually, as
follows:

1. Ordering all material allegations asserted in the
Amended Complaint admitted against the Respondents Lorence and
Clementi;

2. Finding that the Respondents, Lorence and Clementi violated Sections 21(a), (d)(1), (e), and (p)(1) of the Act, 415 ILCS 5/21(a), (d)(1), (e), and (p)(1) (2002);

3. Additionally Complainant requests that the Board grant summary judgment, in favor of the Complainant and against all Respondents, Millenium, Clementi, and Lorence on Counts I through IV of the Amended Complaint;

SUGGESTED PENALTY

1. The Board's Order of October 2, 2003, required Complainant to make a suggestion concerning the appropriate civil penalty in this case as to all Respondents, Millenium, Clementi, and Lorence.

2. Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), provides as follows:

h) In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

- (1) the duration and gravity of the violation;
- (2) the presence or absence of due diligence on the part of the violator in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

- (3) any economic benefits accrued by the violator because of delay in compliance with requirements;
- (4) the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act;
- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

3. In terms of duration and gravity, the Respondents' site was in violation of the Act for over a year, from at least April 20, 2000, through May, 2001. See Amended Complaint with exhibits.

4. Respondents exhibited no diligence whatsoever; they left the site in the offensive condition for over a year, and all Respondents failed to answer the Amended Complaint, or otherwise comply with the Act.

5. Respondents avoided the cost of cleaning the site for over one year and avoided the costs of getting the proper permits from the Illinois EPA.

6. \$50,000.00 (Fifty Thousand Dollars) is the amount of civil penalty authorized by the Act for one violation. Respondents committed four violations over a period of one year. Complainant suggests that a \$50,000.00 penalty will deter further violations of the Act by these Respondents and others similarly

subject to the Act.

7. Complainant is unaware of any previously adjudicated violations against any of the Respondents.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board issue an order in favor of Complainant and against Respondents MILLENIUM RECYCLING & SOLID WASTE CONSULTANTS, INC., an Illinois corporation, SHERRI CLEMENTI, individually and as President of MILLENIUM RECYCLING & SOLID WASTE CONSULTANTS, INC., and MICHAEL LORENCE, individually, as follows:

1. Assessing against the Respondents, Millenium, Clementi, and Lorence a civil penalty of Fifty Thousand Dollars (\$50,000.00) for the violation of Sections 21(a), (d)(1), (e), and (p)(1) of the Act, 415 ILCS 5/21(a), (d)(1), (e), and (p)(1) (2002);

2. Ordering the Respondent to cease and desist from further violations of Sections 21(a), (d)(1), (e), and (p)(1) of the Act, 415 ILCS 5/21(a), (d)(1), (e), and (p)(1) (2002);

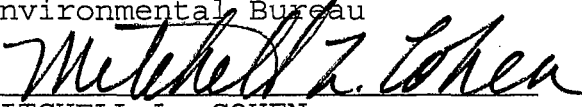
3. Granting such additional relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney
General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

ROSEMARIE CAZEAU, Chief
Environmental Bureau

BY:


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(312) 814-5282

CERTIFICATE OF SERVICE

I, Mitchell L. Cohen, an Assistant Attorney General, do certify that I caused to be mailed this 15th day of December, 2003, the foregoing Motion to Deem Facts Admitted and for Summary Judgment to the persons listed on the said Service List by first-class mail in a postage prepaid envelope and depositing same with the United States Postal Service located at 188 West Randolph Street, Chicago, Illinois, 60601.



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