

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 02-77
)	(Enforcement-Land)
MILLENIUUM RECYCLING & SOLID WASTE)	
CONSULTANTS, INC., an Illinois)	
Corporation, SHERRI CLEMENTI,)	
individually and as President of)	
MILLENIUUM RECYCLING & SOLID WASTE)	
CONSULTANTS, INC., and MICHAEL)	
LORENCE individually,)	
)	
Respondents.)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that today I have electronically filed with the Pollution Control Board the following, Complainant's Response to Lorence's Motion for Relief from and Review of Final Opinion and Order, Notice of Appearance, Notice of Filing, and Certificate of Service, on behalf of the People of the State of Illinois, a copy of which is attached and hereby served upon you.

Respectfully submitted,

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

BY: _____
STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-2087

DATE: August 5, 2005

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Matt B. Fuesting
Kupisch & Carbon, Ltd.
201 N. Church Road
Bensenville, IL 60106

Ms. Sherri Clementi
1133 Hill Crest Drive
Carol Stream, IL 60188

Mr. Peter Orlinsky
Assistant Legal Counsel
Illinois Environmental Protection Agency
9511 West Harrison St. 3rd Floor
Des Plaines, IL 60016

Mr. Bradley Halloran
Chief Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, 11th Floor
Chicago, IL 60601

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CONSULTANTS, INC., and MICHAEL)	
LORENCE individually,)	
)	
Respondents.)	

NOTICE OF APPEARANCE

Pursuant to Section 101.400 of the Illinois Pollution Control Board Rules and Regulations, 35 Ill. Adm. Code 101.400, I hereby file my Appearance in this proceeding.

Respectfully submitted,

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

BY: _____

STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-2087

DATE: August 5, 2005

CERTIFICATE OF SERVICE

I, STEPHEN J. SYLVESTER, an Assistant Attorney General, certify that on the 5th day of August, 2005, I caused to be served by First Class Mail the foregoing Complainant's Response to Lorence's Motion for Relief from and Review of Final Opinion and Order, Notice of Appearance, and Notice of Filing to the parties named on the attached Service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

STEPHEN J. SYLVESTER

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CONSULTANTS, INC., and MICHAEL)	
LORENCE individually,)	
)	
Respondents.)	

**RESPONSE TO LORENCE’S MOTION FOR RELIEF
FROM AND REVIEW OF FINAL OPINION AND ORDER**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby submits its Response to Respondent’s, MICHAEL LORENCE (“Lorence”), Motion for Relief From and Review of Final Opinion and Order and states as follows:

1. On December 12, 2001, the Complainant filed a four-count complaint against Respondent MILLENIUM RECYCLING & SOLID WASTE CONSULTANTS, INC. (“Millenium”), an Illinois corporation, alleging violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2002).

2. On April 10, 2003, the Complainant filed its Motion for Leave to File an Amended Complaint against Respondent Millenium, and added SHERRI CLEMENTI (“Clementi”) and Lorence as parties to the Amended Complaint. In its Amended Complaint, Complainant alleged Respondents violated Sections 21(a), 21(d)(1), 21(e), and 21(p)(1) of the Act, 415 ILCS 5/21(a), (d)(1), and (p)(1) (2002).

3. Section 103.204 of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204, provides in pertinent part:

Notice, Complaint, and Answer

- a) An enforcement proceeding will be commenced by the service of a notice and complaint by registered certified mail, messenger service, or personal service upon all respondents and the filing of 1 original and 9 copies of the notice and complaint with the Clerk.

4. On April 10, 2003, in conformity with Section 103.204 of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204, Complainant, People of the State of Illinois, mailed its Notice of Filing and Motion for Leave to File an Amended Complaint with the Amended Complaint attached to the motion, by certified mail return receipt requested, to Respondents, Clementi and Lorence, at 1133 Crest Hill Drive, Carol Stream, DuPage County, Illinois.

5. On April 12, 2003, Bianca Balaskovits, Respondent Clementi's daughter who was 14 years old at the time, signed the return receipt for and accepted the Complainant's Notice of Filing and Motion for Leave to File an Amended Complaint with the Amended Complaint attached to the motion, which were addressed to Clementi and Lorence. See **Exhibit A** entitled "Affidavit of Sherri Clementi" attached and incorporated by reference to this Response.

6. Complainant complied with Section 103.204 of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204, by serving the Amended Complainant by certified mail, and thus the Board had jurisdiction over Lorence in this case.

7. However, Respondent Lorence claims that he didn't have any knowledge of the Amended Complaint "received and signed by 'Bianca Balasko' on April 12, 2003.," Motion at ¶ 7, and Respondent Lorence also claimed that he did not reside at 1133 Hillcrest Drive, Carol Stream, DuPage County, Illinois on April 12, 2003. Motion at ¶ 4. This is not true.

8. Respondent Michael Lorence resided with Respondent Sherri Clementi and Bianca Balaskovits at 1133 Hillcrest Drive, Carol Stream, DuPage County, Illinois from December 1997 through August 2002 and from November 2002 through June 2003, and therefore Lorence knows that Bianca Balasko and Bianca Balaskovits are one and the same person. See **Exhibit A**.

9. On or about April 12, 2003, Sherri Clementi, one of the individually named Respondents in this case, gave Michael Lorence the Amended Complaint in the case of People v. Millenium Recycling and Solid Waste Consultants, Inc., Sherri Clementi, and Michael Lorence, case number PCB 02-77, which was addressed to Michael Lorence and that Bianca Balaskovits had accepted and signed the return receipt for. See **Exhibit A**. Therefore, Michael Lorence received the Amended Complaint in this case, and he was unequivocally served in conformity with Section 103.204 of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204.

10. Subsequent to the April 12, 2003 service of the Amended Complaint on Lorence, the following activities occurred in this case:

- a) On May 15, 2003, the Board issued an Order granting Complainant's Motion for Leave to File an Amended Complaint;
- b) On October 2, 2003, the Board issued an Order requiring Complainant to file the "green card" proof of service of the Amended Complaint on Respondent, Lorence, and required Respondent Lorence to Answer the Amended Complaint by December 1, 2003;
- c) On November 3, 2003, Complainant filed proof of service of the April 10, 2003 Amended Complaint, including attached copies of the Notice of Filing, Service List, Certificate of Service, and the "green card" Return Receipts from Respondents Sherri Clementi and Michael Lorence;
- d) On December 15, 2004, Complainant filed its Motion to Deem Facts Admitted and for Summary Judgment against Millenium, Clementi, and Lorence, as none of the Respondents filed an Answer to the Amended Complaint; and

- e) On February 19, 2004, the Board issued an Order granting Complainant's Motion to Deem Facts Admitted and for Summary Judgment finding that Millenium, Clementi and Lorence (collectively "Respondents") had violated Sections 21(a), 21(d)(1), 21(e), and 21(p)(1) of the Act, 415 ILCS 5/21(a), (d)(1), and (p)(1) (2002), and ordering Respondents to pay a civil penalty of \$25,000.00 within 60 days.

11. Respondent Lorence clearly had notice of this lawsuit against him and he simply chose to ignore it. See **Exhibit A**.

12. Section 101.904 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.904, provides, in pertinent part:

- b) On written motion, the Board may relieve a party from a final order entered in a contested proceeding, for the following:

* * *

- 3) Void order, such as an order based upon jurisdictional defects.

* * *

- d) A motion under subsection (b) of this Section must be filed with the Board within one year after entry of the order except that a motion pursuant to subsection (b)(3) of this Section must be filed within a **reasonable time after** entry of the order. (Emphasis added.)

13. On February 1, 2005, the People of the State of Illinois, filed a complaint in DuPage County Circuit Court against the Respondents, to enforce the February 19, 2004 Board Order. Attached and incorporated by reference to this Response as **Exhibit B** is the Complaint, People v. Millenium Recycling and Solid Waste Consultants, Inc., Sherri Clementi, and Michael Lorence, case number 05 L 121.

14. On September 20, 2004, a letter with the February 19, 2004 Board Order attached was sent by the Complainant to Respondent Lorence by certified mail return receipt requested. Attached and incorporated by reference to this Response as **Exhibit C** is the September 20, 2004 Letter to Respondent Lorence and the "green card" proof of service.

15. On July 22, 2005, more than 2 years after the Amended Complaint was served upon him, one year and 5 months after the February 19, 2004 Board Order was issued, and 10 months after Lorence received a copy of the February 19, 2004 Board Order attached to Complainant's letter, Respondent Lorence filed his Motion with the Board for relief from the February 19, 2004 Board Order.

15. Complainant does not know of any case law that addresses what constitutes a "reasonable time" after entry of a Board order, but Lorence's claim that he was not served with the Amended Complaint in this matter more than 2 years after the Amended Complaint was served upon him, a year and 5 months after the February 19, 2004 Board Order was issued, and 10 months after Lorence received a copy of the February 19, 2004 Board Order attached to Complainant's letter is surely an unreasonable amount of time.

CONCLUSION

On or about April 12, 2003, Respondent Lorence was served the Amended Complaint in this case, and he was clearly served in conformity with Section 103.204 of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204. Therefore, the Board had proper jurisdiction over Respondent Lorence during the proceedings in this case.

Additionally, Respondent Lorence filed his Motion matter more than 2 years after the Amended Complaint was served upon him, a year and 5 months after the February 19, 2004 Board Order was issued, and 10 months after Lorence received a copy of the February 19, 2004 Board Order attached to Complainant's letter in what surely amounts to an unreasonable amount of time. Respondent Lorence chose to ignore the lawsuit brought before the Board and did not participate in its litigation when he had an opportunity to do so. On February 19, 2004, the Board found that Respondent Lorence violated Sections 21(a), 21(d)(1), 21(e), and 21(p)(1) of

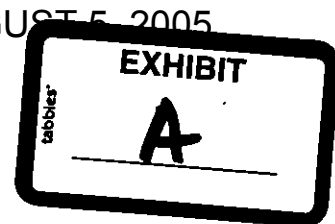
the Act, 415 ILCS 5/21(a), (d)(1), and (p)(1) (2002), and ordered him to pay a civil penalty of \$25,000.00 within 60 days.

Since Respondent Lorence was properly served with the Amended Complaint in this matter, and he delayed the filing of his Motion for an unreasonable amount of time, the February 19, 2004 Board Order should remain in full force and effect as to Respondent Lorence, and his Motion for Relief from and Review of Final Opinion and Order should be denied.

Respectfully submitted,

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

BY: _____
STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau North
188 West Randolph St., 20th Floor
Chicago, Illinois 60601
312-814-2087



AFFIDAVIT OF SHERRI CLEMENTI


I, Sherri Clementi, after being duly sworn on oath, state that if called upon to testify in this matter, I would competently testify as follows:

1. I am one of the named Respondents in the lawsuit, People v. Millenium Recycling and Solid Waste Consultants, Inc., Sherri Clementi, and Michael Lorence, case number PCB 02-77, and I am familiar with the facts of the case.
2. I have resided at 1133 Hillcrest Drive, Carol Stream, DuPage County, Illinois since January 1990.
3. Bianca Balaskovits is my daughter and is currently sixteen years old and she has resided with me at 1133 Hillcrest Drive, Carol Stream, Illinois since January 1990.
4. Michael Lorence, the other individually named Respondent in the lawsuit, resided with me at 1133 Hillcrest Drive, Carol Stream, DuPage County, Illinois from December 1997 through August 2002 and from November 2002 through June 2003.
5. On April 12, 2003, my daughter, Bianca Balaskovits signed the return receipt for two packages that had been sent from the Illinois Attorney General's Office via certified mail, which were addressed, one to Michael Lorence and one to Sherri Clementi. The package addressed to me contained an Amended Complaint in the case of People v. Millenium Recycling and Solid Waste Consultants, Inc., Sherri Clementi, and Michael Lorence, case number PCB 02-77.
6. On or about April 12, 2003, I gave Michael Lorence the package that my daughter, Bianca Balaskovits had accepted and signed the return receipt for, which the Illinois Attorney General's Office had sent and that was addressed to him. He opened the

package in my presence, and I saw that it contained the Amended Complaint in the case of People v. Millenium Recycling and Solid Waste Consultants, Inc., Sherri Clementi, and Michael Lorence, case number PCB 02-77.

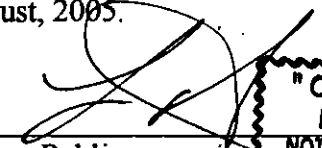
7. After opening the package and reviewing it in my presence, Michael Lorence told me not to worry and that he would take care of the lawsuit, People v. Millenium Recycling and Solid Waste Consultants, Inc., Sherri Clementi, and Michael Lorence, case number PCB 02-77.

FURTHER AFFIANT SAYETH NOT



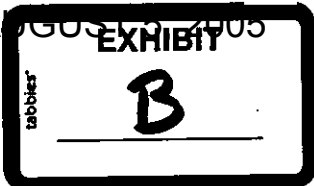
Sherri Clementi

Subscribed and Sworn to
before me this 3rd day of
August, 2005.



Notary Public





IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois,

Plaintiff,

v.

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,

Defendants.

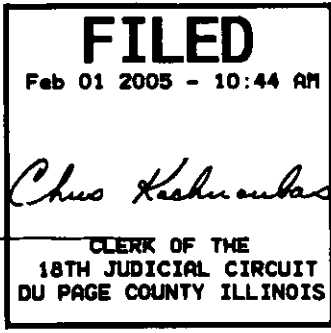
2005L000121

Status Date: 05/02/05

Regmt Date: 07/20/05

Assigned To: 2018

No.



COMPLAINT TO ENFORCE ORDER AND CIVIL PENALTIES

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA
MADIGAN, Attorney General of the State of Illinois, complains of
the Defendants, MILLENIUM RECYCLING & SOLID WASTE CONSULTANTS,
INC. ("Millenium"), an Illinois corporation, SHERRI CLEMENTI
("Clementi"), individually and as President of MILLENIUM
RECYCLING & SOLID WASTE CONSULTANTS, INC., and MICHAEL LORENCE
("Lorence") individually, as follows:

COUNT I

VIOLATION OF ILLINOIS POLLUTION CONTROL BOARD ORDER

1. This Complaint is brought on behalf of the People of
the State of Illinois, ex rel. LISA MADIGAN, Attorney General of

the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA").

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Illinois Environmental Protect Act ("Act"), 415 ILCS 5/4 (2002), and is charged *inter alia* with enforcing the Act.

3. This Complaint is brought pursuant to Section 42 of the Act, 415 ILCS 5/42 (2002).

4. The Illinois Pollution Control Board ("Board") is an independent body created by the Act and empowered to conduct hearings on complaints charging violations of the Act or of rules and regulations promulgated by the Board, 415 ILCS 5/5 (2002).

5. Defendant, Millenium, was an Illinois corporation that operated at 31W620 Spaulding Road, Elgin, Cook County ("Site"). Defendant, Clementi, was the president and registered agent of Millenium. Defendant, Lorence was the operations manager responsible for the day-to-day operations at the Site.

6. On December 12, 2001, the State filed a four-count complaint against Millenium with the Board, alleging that Millenium caused or allowed open dumping, conducted a wasted disposal operation without a permit, disposed of waste at an unpermitted facility, and caused or allowed litter in violation of Section 21(a), (d)(1), (e), and (p)(1) of the Act, 415 ILCS

21(a), (d)(1), (e), and (p)(1) (2002). On April 10, 2003, the State filed an amended complaint, which added Clementi and Lorence as Respondents in the case.

7. On February 19, 2004, the Board issued an Order finding that Millenium, Clementi, and Lorence had violated Section 21(a), (d)(1), (e), and (p)(1) of the Act, 415 ILCS 21(a), (d)(1), (e), and (p)(1) (2002), and ordering Millenium, Clementi, and Lorence to pay \$25,000.00 in civil penalties plus interest. (Board Order of February 19, 2004 incorporated by reference and attached as exhibit A)

8. The Board's February 19, 2004 Order provided, in pertinent part, as follows:

1. The Board finds that Millenium Recycling & Solid Waste Consultants, Inc. (Millenium), Sherri Clementi (Clementi) and Michael Lorence (Lorence) (collectively respondents) have violated 415 ILCS 21(a), (d)(1), (e) and (p)(1) (2002);
2. The respondents must pay a penalty of \$25,000 for violating 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. The respondents must pay \$25,000 within 60 days of the date of this order. Such payment must be made by certified check or money order 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 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62702

Respondents must write their federal employer identification number or social security number on the certified check or money order. Any such penalty not paid within the time prescribed will incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act (35 ILCS 5/1003) as now or hereafter amended, from the date payment is due until the date payment is received. Interest will not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

4. The respondents must cease and desist from any further violations of the Act, and associated regulations.

10. The Board's February 19, 2004 Order has not been modified, vacated, or set aside. It remains in full force and effect.

11. As of the date of filing of this Complaint, the Defendants, Millenium, Clementi, and Lorence have failed to pay the \$25,000.00 civil penalty as ordered by the Board:

12. Section 42 of the Act, 415 ILCS 5/42 (2002), provides, in pertinent part, as follows:

a) [A]ny person . . . that violates any determination or order of the Board pursuant to this Act, shall be liable to a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000.00 for each day during which the violation continues;

* * *

g) All final orders imposing civil penalties pursuant to this Section shall prescribe the time for payment of such penalties. If any such

penalty is not paid within the time prescribed, interest on such penalty at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, shall be paid for the period from the date payment is due until the date payment is received. However, if the time for payment is stayed during the pendency of an appeal, interest shall not accrue during such stay.

13. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), provides as follows:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

14. Millenium, a corporation, and Clementi and Lorence, individuals, are "persons" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

15. Because Defendants failed to pay, or arrange for the payment of the \$25,000.00 civil penalty as ordered by the Board, Defendants are liable for the interest accrued, beginning April 20, 2004, on the unpaid penalty in the amount of \$534.25, representing interest through November 1, 2004, and \$2.83 per day thereafter through the date of payment, pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002).

16. Because Defendants failed to pay the \$25,000.00 penalty and the interest accrued pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), Defendants have violated the

Board's February 19, 2004 Order and are liable for an additional civil penalty pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002).

17. Section 31.1(g) of the Act, 415 ILCS 5/31.1(g) (2002), provides as follows:

All orders issued and entered by the Board pursuant to this Section shall be enforceable by injunction, mandamus, or other appropriate remedy, in accordance with Section 42 of this Act.

18. Therefore, this Court has jurisdiction to enforce the Board's February 19, 2004 Order and to order the appropriate relief for the violation alleged herein.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court enter a judgment in favor of Plaintiff and against Defendants, 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, on Count I:

1. Find that the Defendants have willfully, knowingly and repeatedly violated the Board's February 19, 2004 Order;

2. Enter judgment on behalf of the Plaintiff and against the Defendants for the unpaid civil penalty in the amount of \$25,000.00 plus \$534.25, representing interest through November

1, 2004, and \$2.83 per day thereafter through the date of payment;

3. Assess a civil penalty of \$50,000.00 against the Defendant for each violation of the Board's February 19, 2004 Order, with an additional penalty of \$10,000.00 per day for each day that the violation continues;

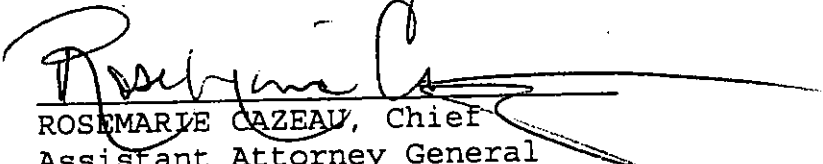
4. Tax all costs in this action, including expert witness, consultant and attorney fees, against the Defendants pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002); and

5. Grant any other relief that this Court deems just and appropriate.

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

By:


ROSEMARIE CAZEAU, Chief
Assistant Attorney General
Environmental Bureau North

Of Counsel:

STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau North
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601
(312) 814-2087

tabular
 A

ILLINOIS POLLUTION CONTROL BOARD

February 19, 2004

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
)	
v.)	PCB 02-77
)	(Enforcement - Land)
MILLENIUM RECYCLING & SOLID)	
WASTE CONSULTANTS, INC., SHERRI)	
CLEMENTI, individually and as president of)	
MILLENIUM RECYCLING & SOLID)	
WASTE CONSULTANTS, INC., and)	
MICHAEL LORENCE, individually,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On December 15, 2003, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a motion to deem facts admitted and for summary judgment against Millenium Recycling & Solid Waste Consultants, Inc. (Millenium), Sherri Clementi (Clementi), and Michael Lorence (Lorence) (collectively respondents) on all counts of the amended complaint filed in this matter. To date, no respondent has filed any response to the motion.

For the reasons set forth below, the Board grants the People's motion. The Board finds that the respondents have violated the Environmental Protection Act (Act) as alleged in the amended complaint, and imposes a \$25,000 penalty on the respondents.

BACKGROUND

On December 12, 2001, the People filed a complaint against Millenium alleging 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). The People alleged that Millenium violated these provisions by conducting a waste disposal operation without a permit, and causing or allowing litter. The complaint concerns Millenium's facility at 31W620 Spaulding Road, Elgin, Cook County.

On January 23, 2003, the Board granted Millenium's attorney motion to withdraw. In order to avoid any undue delay in the resolution of this case, the Board ordered Millenium to retain an attorney who was directed to file an appearance on or before February 24, 2003, and an answer to the complaint on or before March 24, 2003. At a telephonic status conference held on March 4, 2003, Clementi, not a licensed attorney, attempted to appear on behalf of respondent Millenium in her capacity as registered agent. Clementi represented that the respondent corporation is dissolved and bankrupt and lacked the funds to retain an attorney. By order dated

March 4, 2003, the hearing officer gave Clementi until March 19, 2003, to respond to the January 23, 2003 Board order. No response was received by the Board.

On April 10, 2003, the People filed an amended complaint that added Sherri Clementi and Michael Lorence as respondents. The Board accepted the amended complaint on May 15, 2003, advising Sherri Clementi and Michael Lorence that their time to file any answer or responsive motion to the complaint would begin to run from their respective receipt of the order. On August 21, 2003, the Board ordered respondent Millenium to show cause why a default order in this case should not be entered for failure to appear at numerous status conferences. The Board allowed Millenium until September 4, 2003, to respond to this order.

On September 17, 2003 the Board received a Discharge of Debtor Order dated September 8, 2003 issued by the U. S. Bankruptcy Court (N.D. Ill.) regarding "Sherri Lynn Clementi AKA: Millenium Recycling." In re Sherri Lynn Clementi, No. 03-20318 (Bankr. N.D. Ill. Sept. 8, 2003).

On October 2, 2003, the Board issued an order finding Millenium in default for repeated failure to comply with Board and hearing officer orders to appear and proceed with this case. The Board found Millenium had violated Section 21(a), 21(d)(1), 21(e), and 21(p)(1) of the Act, as alleged, by conducting a waste disposal operation without a permit, and causing or allowing litter. The order also addressed an alleged deficiency in service by allowing Lorence until December 1, 2003, to answer the amended complaint; and directed the People to file a motion or other appropriate pleading regarding the appropriate remedy or penalty.

On November 3, 2003, the People filed proofs of service showing that service of the amended complaint on Clementi and Lorence was achieved on April 12, 2003. The instant motion was, as stated, filed on December 15, 2003. No hearing has been held in this matter.

FACTUAL SUMMARY

At all times pertaining to the violations alleged in the complaint, Millenium was an Illinois corporation operating at 31W620 Spaulding Road, Elgin, Cook County. Am. Com. at 2. Clementi is the president and registered agent for Millenium, and communicated directly with the Agency regarding the environmental issues alleged in the amended complaint. *Id.* Lorence is the operations manager responsible for day-to-day operations. *Id.*

As part of the business, Millenium regularly accepted various types of waste and refuse such as wood, construction debris and garbage at the site. Am. Com. at 3. The majority of the waste was wood that was ground and shred to produce animal bedding and compost for landscaping. *Id.* Millenium also separated construction and demolition debris, cardboard and metal for offsite recycling. *Id.* The site at which these activities occurred was never permitted by the Agency for the disposal of waste. Am. Com. at 5,7.

In a letter dated February 13, 2001, Clementi stated that Millenium has removed all the garbage, except "daily activity," from the site and is in the process of moving from the site. Am.

Com. Ex. B. Clementi asserts in that letter that the new owner of the property has been dumping mixed debris on the site. *Id.*

MOTION TO DEEM FACTS ADMITTED

The People contend that the Board's October 2, 2003 order required Lorence to answer the amended complaint on or before December 1, 2003, and that Lorence has not yet filed an answer or other pleading in response to the amended complaint. Mot. at 2. The People assert that by failing to answer the amended complaint by December 1, 2003, or by failing to file a motion staying the 60-day period in which to file an answer, Lorence has admitted the material allegations asserted in the amended complaint. Mot. at 4.

The People contend that the amended complaint was served on Cleminti by certified mail on April 12, 2003, that Clementi has appeared before the Board, and has not filed any answer or other pleading in response to the amended complaint. Mot. at 3. The People assert that by failing to answer the amended complaint by June 11, 2003, or by failing to file a motion staying the 60-day period in which to file an answer, Clementi has admitted the material allegations asserted in the amended complaint. Mot. at 4.

The People request that that pursuant to Section 103.204(d) and (e) of the Board's procedural rules, the Board find Lorence and Clementi have admitted all material allegations asserted in the amended complaint. Mot. at 4.

The Board's Procedural Rules

Section 103.204 of the Board's procedural rules for enforcement actions provides in part:

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. 35 Ill. Adm. Code 103.204(d).

Subsection (e) indicates that the 60-day period to file an answer will be stayed if a respondent timely files a motion attacking the sufficiency of the complaint under Section 101.506 of the Board rules, or claiming the complaint is duplicative or frivolous under Section 103.212(b). 35 Ill. Adm. Code 103.202(e); *see also* 35 Ill. Adm. Code 101.506, 103.212(b).

Subsection (f) provides:

Any party serving a complaint upon another party must include the following language in the notice: "Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this

proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney." 35 Ill. Adm. Code 103.204(f).

Discussion

To date, neither Lorence nor Clementi have filed any response to the motion to deem facts admitted. If a party files no response to a motion within 14 days the party will be deemed to have waived objection to the granting of the motion. See 35 Ill. Adm. Code 101.500(d).

The Board grants the People's motion to deem facts admitted. The notice of filing attached to the amended complaint contained language regarding failure to answer the complaint, as required by Section 103.204(f) of the Board rules. 35 Ill. Adm. Code 103.204(f). The Board deems admitted the material allegations alleged in the People's amended complaint against Lorence and Clementi.

MOTION FOR SUMMARY JUDGMENT

Section 101.516(b) of the Board's procedural rules for enforcement actions provides:

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 judgment as a matter of law, the Board will enter summary judgment. 35 Ill. Adm. Code 101.516(b).

Summary judgment is appropriate when the pleadings and depositions, together with any affidavits and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. See Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 693 N.E.2d 358 (1998). In ruling on a motion for summary judgment, the Board "must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party." Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370.

Summary judgment is a drastic means of disposing of litigation, and therefore it should only be granted when the movant's right to the relief is clear and free from doubt." Dowd, 181, Ill. 2d at 483, 693 N.E.2d at 370, citing Purtill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must "present a factual basis, which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

The People's Arguments

The People argue that if the Board finds that Lorence and Clementi have admitted all material allegations asserted in the amended complaint then the record shows there is no genuine issue of material fact left for review. Mot. at 5. Accordingly, the People contend, summary judgment in the People's favor as a matter of law is appropriate. *Id.* The People request that the

Board grant summary judgment in favor of the People and against the respondents on counts I through IV of the amended complaint. Mot. at 6. Further, the People ask the Board to find Lorence and Clementi have violated Sections 21(a), (d)(1), (e) and (p)(1) of the Act. *Id.*

The People request that a civil penalty of \$50,000 be assessed against the respondents for the violations, and further ask the Board to order respondents to cease and desist from further violations of the Act and Board regulations. Mot. at 8. As previously noted, the respondents did not respond to the motion.

Alleged Violations

The amended complaint contains four counts alleging violations of Section 21 of the Act. 415 ILCS 5/21 (2002). Section 21(a) of the Act is a prohibition against open dumping of waste. 415 ILCS 5/21(a) (2002). 'Open dumping' is defined as the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill. 415 ILCS 5/3.24 (2002). 'Sanitary landfill' is defined, in part, as a facility permitted by the Agency for the disposal of waste. 415 ILCS 5/3.41 (2002). 'Refuse' is defined as waste, and 'waste' is defined, in part, as any garbage or other discarded material. 415 ILCS 5/3.31 and 3.53 (2002). Section 21(d)(1) prohibits the operation of a waste disposal operation without a permit issued by the Agency. 415 ILCS 5/21(d)(1) (2002). Section 21(e) of the Act provides, in pertinent part, that no person may dispose, treat, store or abandon any waste except at a site meeting the requirements of the Act and regulations. Section 21(p)(1) prohibits the open dumping of any waste in a manner resulting in litter. 415 ILCS 5/21(p)(1) (2002).

The Board will first address each of the four counts in turn, with the Board's analysis following each count. Once all four counts have been analyzed, the Board will turn to a penalty determination.

DISCUSSION

The Board finds that the allegations deemed admitted pursuant to 35 Ill. Adm. Code 103.204(d) are sufficient to prove that the People are entitled to a judgment as a matter of law against Lorence and Clementi under 35 Ill. Adm. Code 101.516(b). Below the Board discusses how the admitted facts support each of the four counts of the complaint in turn.

Count I – Open Dumping

In count I, the People contend that the respondents violated Section 21(a) of the Act (415 ILCS 5/21(a) (2002)) by causing or allowing waste consisting of wood, garbage, construction and demolition debris, cardboard, metal and other unidentifiable items to be discharged, deposited, dumped, spilled or leaked onto a disposal site which does not fulfill the requirements of a sanitary landfill, and therefore engaged in open dumping as that term is defined in the Act. Am. Com. at 5-6.

The People state that on April 20, 2000 and continuing through May, 2001 there were various types of waste and refuse (wood, construction debris and garbage) piled on the site, and

that respondents did not demonstrate to the Agency that the waste was properly disposed of at a permitted facility. Am. Com. at 3. The People assert that the wood, garbage and other items were and are waste and refuse as defined by the Act. Am. Com. at 4. Further, the People contend that the site where the waste and refuse was placed is and was a disposal site as defined in the Act. Am. Com. at 5.

Count II – Conducting a Waste Disposal Operation Without a Permit

The People contend in count II that the respondents violated Section 21(d) of the Act (415 ILCS 5/21(d) (2002)) by causing or allowing the disposal of waste and refuse on their site from at least April 26, 2000 through May, 2001 without having an Agency permit to conduct a waste disposal operation at the site. Am. Com. at 7-8. The People assert that by accepting and piling waste on the site without a permit, respondents operated a waste disposal operation in violation of Section 21(d) of the Act. Am. Com. at 8.

Count III – Disposal of Waste at an Unpermitted Facility

The People state in count III that respondents violated Section 21(e) of the Act (415 ILCS 5/21(e)) by causing or allowing waste to be disposed of at an unpermitted site. Am. Com. at 9-10. The People assert that from at least April 26, 2000 and continuing through May, 2001 the site was never permitted by the Agency for the disposal of waste, and that such disposal did occur. *Id.*

Count IV – Causing or Allowing Litter

The People contend that the respondents violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2002)) by causing or allowing the open dumping of waste resulting in litter at the site. Am. Com. at 11. The People argue that the wood, garbage, construction and demolition debris, cardboard, metal and other unidentifiable items constitute litter as contemplated in the Act. *Id.*

Board Analysis

As previously stated, the Board deems all of the facts contained in the People's second amended complaint admitted by Lorence and Clementi. Accordingly, the Board finds that Lorence and Clementi violated Section 21(a), 21(d)(1), 21(e), and 21(p)(1) as alleged in the amended complaint. Further, in the October 2, 2003 Board order, the Board found Millennium had violated Section 21(a), 21(d)(1), 21(e), and 21(p)(1) as alleged in the amended complaint.

No party has filed a response to the motion. Once again, if a party files no response to a motion within 14 days the party will be deemed to have waived objection to the granting of the motion. See 35 Ill. Adm. Code 101.500(d). The Board finds that no genuine issue of material fact remains and that the People are entitled to judgment as a matter of law. The Board grants the People's motion for summary judgment on all four counts.

REMEDY

If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2002). If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondent, only then does the Board consider the Act's Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount.

The People provided information regarding an appropriate remedy, including a civil penalty, in their motion. The only remedy sought by the People is the imposition of a civil penalty. The People noted that \$50,000 is the amount of civil penalty authorized by the Act for one violation, and that respondents committed four violations over a period of one year. Mot. at 7. The People recommend that a \$50,000 penalty be imposed. Mot. at 8.

Statutory Background

Section 33(c) of the Act states: "In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- (ii) the social and economic value of the pollution source;
- (iii) the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- (v) any subsequent compliance." 415 ILCS 5/33(c) (2002).

According to Section 42(h) of the Act, in determining the appropriate civil penalty, the Board considers any matters of record in mitigation or aggravation of penalty, including "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; and
- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.” 415 ILCS 5/42(h) (2002).¹

Discussion

In determining what remedy is appropriate, the Board considers all facts and circumstances of record that bear upon the reasonableness of the respondents' violations of the Act. 415 ILCS 5/33(c) (2002).

Section 33(c)

Section 33(c) lists five factors the Board considers in making orders and determinations. First, the facts and circumstances of this case show that the violations in question interfered with the protection of the health, general welfare and physical property in an area around the site. The waste and refuse was dumped, and not properly stored or disposed. *See* 415 ILCS 5/33(c)(i) (2002). Second, there is no evidence in the record showing that respondents' operation, as conducted, had a social or economic value. *See* 415 ILCS 5/33(c)(ii) (2002). Third, the waste or refuse was in an area that would have been suitable were it disposed of or stored properly. The People did not provide any evidence indicating that the location was not suitable. *See* 415 ILCS 5/33(c)(iii) (2002). Fourth, the record does not contain evidence concerning the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source, but it is evident that the waste and refuse was eliminated. *See* 415 ILCS 5/33(c)(iv) (2002). Finally, the respondents did not comply with the Act and left the waste and refuse for over a year. *See* 415 ILCS 5/33(c)(v) (2002).

After considering the Section 33(c) factors, the Board finds that a civil penalty is proper in this instance. To determine the proper penalty, the Board considers factors listed in Section 42(h) of the Act.

Section 42(h)

In determining the appropriate civil penalty, the Board considers any matters of record in mitigation or aggravation of penalty. 415 ILCS 42(h) (2002). The Board's determination is aided by the five factors listed in Section 42(h) of the Act.

The People's Arguments Concerning 42(h) Factors. In its motion, the People address each of the 42(h) factors. The People assert that in considering the duration and gravity of the

¹ Section 42(h) of the Act (415 ILCS 5/42(h) (2002)), was substantially amended by P.A. 93-575, effective January 1, 2004. The amendments include establishing that the economic benefit from delayed compliance is a minimum penalty. Because the complaint in this proceeding was filed prior to January 1, 2004, the Board did not use the amendments to Section 42(h) of the Act in determining the appropriate penalty in this proceeding.

violations, the respondents' site was in violation of the Act for over a year – from at least April 20, 2000 through May, 2001. Mot. at 7.

The People argue that the respondents exhibited no diligence whatsoever as is evidenced by the length of time they left the site in an offensive condition and failed to answer the amended complaint or otherwise comply with the Act. Mot. at 7. The People assert that respondents avoided the cost of cleaning the site for over one year and avoided the costs of getting the proper permits from the Agency. *Id.*

The People suggest that \$50,000 will deter further violations of the Act by these respondents and others similarly subject to the Act. Mot. at 7-8. Finally, the People note that they are unaware of any previously adjudicated violations against any of the respondents. Mot. at 8.

Board Analysis of 42(h) Factors. The record in this case clearly shows that the violations in this matter lasted for over a one-year period of time. The respondents committed serious violations that can lead to damage to the environment and human health and welfare. Accordingly, the duration and gravity of the violations are weighed against the respondents. See 415 ILCS 5/42(h)(1) (2002). The respondents did not exhibit due diligence in attempting to comply with requirements of this Act and regulations. The waste and refuse remained on site for over one year after respondents were made aware of the violation. This factor, too, is weighed in aggravation of the civil penalty. See 415 ILCS 5/42(h)(2) (2002). The record shows that respondents benefited from avoiding the cost of cleaning the site for over one year and, and further never incurred the costs of getting the proper permits from the Agency. This factor is weighed in aggravation of the penalty. See 415 ILCS 5/42(h)(3) (2002). The respondents did not promptly remediate the site, and have not been responsive during the proceeding before the Board. Accordingly, the amount of monetary penalty which will serve to deter further violations by the violator and other persons similarly subject to the Act must be substantial, and this factor is aggravates the penalty. See 415 ILCS 5/42(h)(4) (2002). The record does not indicate that any respondent has any previously adjudicated violations. Accordingly, this factor serves to mitigate the civil penalty. See 415 ILCS 5/42(h)(5) (2002).

Penalty Determination

The Board finds that the nature of the violations in this matter posed potential risks to the environment of the State as well as to the people living near the site, for 13 months. Accordingly, the Board finds that a substantial penalty is necessary. However, any risk has ended and the likelihood of the offense being repeated is minimal. Respondents no longer own the site, and the corporation is no longer in existence. After consideration of the 33(c) and 42(h) factors, the Board finds that a penalty of \$25,000 is warranted in this case.

CONCLUSION

The Board grants the People's motion for summary judgment as to all counts in the amended complaint. The Board finds that all the respondents have violated Section 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). The Board imposes a civil penalty of \$25,000 on the respondents.

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

ORDER

1. The Board finds that Millenium Recycling & Solid Waste Consultants, Inc. (Millenium), Sherri Clementi (Clementi) and Michael Lorence (Lorence) (collectively respondents) have violated 415 ILCS 21(a),(d)(1), (e) and (p)(1) (2002);
2. The respondents must pay a penalty of \$25,000 for violating 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. The respondents must pay \$25,000 within 60 days of the date of this order. Such payment must be made by certified check or money order 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 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62702

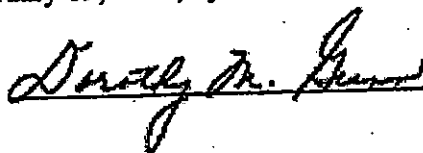
Respondents must write their federal employer identification number or social security number on the certified check or money order. Any such penalty not paid within the time prescribed will incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act (35 ILCS 5/1003) as now or hereafter amended, from the date payment is due until the date payment is received. Interest will not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

4. The respondents must cease and desist from any further violations of the Act, and associated regulations.

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 orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *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 February 19, 2004, by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above the printed name.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 20, 2004

**Certified Mail-Return Receipt Requested; and
United States Mail**

Michael Lorence
131 Fleetwood Dr.
Glendale Heights, IL 60139-1931

**Re: People v. Millenium Recycling & Solid Waste Consultants,
Sheri Clementi, and Michael Lorence, PCB # 02-77**

Dear Mr. Lorence:

The Illinois Environmental Protection Agency has referred the above-referenced matter to this Office for the initiation of a collection action and to enforce violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* Specifically, the State alleges that you, by failing to pay an assessed civil penalty of \$25,000.00 and the interest accrued to date:

1. Violated an Order of the Illinois Pollution Control Board (Attachment A) pursuant to the Act, and thereby Violated Section 42(a) of the Act, 415 ILCS 5/42(a) (2002).

It is the policy of this Office to notify a potential defendant before filing a complaint in an effort to resolve the matter. In your case, an acceptable alternative to litigation would be payment of the \$25,000.00 penalty and interest due under the Order and payment of a negotiated civil penalty for violation of Section 42(a) of the Act. Section 42 of the Act, 415 ILCS 5/42, provides for penalties up to \$50,000.00 per violation plus \$10,000.00 per day that each violation continues.

Attachment A

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

ORDER

1. The Board finds that Millenium Recycling & Solid Waste Consultants, Inc. (Millenium), Sherri Clementi (Clementi) and Michael Lorence (Lorence) (collectively respondents) have violated 415 ILCS 21(a),(d)(1), (e) and (p)(1) (2002);
2. The respondents must pay a penalty of \$25,000 for violating 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. The respondents must pay \$25,000 within 60 days of the date of this order. Such payment must be made by certified check or money order 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 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62702

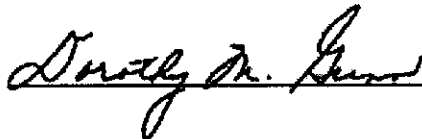
Respondents must write their federal employer identification number or social security number on the certified check or money order. Any such penalty not paid within the time prescribed will incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act (35 ILCS 5/1003) as now or hereafter amended, from the date payment is due until the date payment is received. Interest will not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

4. The respondents must cease and desist from any further violations of the Act, and associated regulations.

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 orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *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 February 19, 2004, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

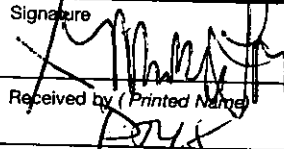
1. Article Addressed to:

Michael Lorence
131 Fleetwood Drive
Glendale Heights, IL 60139-1931

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X



Agent

Addressee

B. Received by (Printed Name)

For

C. Date of Delivery

8/2/05

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail

Registered Return Receipt for Merchandise

Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number

(Transfer from service label)

7002 0860 0004 7153 3756

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540