

ILLINOIS POLLUTION CONTROL BOARD
January 18, 2001

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 01-12
)	(Administrative Citation)
J & T RECYCLING and JOHN A.)	(IEPA No. 475-00-AC)
GORDON,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

On November 6, 2000, the Illinois Environmental Protection Agency (Agency) filed an administrative citation with the Board naming J & T Recycling (Recycling) and John A. Gordon (Gordon) as respondents. The administrative citation was filed in response to observed violations that occurred on September 27, 2000, at a facility known as Marion/Wilson Asphalt in Marion, Williamson County, Illinois. It alleges that respondents caused or allowed the open dumping of waste resulting in litter and open burning in violation of Sections 21(p)(1) and 21(p)(3) of the Environmental Protection Act (Act). 415 ILCS 5/21(p)(1) and 5/21(p)(3), as amended by Pub. Act 91-72, eff. July 9, 1999.

The Board received Gordon's petition for review on December 4, 2000, but did not receive a petition for review from Recycling. The Board accepted this case for hearing on December 7, 2000. In that December 7 order, the Board also held that if Recycling did not submit a petition for review by the statutory 35-day deadline (December 11, 2000), the Board would enter a default judgement against Recycling. See 415 ILCS 5/31.1(d)(1) (1998). Recycling did not submit a petition for review.

On December 18, 2000, the Agency and Gordon filed a joint stipulation of settlement and dismissal of respondents' petition for administrative review (stipulation). In the stipulation, Gordon admits the alleged open burning violation and agrees to pay the statutory civil penalty of \$1,500. In consideration of Gordon's admission of open burning and agreement to pay the penalty, the Agency dismisses the alleged litter violation. Gordon must cease and desist from further violations of the Act and the Board's regulations. Both the Agency and Gordon agree that, contingent upon the Board's acceptance and adoption of the terms and conditions of the stipulation, Gordon's petition for review shall be dismissed.

Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (1998)) authorizes the Board to impose a civil penalty for a violation of the Act as alleged in an administrative citation. However, Section 31.1(d) of the Act limits the relief that the Board can order in an administrative citation

action, and the compliance conditions as outlined by the parties in the joint stipulation are not within the Board's authority.

The Board order will, therefore, include that portion of the stipulation which finds a violation of Section 21(p)(3) of the Act and imposes a \$1,500 penalty in accordance with Section 42(b)(4-5) of the Act. 415 ILCS 5/42(b)(4-5), as amended by Pub. Act 91-72, eff. July 9, 1999. The additional terms of the stipulation will not be included in the Board order. These agreements may be enforceable as a matter of contract law or be alleged as aggravating factors in any future enforcement action brought pursuant to Section 31 of the Act. 415 ILCS 5/31 (1998). However, this settlement agreement in no way affects respondents' ability to comply with any federal, State, or local regulations including, but not limited to, the Act and the Board's regulations.

The Board grants the stipulation and dismisses Gordon's petition for review.

Recycling has not filed a petition for review with the Clerk of the Board within 35 days of the date of service as required by Section 31.1(d) of the Act. 415 ILCS 5/31.1(d) (1998). Accordingly, the Board finds Recycling has violated the provisions of the Act alleged in the administrative citation, which is attached hereto. Although the Board finds that Recycling has violated both Sections 21(p)(1) and 21(p)(3) of the Act as alleged in the Agency's complaint, the Board will not issue a \$3,000 penalty against Recycling. Unless otherwise specified in the complaint, joint and several liability is presumed in administrative citations. See County of Ogle v. Rochelle Disposal Service, Inc. and City of Rochelle, Illinois (August 11, 1994, and April 20, 1995), AC 94-37. In its complaint, the Agency asks for a total penalty of \$3,000 against both respondents. Since the stipulation calls for Gordon to pay a \$1,500 penalty, the Board will assess the remaining \$1,500 of the penalty against Recycling. This opinion constitutes the Board's findings of fact and conclusion of law in this matter.

ORDER

1. The Board finds that the respondent John A. Gordon (Gordon) caused or allowed open burning in violation of 415 ILCS 5/21(p)(3) (1998).
2. Gordon shall pay the sum of \$1,500 by February 5, 2001.
3. The Board finds that respondent J & T Recycling (Recycling) caused or allowed littering and open burning in violation of 415 ILCS 5/21(p)(1) and (p)(3) (1998).
4. Recycling shall pay the sum of \$1,500 by February 5, 2001.
5. Such payments shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund. The case number, case name, and respondents' social security numbers or federal employer identification numbers shall also be included on the checks (or money orders) and should clearly indicate that payment is directed to the Environmental Protection Trust Fund.

6. The checks or money orders shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

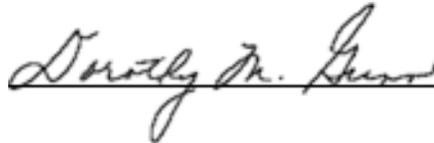
Recycling shall also send the remittance form to the Agency along with its payment.

7. Penalties unpaid after 30 days of the date of this order shall accrue interest pursuant to Section 42(g) of the Act. 415 ILCS 5/42(g) (1998).

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.520, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 18th day of January 2001 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board