

ILLINOIS POLLUTION CONTROL BOARD  
June 5, 1997

COUNTY OF DUPAGE,	)	
	)	
Complainant,	)	
	)	AC 97-13
v.	)	(County No.96 CD 494)
	)	(County No. 96 SA 494)
M. SALEEM CHOUDHRY,	)	(Administrative Citation)
	)	
Respondent.	)	

ORDER OF THE BOARD (by J. Theodore Meyer):

On April 25, 1997 respondent, M. Saleem Choudhry, (Choudhry) filed a motion for reconsideration (Motion), objecting to the Board's finding that Choudhry violated the Environmental Protection Act (Act) because the parties' stipulation provided for withdrawal of the petition for review with no admission of fault by respondent. (Motion at 1.) Choudhry requests that if the Board withdraws the petition for review, it should also dismiss the administrative citation; in the alternative, the Board should reinstate the petition for review. (Motion at 1-2.) Complainant did not file a response.

In ruling upon a motion for reconsideration the Board is to consider factors including, but not limited to, error in the previous decision and facts in the record which were overlooked. (35 Ill. Adm. Code 101.246(d).) The Board has stated that "[t]he intended purpose of a motion for reconsideration is to bring to the court's attention newly-discovered evidence which was not available at the time of the hearing, changes in law, or errors in the court's previous application of the existing law." (Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 572 N.E.2d 1154 (1<sup>st</sup> Dist. 1992).) In the present matter, since the parties' stipulation of settlement did not include an admission to the violations, the Board will grant the motion for reconsideration, clarify its position regarding the settlement agreement in this matter, vacate its prior order and direct the parties to proceed to hearing.

The County's August 26, 1996 administrative citation cited to five violations: (1) causing or allowing litter in violation of Section 21(p)(1) of the Act; (2) causing or allowing the deposition of waste in standing or flowing waters in violation of Section 21(p)(4) of the Act; (3) causing or allowing the development and/or operation of a solid waste management site without a permit issued by the Agency in violation of Sections 807.201 and 807.202 of the Board's regulations; (4) causing or allowing the open dumping of any waste in violation of Section 21(a) of the Act; and, (5) conducting any waste-storage, waste-treatment, or waste-disposal operation without a permit granted by the Agency in violation of Section 21(d) of the Act. (415 ILCS 5/21(a), 21(d), 21(p)(1), 21(p)(4) (1994); 35 Ill. Adm. Code 807.201 and 807.202.) The parties filed a joint stipulation of settlement and withdrawal of respondent's petition for administrative review wherein Choudhry neither admitted nor denied the alleged

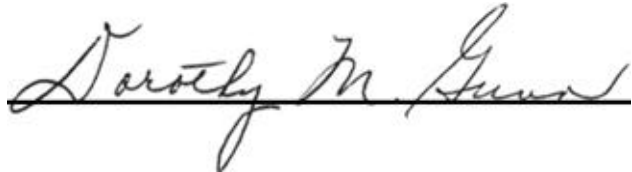
violations, but agreed to pay a civil penalty of \$1,000.00. The stipulation also stated that DuPage County agreed to dismiss four of the five violations.<sup>1</sup>

The Board's March 20, 1997 order stated that Section 31.1(d) of Act does not allow the Board to accept stipulated settlements in administrative citation proceedings. Section 31.1(d) only allows imposition of the statutory penalty after a finding of violation. Since Choudhry did not admit to the violations in the parties' stipulation and settlement agreement, this agreement left the Board with no statutory authority to accept the agreed upon penalty. As the parties' agreement indicated a willingness on the part of the respondent to pay a penalty, the Board's prior order found that Choudhry violated Sections 21(p)(1) and 21(p)(4) of the Act and ordered respondent to pay a civil penalty of \$1,000.00.

However, Choudhry's motion for reconsideration states that the Board's order is unacceptable, and requests the Board to either withdraw the petition for review and dismiss the administrative citation, or reinstate the petition for review. The first option leaves the Board with no authority to order Choudhry to pay the penalty, or to order that half of the penalty amount be paid to the Environmental Protection Trust Fund as required by the Act. (See 415 ILCS 5/42(b)(4) (1994).) As a result, the Board will vacate its prior order and reinstate Choudhry's petition for review. This matter shall proceed to hearing. The Board reminds respondent that, pursuant to Section 42(b)(4) of the Act, if the Board finds that respondent violated the Act as alleged in the administrative citation, he shall pay the civil penalty plus any hearing costs incurred by the Board and DuPage County.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 5th day of June, 1997, by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

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<sup>1</sup> The Board notes that the County may enforce only violations of Sections 21(o) and 21(p) of the Act in an administrative citation. (See 415 ILCS 5/31.1(d) (1994).) Therefore, if the County had not withdrawn the violation of Sections 807.201 and 807.202 of the Board's regulations, the Board would have stricken that violation.