

ILLINOIS POLLUTION CONTROL BOARD
January 22, 1998

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 98-13
)	(IEPA No. 473-97-AC)
MANDARIN INVESTMENT)	(Administrative Citation)
CORPORATION,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. Yi):

On November 3, 1997, the Illinois Environmental Protection Agency (Agency) filed an administrative citation with the Board naming Mandarin Investment Corporation (Mandarin), Jayne Lien and Fred Rosenberger as respondents. The administration citation was filed in response to observed violations that occurred on September 18, 1997, and alleges that respondents caused or allowed litter and open burning in violation of Sections 21(p)(1) and (p)(3) of the Environmental Protection Act (Act). 415 ILCS 5/21(p)(1), (p)(3) (1996). The Board accepted this case for hearing on November 6, 1997, and received respondent Mandarin's petition for review on December 3, 1997.

On December 8, 1997, the Board received a motion to dismiss filed by the complainant. The motion seeks to dismiss Jayne Lien and Fred Rosenberger from the administrative citation action, leaving Mandarin as the sole respondent. This motion is granted.

On January 7, 1998, the Board received a joint stipulation of settlement and dismissal of respondent's petition for administrative review. In the stipulation, Mandarin admits that it caused or allowed litter in violation of Section 21(p) of the Act, and agrees to pay the statutory civil penalty of \$500.00 on or before March 1, 1998. In consideration of respondent's admission and corresponding agreement to pay the civil penalty, the Agency agrees to dismiss the alleged violation against respondent for causing or allowing open burning in violation of Section 21(p)(3) of the Act.

In addition to the foregoing, Mandarin agrees to dispose of all remaining litter at its site by properly disposing of the litter at a permitted facility. Respondent also agrees to diligently comply with, and cease and desist from, violation of the Act (415 ILCS 5/1 et seq. (1996)), the Board's rules and regulations (35 Ill. Adm. Code Subtitles A through H), and any and all applicable federal laws and regulations. Finally, both parties agree that, contingent upon the

Board's acceptance and adoption of the terms and conditions of the joint stipulation, the petition for review shall be dismissed.

Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (1996)) authorizes the Board to impose a civil penalty pursuant to Section 42(b)(4) of the Act (415 ILCS 5/42(b)(4) (1996)) for a violation of the Act as alleged in an administrative citation. However, Section 31.1(d) of the Act limits the relief 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)(1) of the Act and imposes a \$500.00 penalty. The Board order will also reflect the withdrawal of the allegation of a Section 21(p)(3) violation, and the dismissal of the petition for review. 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. This settlement agreement in no way affects respondent's responsibility to comply with any federal, state, or local regulations including, but not limited to, the Act and the Board's pollution control regulations.

This opinion constitutes the Board's finding of fact and conclusions of law in this matter.

ORDER

1. The Board finds that the respondent, Mandarin Investment Corporation, caused or allowed litter in violation of 415 ILCS 5/21(p)(1) (1996).
2. Respondent shall pay a civil penalty in the sum of five hundred dollars (\$500.00) on or before March 1, 1998. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Illinois Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
Springfield, Illinois 62702

The certified check or money order shall clearly indicate on its face respondent's Federal Employer Identification Number or Social Security Number, and that the payment is directed to the Environmental Protection Trust Fund.

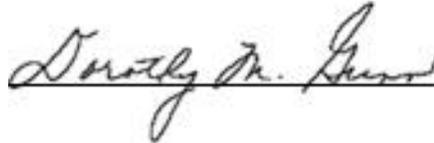
Any such penalty not paid within the time prescribed shall accrue interest pursuant to Section 42(g) of the Act. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

3. The Board dismisses the alleged violation against respondent for causing or allowing open burning, a violation of 415 ILCS 5/21(p)(3) (1996).
4. Respondent's petition for review is hereby dismissed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) 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 145 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions For Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 22nd day of January 1998, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board