

ILLINOIS POLLUTION CONTROL BOARD
November 6, 1997

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 98-2
)	(IEPA No. 269-97)
v.)	(Administrative Citation)
)	
FRANK A. OLSON,)	
)	
Respondent.)	

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

This matter comes before the Board upon an administrative citation filed July 11, 1997, by the Illinois Environmental Protection Agency (complainant) against Frank A. Olson (respondent) regarding respondent's facility located in Henderson County, Illinois. The administrative citation alleged that respondent had caused or allowed open dumping at his facility on and/or prior to June 9, 1997, in a manner which resulted in the following occurrences: (1) litter in violation of Section 21(p)(1) of the Environmental Protection Act (Act); and (2) open burning in violation of Section 21(p)(3) of the Act. 415 ILCS 5/21(p)(1), (3) (1996). On or about August 12, 1997, respondent filed its petition for review of the administrative citation with the Board.

In an effort to resolve this matter without the need for a hearing, the parties have engaged in settlement negotiations and have reached a settlement agreement. On October 20, 1997, the parties filed a joint stipulation and settlement agreement. The stipulation sets forth the facts relating to the nature, operations, and circumstances surrounding the claimed violations. Respondent admits that it caused or allowed litter in violation of 415 ILCS 5/21(p)(1) (1996) and agrees to pay a statutory penalty of \$500. In exchange for respondent's admission of liability and payment of the \$500 penalty for causing or allowing litter, complainant agrees to dismiss the alleged violation against respondent for causing or allowing open burning in violation of 415 ILCS 5/21(p)(3) (1996).

In addition to respondent's agreement to pay a penalty of \$500, respondent agrees to properly dispose of all remaining litter at his facility within sixty (60) days of entry of this order, or on or before January 6, 1998, by properly disposing of the litter at a facility permitted by complainant to accept the type of waste located at respondent's facility. Respondent also agrees to provide complainant with receipts evidencing proper disposal of the litter located at his facility. The parties also agree that these receipts shall be presented to complainant upon request, for review and photocopying. Finally, respondent agrees to diligently comply with, and shall cease and desist from violations of the Act, 415 ILCS 5/1 *et*

seq. (1996), and the Board's rules and regulations, 35 Ill. Adm. Code Subtitles A through H, and any and all applicable federal laws and regulations.

Section 31.1(d)(1) of the Act (415 ILCS 5/31.1(d)(1) (1996)) authorizes the Board to impose a penalty upon making a finding of violation. It does not, however, authorize the Board to order compliance conditions as outlined by the parties as the Board could if it were issuing an order pursuant to Section 33(c) in a Section 31(d) enforcement action. See 415 ILCS 5/31(d), 33(c) (1996).

The Board order will include that portion of the stipulation which allows for a finding of violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p) (1996)), imposition of a \$500 penalty, withdrawal of the allegation relating to a Section 21(p)(3) violation, and dismissal of the petition for review. The parties' other agreements may be enforceable as a matter of contract or be alleged as aggravating factors in any future enforcement action brought pursuant to Section 31 of the Act. 415 ILCS 5/31 (1996). 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, as admitted by Frank A. Olson (respondent), that respondent caused or allowed litter in violation of 415 ILCS 5/21(p)(1) (1996).
2. Respondent shall pay a statutory civil penalty in the sum of five hundred dollars (\$500) 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, IL 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 payment is directed to the Environmental Protection Trust Fund.

Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 the Illinois Income

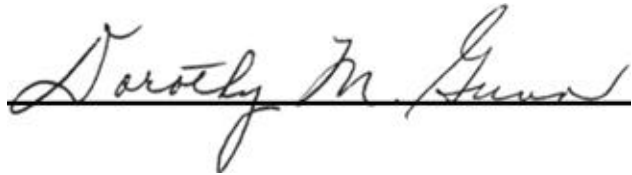
Tax Act, (35 ILCS 5/1003), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

3. The Board hereby 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 of Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 6th day of November 1997, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board