

ILLINOIS POLLUTION CONTROL BOARD
November 5, 1998

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 99-6
)	(IEPA No. 407-98-AC)
S & S GRADING OF ILLINOIS, INC.,)	(Administrative Citation)
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

On August 7, 1998, complainant filed an administrative citation with the Board against Lawrence County Disposal Centre, Inc. (County Disposal), S & S Grading of Illinois, Inc., and Gary McLaren. On September 8, 1998, complainant filed a motion to dismiss McLaren as a respondent because it was unable to complete service upon him. See 415 ILCS 5/31.1(b) (1996). In the Board's September 17, 1998 order, the Board granted complainant's motion to dismiss McLaren as a respondent and found that the remaining respondent, County Disposal and S & S Grading of Illinois, Inc., violated the provisions alleged in the administrative citation. The Board imposed a civil penalty in the amount of \$1,500 on both respondents.

On October 22, 1998, County Disposal filed a document entitled "Special and Limited Appearance of Lawrence County Disposal Centre, Inc., Challenging Personal and Subject Matter Jurisdiction" (Mot.). County Disposal challenges the Board's personal and subject matter jurisdiction over County Disposal, and asks the Board to reconsider its September 17, 1998 ruling against County Disposal. (Mot. at 1). Specifically, County Disposal alleges that complainant failed to properly serve the administrative citation on County Disposal, pursuant to Section 31.1(b) of the Environmental Protection Act, 415 ILCS 5/31.1(b) (1996) and 35 Ill. Adm. Code 103.123. (Mot. at 3).

On October 28, 1998, the Agency filed a response to County Disposal's motion. The Agency states that it does not object to the Board vacating its September 17, 1998 order, to the extent it entered a finding and penalty against County Disposal. Further, the Agency does not object to the Board dismissing the administrative citation as it relates to County Disposal.

The Board grants County Disposal's motion for reconsideration. The Board's September 17, 1998 order is vacated to the extent that it entered a default order against County Disposal. The matter as to County Disposal is hereby dismissed.

Because the Board has dismissed both Gary McLaren and Lawrence County Disposal Centre, Inc. from this action, any further pleadings in this matter should include a caption naming S & S Grading of Illinois, Inc. as the sole respondent.

For the convenience of the parties, that portion of the September 17, 1998 order which imposes a penalty against S & S Grading is set forth below.

It is hereby ordered that:

1. S & S Grading of Illinois, Inc. shall pay a civil penalty in the amount of \$1,500, within 30 days of this order.
2. Payment shall be made in the form of a certified check or money order, payable to the Illinois Environmental Protection Trust Fund. The case number, case name and respondent's social security number or federal employer identification number should also be included on the check (or money order).
3. The check (or money order) and the remittance form shall be sent to:

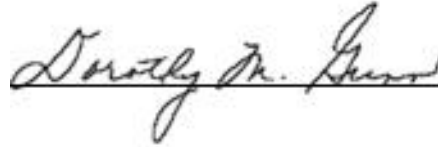
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

4. 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) (1996).
5. Payment of this penalty does not prevent future prosecution if the violations continue.

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 172 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 5th day of November 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