

ILLINOIS POLLUTION CONTROL BOARD
January 20, 2000

COUNTY OF SANGAMON,)	
)	
Complainant,)	
)	
v.)	AC 00-33
)	(SCDPH 99-AC-21)
AMERICAN TREE SERVICE, ROY F.)	(Administrative Citation)
THROOP,)	
)	
Respondent.)	

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

On October 27, 1999, pursuant to Section 31.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/31.1(b) (1998)), the County of Sangamon (County) issued an administrative citation to respondent American Tree Service, Roy F. Throop. The administrative citation alleges that respondent violated Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (1998)). The alleged violations occurred at 1701 North Lincoln, Springfield, Sangamon County, Illinois.

Respondent was served with the administrative citation on October 28, 1999. On December 13, 1999, respondent mailed a petition for review of the administrative citation which the Board received on December 15, 1999. The Board then accepted this matter for hearing. See County of Sangamon v. American Tree Service, Roy F. Throop (January 6, 2000), AC 00-33. Respondent's attorney Delbert D. Haschemeyer of Stratton, Giganti, Stone & Kopec filed a notice of withdrawal of appearance with the Board on January 18, 2000.

Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (1998)) states, in pertinent part:

If the person named in the administrative citation fails to petition the Board for review within 35 days from the date of service, the Board shall adopt a final order, which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) of Section 42.

The County served respondent with the administrative citation on October 28, 1999. The deadline to file a petition for review with the Board was 35 days later, on December 2, 1999. However, respondent did not file its petition for review with the Board until December 15, 1999. As a result, the Board does not have jurisdiction to accept this matter for hearing. Instead, the Board must issue a final order finding a violation of the Act against respondent as alleged in the County's October 27, 1999 administrative citation, which is attached hereto. As a result, the Board, on its own motion, vacates its January 6, 2000 order accepting this matter for hearing.

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

ORDER

1. The Board vacates its January 6, 2000 order in this matter. See County of Sangamon v. American Tree Service, Roy F. Throop (January 6, 2000), AC 00-33
2. The Board finds that respondent caused or allowed the open dumping of waste which resulted in open burning in violation of Section 21(p)(3) of the Environmental Protection Act. 415 ILCS 5/21(p)(3) (1998).
3. Respondent shall pay the sum of \$500 by February 22, 2000. Payment shall be made by certified check or money order to the Sangamon County Department of Public Health. The case number and case name must be included on the certified check or money order. In addition, the federal employer identification number for American Tree Service or the social security number for Roy F. Throop shall also be included on the check or money order.
4. The check or money order and the County's remittance form shall be sent by first class mail to:

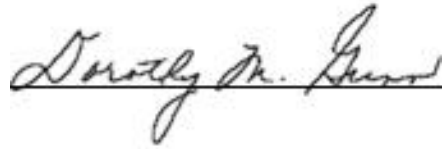
James Stone, Director
Sangamon County Department of Public Health
2501 North Dirksen Parkway
Springfield, Illinois 62702
5. Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003 (1998)), 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.

IT IS SO ORDERED.

Board Member E.Z. Kezelis abstained.

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 101.246, 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 20th day of January 2000 by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board