

ILLINOIS POLLUTION CONTROL BOARD
September 5, 2002

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 02-58
)	(IEPA No. 242-02-AC)
RCS, INC. and ROBERT FOSNOCK,)	(Administrative Citation)
)	
Respondents.)	

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

On August 8, 2002, the Board dismissed this matter and closed this docket on the grounds that RCS, Inc. and Robert Fosnock (respondents) were not timely served with the administrative citation. The Illinois Environmental Protection Agency (Agency) filed a motion for reconsideration on August 19, 2002, pointing out that the service deadline fell on a Saturday, and respondents were served on the next business day. *See* 35 Ill. Adm. Code 101.300(a). On August 29, 2002, the respondents filed a response. Respondents do not address the service issue, but state that they had already paid the required civil penalty, and attached a copy of the canceled check.

The Board grants the Agency's motion, and vacates its August 8, 2002 order in this matter. Since the Agency timely served the administrative citation on respondents, and respondents filed no petition for review, the Board now enters this order finding respondents have committed the violations alleged, and assessing the statutory civil penalty, but also acknowledging that they have already paid the penalty.

On June 3, 2002, the Agency timely filed an administrative citation against respondents. *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleges that respondents violated Sections 21(o)(5) and (o)(12) of the Environmental Protection Act (Act) (415 ILCS 5/21(o)(5), (o)(12) (2000), *as amended by* P.A. 92-0574, eff. June 26, 2002). The Agency further alleges that respondents violated these provisions by conducting a sanitary landfill in a manner which resulted in uncovered refuse remaining from a previous operating day, and failure to collect and contain litter at the end of the operating day at a facility located at 1336 Crystal Lake Road, Jerseyville, Jersey County. The administrative citation meets the content requirements of 35 Ill. Adm. Code 108.202(b).

As noted above, the Agency served the administrative citation on respondents within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2000); *see also* 35 Ill. Adm. Code 108.202(b). To contest an administrative citation, a respondent must file a petition

with the Board no later than 35 days after being served with the administrative citation. If the respondent fails to do so, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. 415 ILCS 31.1(d)(1) (2000); 35 Ill. Adm. Code 108.204(b), 108.406. Here, respondents failed to timely file a petition. Accordingly, the Board finds that respondents violated Sections 21(o)(5) and (o)(12) of the Act.

The civil penalty for violating Section 21(o) is \$500 for each violation. 415 ILCS 5/42(b)(4) (2000); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(o), the total civil penalty is \$1,000. Under Section 31.1(d)(1) of the Act, the Board attaches the administrative citation and makes it part of the order below.

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

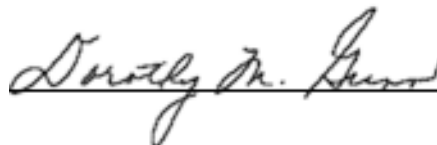
ORDER

1. RCS, Inc. and Robert Fosnock (respondents) must pay a civil penalty of \$1,000. Respondents paid this penalty on June 26, 2002. Accordingly, no further payment is required.
2. Payment of this penalty does not prevent future prosecution if the violations continue.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 5, 2002, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board