

ILLINOIS POLLUTION CONTROL BOARD  
March 15, 2007

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 07-31  
 ) (IEPA No. 376-06-AC)  
MARK A. LEWIS, ) (Administrative Citation)  
 )  
Respondent. )

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On January 5, 2007, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Mark A. Lewis (Lewis). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns a site commonly known to the Agency as “Clay City/Lewis, Mark A.,” designated with Site Code No. 0258025002, and located at 1835 Bunnyville Drive in rural Clay City, Clay County. For the reasons below, the Board finds that Lewis violated the Environmental Protection Act (Act) (415 ILCS 5 (2004)) and orders Lewis to pay \$1,500 in civil penalties.

Under the Act, an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2004); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that Lewis violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2004)) by causing or allowing the open dumping of waste in a manner resulting in litter. The Agency asks the Board to impose a \$1,500 civil penalty on Lewis. As required, the Agency served the administrative citation on Lewis within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2004); *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 a respondent fails to do so, the Board must find that the respondent committed the violation alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b), 108.406. Here, Lewis was served with the administrative citation on January 5, 2007. The Board received Lewis’ petition on February 27, 2007. When the Board receives a petition after the 35-day deadline, the postmark date of that petition is considered its filing date under the Board’s procedural rules. *See* 35 Ill. Adm. Code 101.300(b)(2). The postmark date on Lewis’ petition is February 17, 2007. The deadline for a petition to be filed in this case, however, was

February 9, 2007. Lewis therefore failed to timely file a petition. Accordingly, the Board finds that Lewis violated Section 21(p)(1) of the Act.

The civil penalty for violating any provision of subsection (p) of Section 21 is \$1,500 for each violation, except that the penalty amount is \$3,000 for each violation that is the person's second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500(a). Because there is one violation and no indication in the record that this is a second or subsequent adjudicated violation, the total civil penalty is \$1,500. 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**

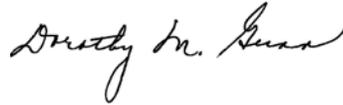
1. Lewis must pay a civil penalty of \$1,500 no later than April 16, 2007, which is the first business day following the 30th day after the date of this order.
2. Lewis must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and Lewis' social security number must be included on the certified check or money order.
3. Lewis must send the certified check or money order and the remittance form to:  
  
Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
5. Payment of this penalty does not prevent future prosecution if the violation continues.

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) (2004); *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 March 15, 2007, by a vote of 4-0.

A handwritten signature in black ink, appearing to read "Dorothy M. Gunn". The signature is written in a cursive style with a large, looping initial "D".

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board