

ILLINOIS POLLUTION CONTROL BOARD
October 1, 2009

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 10-3
) (IEPA No. 164-09-AC)
LES CURTIS,) (Administrative Citation)
)
Respondent.)

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

On August 18, 2009, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Les Curtis (Curtis). *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Curtis' residential property located at 28800 Bodeyville Road in Gale, Alexander County. The property is commonly known to the Agency as the "Gale/Curtis, Les" site and is designated with Site Code No. 0035890012. For the reasons below, the Board accepts Curtis' petition as timely filed, but directs Curtis to file an amended petition to cure two deficiencies.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)),¹ 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) (2008); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that on July 24, 2009, Curtis violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2008)) by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of general or clean construction or demolition debris at her Gale County site. The Agency asks the Board to impose the statutory civil penalty of \$1,500 per violation for a total civil penalty of \$3,000.

As required, the Agency served the administrative citation on Curtis within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2008); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by September 19, 2009. On September 22, 2009, the Board received Curtis' petition to contest the administrative citation. The petition is considered timely filed because it was postmarked on or before the filing deadline. *See* 35 Ill. Adm. Code 101.300(b)(2) ("mailbox rule").

¹ All citations to the Act are to the 2008 compiled statutes because the provisions at issue have not been substantively amended in the 2008 compiled statutes.

The Board finds, however, that there are two deficiencies with Curtis' petition that must be remedied before the Board can accept this case for hearing. First, contrary to the Board's procedural rules, Curtis fails to allege any grounds for contesting the administrative citation. *See* 35 Ill. Adm. Code 108.206. Second, there is no indication that Curtis served a copy of the petition upon the Agency. Under the Board's procedural rules, Curtis was required to serve a copy of the petition upon the Agency and file proof of that service with the Board. *See* 35 Ill. Adm. Code 101.304. The Board directs Curtis to file an amended petition, accompanied by a certificate of service. The amended petition must state any grounds for contesting the administrative citation. The certificate of service must document that Curtis served a copy of the amended petition upon the Agency. If Curtis fails to file these documents with the Board by November 2, 2009, which is the first business day following the 30th day after the date of this order, the Board will dismiss the petition and enter a default order against Curtis, imposing the \$3,000 penalty.

If Curtis proceeds to contest the administrative citation but does not prevail on the merits of the case, Curtis will have to pay not only the \$3,000 penalty but also any hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2008); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available from the Clerk of the Board and on the Board's website at www.ipcb.state.il.us. *See* 35 Ill. Adm. Code 108.504.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 1, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board