

ILLINOIS POLLUTION CONTROL BOARD  
January 24, 2002

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 02-25
	)	(IEPA No. 489-01-AC)
ROBERT WIERSEMA,	)	(Administrative Citation)
	)	
Respondent.	)	

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

On December 3, 2001, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Robert Wiersema (Wiersema). *See* 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Wiersema violated Sections 21(p)(1), 21(p)(4), and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(4), (p)(7) (2000)). The Agency further alleges that Wiersema violated these provisions by causing or allowing the open dumping of waste in a manner resulting in litter, the deposition of waste in standing or flowing waters, and the deposition of general construction or demolition debris at his facility located between Claire Boulevard and 135th Street and to the east of Sacramento Avenue in Robbins, Cook County. The property is commonly known as Robbins/Windy City Waste and Recycling. The administrative citation meets the content requirements of 35 Ill. Adm. Code 108.202(b).

As required, the Agency served the administrative citation on Wiersema 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.

In this matter, Wiersema was served with the administrative citation on December 3, 2001, as indicated on the certified mail receipt the Agency filed on December 13, 2001. Wiersema filed a petition for review received by the Board on January 14, 2002, which the notice of filing states was mailed on January 10, 2002. Based on the December 3, 2001 service date, the 35-day appeal period expired on January 7, 2002. Wiersema’s petition was neither received by the Board nor postmarked on or before January 7, 2002. *See* 35 Ill. Adm. Code 101.300(b). Accordingly, the Board finds that Wiersema failed to timely file his petition, and dismisses the petition for review for lack of jurisdiction. Since no timely appeal was filed, the Board further finds that Wiersema violated Sections 21(p)(1), (p)(4), and (p)(7) of the Act.

The civil penalty for violating Section 21(p) of the Act is \$1,500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b)(4-5) (2000); 35 Ill. Adm. Code 108.500(a). Because there are three violations of Section 21(p) of the Act and these violations are first offenses, the total civil penalty is \$4,500. Under Section 31.1(d)(1) of the Act, the Board attaches the administrative citation and makes it part of the order below.

### **ORDER**

1. Robert Wiersema's (Wiersema) petition for review received by the Board on January 14, 2002 and mailed on January 10, 2002, is dismissed as untimely filed. Wiersema must pay a civil penalty of \$4,500 no later than February 24, 2002, which is the 30th day after the date of this order.
2. Wiersema 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 Wiersema's social security number or federal employer identification number must be included on the certified check or money order.
3. Wiersema 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) (2000)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2000)).
5. Payment of this penalty does not prevent future prosecution if the violations continue.

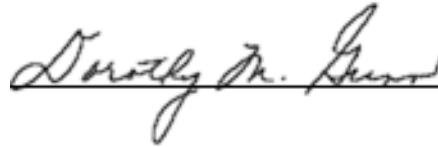
IT IS SO ORDERED.

Board Member G.T. Girard dissented.

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 January 24, 2002, by a vote of 6-1.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board