

ILLINOIS POLLUTION CONTROL BOARD

June 22, 2000

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 00-81
)	(IEPA No. 125-00-AC)
JESSE LOCKHART,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by S.T. Lawton, Jr.):

On May 3, 2000, the Illinois Environmental Protection Agency (Agency) issued an administrative citation to Jesse Lockhart (respondent) pursuant to Section 31.1(b) of the Environmental Protection Act (Act). 415 ILCS 31.1(b)(1998). The administrative citation alleges respondent violated Sections 21(p)(1) and 21(p)(3) of the Act by open dumping without a permit and open dumping resulting in open burning. 415 ILCS 5/21(p)(1) and 5/21(p)(3) (1998).

On May 11, 2000, respondent filed a letter with the Board, challenging the administrative citation by denying he owned the property where the alleged violations occurred. The Board sent the Agency a copy of respondent's letter on May 12, 2000, and issued an order on May 18, 2000, accepting the letter as a proper petition for review pursuant to Section 31.1(d). 415 ILCS 31.1(d)(1998).

The Agency filed a motion to dismiss the petition for review on May 30, 2000. The motion raises two main arguments. It first alleges respondent's petition is flawed by not complying with form requirements in Sections 101.103 of the Illinois Administrative Code. 35 Ill. Adm. Code 101.103(1994). Second, the motion states the Board lacks personal jurisdiction over the Agency because respondent failed to serve the petition for review on the Agency within 35 days of receiving the administrative citation. The respondent has not filed a response to the motion.

The Board denies the Agency's motion to dismiss for reasons set forth below.

1. The Board found the petition for review sufficient by order of May 18, 2000.

The Agency claims the Board is not authorized to accept a petition for review which departs from form requirements under Sections 101.103(a) through 101.103(e) of the Illinois Administrative Code unless respondent requests in writing to waive certain requirements. 35 Ill. Adm. Code

101.103(1994). Specifically, the Agency claims the Board should dismiss the petition for review because it lacks a proper caption and does not contain formal language requesting a hearing.

Although respondents cannot ignore Board regulations prescribing filing requirements, the Board reserves the right to waive non-compliance with such requirements. See 35 Ill. Adm. Code 101.103(e)(1994). In its order issued on May 18, 2000, the Board found the petition sufficiently expressed a challenge to the citation based on the statutory defense that respondent did not own the property where the violations allegedly occurred.

2. The respondent timely filed its petition with the Board, and the Board gave the Agency sufficient notice of the petition in accordance with Section 31.1(d)(2) of the Act.

In the Agency's motion to dismiss, it concedes receiving respondent's petition for review on May 11, 2000. However, the motion states the Board lacks personal jurisdiction over the Agency because respondent failed to serve his petition for review on the Agency within the 35-day filing deadline. The Board ensured the Agency received sufficient notice of respondent's petition for review in accordance with procedures set forth in the administrative citation section of the Act. See 415 ILCS 31.1(d)(1998).

The Illinois General Assembly enacted specific procedures regarding administrative citations. See 415 ILCS 31.1(1998). Section 31.1(d) requires respondents to file a petition for review with the Board within 35 days from the date of service. 415 ILCS 31.1(d)(1998). The Board then notifies the Agency and the respondent of a hearing date. *Id.* The Board rules do not currently include specific procedures addressing administrative citations. However, the Board has proposed a new part 108 for clarification. See *In re Revision of the Board's Procedural Rules*: 35 Ill. Adm. Code 101-130 (March 16, 2000), R00-20.

The complainant cites sections 101.143, 103.122 and 103.123 of the Board's procedural rules in support of its motion to dismiss. 35 Ill. Adm. Code 101.143, 103.122 and 103.123(1994). Section 101.143 solely delineates different means of service on parties, and does not touch the heart of the issue of whether respondent must serve the Agency within the 35-day filing deadline. Sections 103.122 and 103.123, which establish service requirements in enforcement cases, are not applicable to the present case because Part 103 of the Board's procedural rules predates Section 31.1 in the Act. Section 103.123 of the Board's procedural rules was last amended in 1985. See R84-10 (Jan. 16, 1985). Section 31.1 of the Act was not enacted until 1986, and was last revised in 1994. See Pub. Act 76-2429, added by Pub. Act 84-1320, § 30, eff. Sept. 4, 1986; Pub. Act 99-670, Art. 2, § 2-57, eff. Dec. 2, 1994. Section 103.101 further states the section applies to specific types of cases. 35 Ill. Adm. Code 103.101(1994). The list does not include administrative citations. *Id.* Section 103 only applies to the extent applicable to proceedings, and Section 103.123 is not applicable to procedures involving administrative citations, as found in this matter. 35 Ill. Adm. Code 103.101(1994).

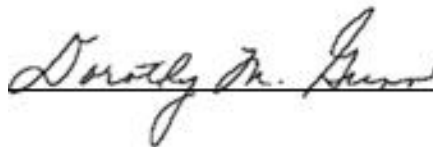
In the absence of procedures regarding service in Section 31.1 of the Act, the Board, through its Clerk, ensures the Agency receives notice of *pro se* petitions for review by providing the Agency with copies within 24 hours of the respondent's filing. In fact, the Agency submitted its motion after receiving a copy of the petition for review well within 35 days after its service of the administrative citation. The Board finds under these circumstances that its procedure satisfies the intent of Section 31.1(d)(2) of the Act. 415 ILCS 31.1(d)(2)(1998).

The Agency also cites to two enforcement proceedings that are not supportive of the Agency's position. In Trepanier, et. al. v. Board of Trustees of the University of Illinois at Chicago, et. al. (November 21, 1996), PCB 97-50, the Board dismissed the enforcement proceeding without prejudice because the *pro se* citizen complainant failed to serve a complaint upon an authorized agent of the University. The order in Wholesale Oil Company v. IEPA (April 6, 2000), PCB 00-120, is also irrelevant in that the Board dismissed the case because the petitioner failed to file an amended petition for review, as required by a previous Board order. In the matter at hand, respondent filed a valid and timely petition for review with the Board.

Since the Board correctly construed the respondent's letter as a petition for review, and the Agency received notice of respondent's petition as required by Section 31.1(d) of the Act, the Board denies the Agency's motion to dismiss. 415 ILCS 31.1(d)(2)(1998). This order does not dispose of any substantive contentions of the parties, which can be heard at a plenary hearing regarding the administrative citation.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 22nd day of June 2000 by a vote of 6-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board