

ILLINOIS POLLUTION CONTROL BOARD
May 20, 2004

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 04-60
)	(IEPA No. 130-04-AC)
SHARYN FULLER and CARL BENEDICT)	(Administrative Citation)
d/b/a BENEDICT AUTO SALES,)	
)	
Respondents.)	

ORDER OF THE BOARD (by T.E. Johnson):

On April 6, 2004, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Sharyn Fuller (Fuller) and Carl Benedict d/b/a Benedict Auto Sales (Benedict) collectively (respondents). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that respondents violated Sections 21(p)(1) of the Environmental Protection Act. 415 ILCS 5/21(p)(1) (2002). The Agency further alleges that respondents violated this provision by causing or allowing the open dumping of waste in a manner that resulted in litter at the a property located between Kickapoo Creek and the railroad tracks in Pottstown, Peoria County.

As required, the Agency served the administrative citation on Benedict within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2002); *see also* 35 Ill. Adm. Code 108.202(b). To date, the Agency has not filed a proof of service on Fuller. 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 he committed the violation alleged and impose the corresponding civil penalty. 415 ILCS 31.1(d)(1) (2002); 35 Ill. Adm. Code 108.204(b), 108.406.

On April 16, 2004, the Agency submitted proof that Benedict had received service on April 2, 2004; consequently, any timely petition for review for this respondent would have to be postmarked on or before May 7, 2004. *See* 35 Ill. Adm. Code 101.300(b)(2). On May 4, 2004, Benedict filed a handwritten petition for review of the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). In total, the petition states: “I am contesting the Administrative Citation AC (IEPA No. 130-04-AC) and requesting a petition for review.”

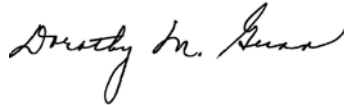
The Board finds that the petition for review is deficient because it does not states a basis for the appeal, and does not include an appropriate proof of service. *See* 35 Ill. Adm. Code 101.304 and 108.206.

The Board directs Benedict to file an amended petition for review that corrects these deficiencies on or before June 21, 2004. If Benedict fails to file an adequate amended petition, the Board may dismiss the appeal filed on May 4, 2004, as inadequate and enter an order of default against him, finding them in violation and assessing the statutory \$1,500 penalty sought by the Agency.

To date, the Agency has not filed any proof of service regarding Fuller. The Agency is directed to file the appropriate proof of service on or before June 4, 2004. If proof of service is not filed, the Board may dismiss the administrative citation against Fuller.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 20, 2004, by a vote of 5-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board