

ILLINOIS POLLUTION CONTROL BOARD  
January 5, 2006

COUNTY OF JACKSON, )  
 )  
 Complainant, )  
 )  
 v. ) AC 06-14  
 ) (Site Code 0770405015)  
 ROCKY LEE MORSE, ) (Administrative Citation)  
 )  
 Respondent. )

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

On October 27, 2005, the County of Jackson timely filed an administrative citation against Rocky Lee Morse. *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The County of Jackson alleges that on September 8, 2005, Rocky Lee Morse violated Section 21(p)(1), (p)(3) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3) and (p)(7) (2004)). The County of Jackson further alleges that Rocky Lee Morse violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) litter; (2) open burning; and (3) deposition of general construction or demolition debris or clean construction or demolition debris at the Grand Tower/Rocky Lee Morse site in Jackson County.

As required, the County of Jackson served the administrative citation on Rocky Lee Morse 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 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 5/31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b), 108.406.

Since Rocky Lee Morse was served with the administrative citation on October 18, 2005, any on-time petition for review would need be be postmarked no later than November 22, 2005. *See* 415 ILCS 5/31.1(d)(1) (2004). On November 30, 2005, the Board received a letter from Mr. Morse dated November 29, 2005. In his letter, Mr. Morse requested a hearing, and stated that the County had agreed to accept the late filing.

The Board cannot lawfully accept this late-filed petition for review. Neither the County nor the Board has the statutory authority to agree to an extension of the 35-day appeal period for administrative citations. The Act allows the Board to accept late petitions only in some kinds of cases, such as permit appeals, and under specific conditions. There is no specific allowance for late-filed petitions in the administrative citation program. Compare, 415 ILCS 5/40(a)(1) (2004) and 35 Ill. Adm. Code 105.208 (authorizing agreed 90-day extension of time of filing of permit

appeal) and 415 ILCS 5/31.1(d)(1)(2004) (directing Board to adopt final order in administrative citation cases unless petition for review filed within 35 days).

Rocky Lee Morse failed to timely file a petition. The Board lacks jurisdiction to hear the late-filed petition, and the Board must dismiss that petition. Accordingly, the Board finds that Rocky Lee Morse violated Section 21(p) of the Act as alleged in the administrative citation.

The civil penalty for violating Section 21(p) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500(a). Because there are three violations of Section 21(p) 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.

This opinion constitutes the Board's finding of fact and conclusions of law.

### **ORDER**

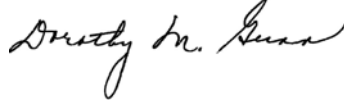
1. The Board finds that Rocky Lee Morse violated Sections 21(p)(1), (p)(3) and (p)(7) of the Act as alleged. Rocky Lee Morse must pay a civil penalty of \$4,500 no later than January 16, 2006, which is the first business day after the 30th day after the date of this order.
2. Rocky Lee Morse must pay the civil penalty by certified check or money order, made payable to the Jackson County Treasurer's Office. The case number, case name, and Rocky Lee Morse's social security number or federal employer identification number must be included on the certified check or money order.
3. Rocky Lee Morse must send the certified check or money order and the remittance form to:  
  
Shirley Dillinger Booker  
Jackson County Treasurer  
Murphysboro, Illinois, 62966
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 violations continue.

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 January 5, 2006, by a vote of 4-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board