

ILLINOIS POLLUTION CONTROL BOARD

August 4, 2006

COUNTY OF WAYNE,)
)
 Complainant,)
)
 v.) AC 06-55
) (Site Code 1910405002)
 JULIAN BUCHANAN,) (Administrative Citation)
)
 Respondent.)

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

On June 22, 2006, the County of Wayne timely filed an administrative citation against Julian Buchanan. *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The County of Wayne alleged that on May 16, 2006, Julian Buchanan violated Section 21(p)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) (2004)). The County of Wayne further alleges that Julian Buchanan violated this provision by causing or allowing the open dumping of waste in a manner that resulted in litter. The alleged violations occurred in Arrington Township, Wayne County.

As required, the County of Wayne served the administrative citation on Julian Buchanan 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). On July 24, 2006, Julian Buchanan filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). Julian Buchanan alleges that the alleged violations were the result of uncontrollable circumstances: debris on the site was what remained of buildings damaged or destroyed by a tornado in April 2002. He further asserts that that remaining debris has since been removed from the site. *See* 35 Ill. Adm. Code 108.206.

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 violation alleged and impose the corresponding civil penalty. 415 ILCS 5/31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b), 108.406. Here, any petition for review was due on July 22, 2006. Julian Buchanan filed his petition for review using Federal Express, and the Board received the petition on July 24, 2006. Any documents “filed in person, by messenger service or mail delivery service other than U.S. Mail, . . . are considered filed when they are received in the Office of the Clerk.” 35 Ill. Adm. Code 101.300(b)(1). Thus, the filing date of the petition is not within the time allowed for filing, so the petition was not timely filed. Accordingly, the Board dismisses the untimely filed petition and finds that Julian Buchanan violated Section 21(p)(1) of the Act.

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 is one violation of Section 21(p) and this violation is a first offense, the total civil penalty is \$1,500. 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

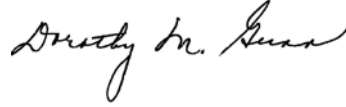
1. The Board finds that Julian Buchanan violated Sections 21(p)(1) of the Act as alleged. Julian Buchanan must pay a civil penalty of \$1,500 no later than September 5, 2006, which is the first business day after the 30th day after the date of this order.
2. Julian Buchanan must pay the civil penalty by certified check or money order, made payable to the Wayne County Treasurer's Office. The case number, case name, and Julian Buchanan's social security number or federal employer identification number must be included on the certified check or money order.
3. Julian Buchanan must send the certified check or money order and the remittance form to:

Donna Vaughan
Wayne County Treasurer
307 East Main Street
Fairfield, Illinois 62837
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 violation continues.

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 August 4, 2006, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board