

ILLINOIS POLLUTION CONTROL BOARD
May 17, 2007

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 07-53
) (IEPA No. 58-07-AC)
RENEE C. LO,) (Administrative Citation)
)
Respondent.)

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

On April 4, 2007, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Renee C. Lo (respondent). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The administrative citation concerns a site commonly known as Champaign/LoFarms with Site Code No. 0198025005, and located at 1404 N. Rising Road in Champaign County. For the reasons below, the Board finds that respondent violated the Environmental Protection Act (Act) (415 ILCS 5 (2004)) and orders respondent to pay \$4,500 in civil penalties.

Under the Act, an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2004); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that respondent violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2004)) by operating an open dump resulting in: (1) litter; (2) open burning; (3) deposition of general construction or demolition debris or clean construction or demolition debris. The Agency asks the Board to impose a \$4,500 civil penalty on respondent. As required, the Agency served the administrative citation on respondent 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 a respondent fails to do so, the Board must find that the respondent committed the violation alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b), 108.406. Here, any petition for review was due on May 9, 2007. Respondent filed a "Response to Citation" with the Board on May 14, 2007 and the certificate of service indicates that the response was mailed on May 10, 2007.

The Board cannot lawfully accept this late-filed petition for review. Neither the Agency 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) *with* 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).

Respondent failed to timely file a petition. Accordingly, the Board finds that respondent violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2004)).

The civil penalty for violating Section 21(p) is \$1,500 for each violation. 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500(a). Because there are three violations, 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. Respondent must pay a civil penalty of \$4,500 no later than June 18, 2007, which is the first business day following the 30th day after the date of this order.
2. Respondent must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund.
3. Respondent must send the certified check or money order and the remittance form to:

Fiscal Services
Illinois Environmental Protection Agency
1021 N. 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) (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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 17, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board