

ILLINOIS POLLUTION CONTROL BOARD  
July 23, 2009

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 09-41
	)	(IEPA No. 65-09-AC)
MARK A. LEWIS,	)	(Administrative Citation)
	)	
Respondent.	)	

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

On May 6, 2009, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Mark A. Lewis. *See* 415 ILCS 5/31.1(c) (2008); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns Mr. Lewis’s residential property located at 1835 Bunnyville Drive in Clay City, Clay County. The property is commonly known to the Agency as the “Clay City/Lewis, Mark A.” site and is designated with Site Code No. 0258025002. For the reasons below, the Board accepts Mr. Lewis’s amended petition as timely filed, but directs Mr. Lewis to file a second amended petition.

Under the Environmental Protection Act (Act)<sup>1</sup> (415 ILCS 5 (2008)), 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) (2008); 35 Ill. Adm. Code 108.

In this case, the Agency alleges that Mr. Lewis violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2006)) by causing or allowing the open dumping of waste in a manner resulting in litter at his Clay County site. The Agency further alleges that this violation is Mr. Lewis’s second or subsequent violation of Section 21(p)(1) and therefore asks the Board to impose a \$3,000 civil penalty on Mr. Lewis.

As required, the Agency served the administrative citation on Mr. Lewis within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2008); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Any petition to contest the administrative citation was due by June 5, 2009. On June 8, 2009, the Board received Mr. Lewis’s petition to contest the administrative citation. The petition is considered timely filed because it was postmarked on or before the filing deadline. *See* 35 Ill. Adm. Code 101.300(b)(2) (“mailbox rule”). On June 18, 2009, the Board accepted Mr. Lewis’s petition as timely filed. However, the Board identified two deficiencies

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<sup>1</sup> All citations to the Act will be to the 2008 compiled statutes, unless the section at issue has been substantively amended in the 2008 compiled statutes.

which must be remedied before the Board can accept this case for hearing. First, the Board found that the petition was deficient under the Board's procedural rules because the petition failed to state Mr. Lewis' grounds for appeal. *See* 35 Ill. Adm. Code 108.206. Second, there was no indication that Mr. Lewis had served a copy of the petition on the Agency. *See* 35 Ill. Adm. Code 101.304. On June 18, 2009, the Board issued an order directing Mr. Lewis to correct these deficiencies by filing an amended petition on or before July 6, 2009.

On July 8, 2009, Mr. Lewis filed an amended petition (Am. Pet.) contesting the administrative citation. The petition is considered timely filed because it was postmarked on or before the filing deadline. *See* 35 Ill. Adm. Code 101.300(b)(2) ("mailbox rule"). In the amended petition, Mr. Lewis alleges that he is "willing to work with the [Agency] to get all matters resolved." Am. Pet. at 1. The Board notes, however, that in an administrative citation proceeding, voluntary clean up acts performed by a respondent after a site inspection are generally neither a defense to the alleged violation nor relevant in determining the civil penalty amount. *See, e.g., IEPA v. Jack Wright*, AC 89-227, slip op. at 7 (Aug. 30, 1990). Mr. Lewis also maintains that he "did not understand that there was still a violation on [his] property." Am. Pet. at 1. However, one may "cause or allow" a violation of the Act without knowledge or intent. *See, e.g., People v. Fiorini*, 143 Ill. 2d 318, 336, 574 N.E.2d 612, 621 (1991).

The Board finds that the amended petition filed by Mr. Lewis cures the petition's deficiency with respect to service on the Agency. *See* 35 Ill. Adm. Code 101.304. However, the Board finds that Mr. Lewis's amended petition fails to adequately state the grounds for appeal. *See* 35 Ill. Adm. Code 108.206. In order for the Board to accept this case for hearing, Mr. Lewis's petition must allege grounds for contesting the administrative citation, which are contained in Section 108.206 of the Board's procedural rules. *See* 35 Ill. Adm. Code 108.206.

The Board therefore directs Mr. Lewis to file a second amended petition for review correcting this deficiency. The Board also directs the clerk to enclose a copy of the Board's procedural rules with this order. If Mr. Lewis fails to file a second amended petition by August 24, 2009, the Board will enter a default order against Mr. Lewis, imposing the \$3,000.00 penalty.

If Mr. Lewis proceeds to contest the administrative citation but does not prevail on the merits of the case, Mr. Lewis will have to pay not only the \$3,000 penalty but also any hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2008); 35 Ill. Adm. Code 108.500 (2008). A schedule of the Board's hearing costs is available from the Clerk of the Board and on the Board's website at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). *See* 35 Ill. Adm. Code 108.504.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 23, 2009, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

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John Therriault, Assistant Clerk  
Illinois Pollution Control Board