

ILLINOIS POLLUTION CONTROL BOARD

April 1, 2004

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 04-48
)	(IEPA No. 37-04-AC)
)	(Administrative Citation)
RUSSELL V. WELLER, EVELYN L.)	
WELLER, and SPRINGFIELD IRON AND)	
METAL CO., INC.,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by J.P. Novak):

On February 18, 2004, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Russell V. Weller, Evelyn L. Weller, and Springfield Iron and Metal Co., Inc. (respondents). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleged that the respondents violated Section 21(p)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) (2002)). The Agency further alleges that the respondents violated this provision by causing or allowing the open dumping of waste in a manner that resulted in litter at 930 Wolfe Street, Springfield, Sangamon County.

As required, the Agency served the administrative citation on the respondents 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 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 31.1(d)(1) (2002); 35 Ill. Adm. Code 108.204(b), 108.406.

Here, on February 18, 2004, the Agency submitted proof that Russell Weller had received service on behalf of Springfield Iron and Metal Co. Inc. on February 7, 2004; consequently, any timely petition for review for this corporate respondent would have to be postmarked on or before March 13, 2004. On February 23, 2004, the Agency submitted proof that Russell V. Weller and Evelyn L. Weller received service on February 11, 2004; consequently, any timely petition for review for these respondents would have to be postmarked on or before March 17, 2003. *See* 35 Ill. Adm. Code 101.300 (b)(2).

On March 22, 2004, the Board received a single petition for review for all respondents, postmarked March 18, 2004, 36 days after service on the Wellers as individuals and 40 days after service on the corporate respondent. The Board has no statutory authority to extend the time for

filing administrative citations. *See, e.g., County of Jackson v. Frank Stonemark*, AC 04-43 (Mar. 4, 2004) (comparing the administrative citation provisions of the Act and the Board's rules (415 ILCS 5/31.1(d)(1)(2002) and 35 Ill. Adm. Code 108.204) with those for permit appeals (415 ILCS 5/40(a)(1), (c) (2002) and 35 Ill. Adm. Code 105.406)). The Board accordingly dismisses this late-filed petition for review, and finds that the respondents 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) (2002); 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 respondents must pay a civil penalty of \$1,500 no later than May 1, 2004, which is the 30th day after the date of this order.
2. The respondents must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and the respondents' social security number or federal employer identification number must be included on the certified check or money order.
3. The respondents must send the certified check or money order and the remittance form to:

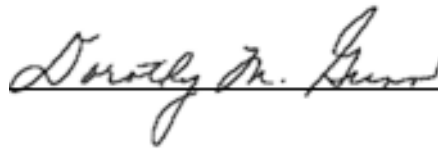
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
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) (2002); *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 April 1, 2004, by a vote of 4-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board