

ILLINOIS POLLUTION CONTROL BOARD
December 7, 2000

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 01-6
)	(IEPA No. 334-00-AC)
JACK BUSBY,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD (by S.T. Lawton, Jr.):

On August 1, 2000, the Illinois Environmental Protection Agency (Agency) filed an administrative citation with the Board against Jack Busby (Busby), pursuant to Section 31.1 of the Environmental Protection Act (Act) (415 ILCS 5/31.1 (1998)). The administrative citation alleges that Busby caused or allowed open dumping resulting in litter and caused or allowed open dumping resulting in the proliferation of disease vectors at the facility located two miles east of Salem, Marion County, Illinois in violation of Sections 21(p)(1) and (p)(5) of the Act (415 ILCS 5/21(p)(1), (p)(5) (1998)).

Busby failed to file a petition for review with the Clerk of the Board within 35 days of the date of service as required by Section 31.1(d)(1) of the Act. 415 ILCS 5/31.1(d)(1) (1998). Accordingly, on September 21, 2000, the Board found that Busby violated the provisions of the Act alleged in the administrative citation and imposed a civil penalty of \$3,000.

On October 23, 2000, Busby filed a response and petition. The Board will consider the filing as a petition for review and a motion to reconsider the September 21, 2000 default order. The October 23, 2000 filing indicates Busby allegedly attempted to timely file the petition, but sent it to an incorrect address in Springfield. Busby realized his error in an October 19, 2000 conversation with the Agency, and re-sent the petition to the Board. The Board notes the Clerk of the Board sent a copy of the default order to Busby shortly after the September 21, 2000 Board meeting.

On October 30, 2000, the Agency filed a response to respondent's request for a hearing. The filing indicates the Agency does not object to the Board vacating its September 21, 2000 order and does not object to setting this matter for hearing. Section 31.1(d)(1) of the Act specifically provides that if the person named in an administrative citation fails to petition the Board for review within 35 days from the date of service the Board shall issue an order finding violation and assessing a penalty. Section 31.1(d)(1) neither grants the Board nor the Agency the authority to waive the 35-day jurisdictional deadline. See 415 ILCS 5/31.1(d)(1) (1998). The Board can not expand its authority beyond that which the legislature expressly granted to it. See Landfill, Inc. v. Pollution

Control Board, 74 Ill. 2d 541, 557-58 (1978). According to the long-standing principal of administrative review law, the 35-day filing period for a petition for review is jurisdictional, and the failure to file a timely petition deprives the Board of subject matter jurisdiction. See e.g. Siciliano v. Illinois Racing Board, 264 Ill. App. 3d 1085, 637 N.E.3d 612 (1st Dist. 1994).

The jurisdictional requirement in 31.1(d)(1) that petitioners must file their petitions for review with the Board within the 35-day deadline is similar to the deadline for appeals of eligibility for reimbursement of underground storage tank costs by the Office of State Fire Marshal (OSFM). See 35 Ill. Adm. Code 107.121. The mailbox rule offers the only allowable extension of time. See General Motors Corp. v. OSFM, PCB 01-14 (August 24, 2000), slip. op. at 1. Unlike waivers of decision deadlines by petitioners, the authority in both cases neither grants the complainant nor respondent the right to waive the 35-day deadline. Therefore, the Board will not consider the petition for review because it was not timely filed.

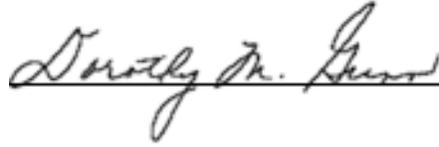
In ruling on a motion for reconsideration, the Board is to consider factors including, but not limited to, error in the previous decision and facts in the record which are overlooked. 35 Ill. Adm. Code 101.246(d). In Citizens Against Regional Landfill v. County Board of Whiteside (March 11, 1993), PCB 93-156, the Board stated that “the intended purpose of a motion for reconsideration is to bring to the court’s attention newly-discovered evidence which was not available at the time of the hearing, changes in the law or errors in the court’s previous application of the existing law.” Korogluyan v. Chicago Title & Turst Co., 213 Ill. App. 3d 622, 572 N.E.2d 1154 (1st Dist. 1992). The motion to reconsider does not contain any information that points to an error in the decision or to facts in the record, which were overlooked by the Board. It merely states that the respondent originally sent his petition to an erroneous address and attempted to cure his error over one month after the tolling of the 35-day statutory period for accepting a petition for review. Therefore, the motion to reconsider is denied.

The Agency’s Response to Respondent’s motion for reconsideration states it would not object to the Board vacating its order dated September 21, 2000, and granting a hearing in this matter. Since the Board does not have the statutory authority to waive the 35-day deadline, it does not have the jurisdiction to grant a petition for review and accept this matter for hearing. Notwithstanding the foregoing, if the Agency feels that the default order should be vacated the Agency can withdraw its Administrative Citation and pursue such other steps as it deems appropriate.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 145 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101-246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 7th day of December 2000 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board