

ILLINOIS POLLUTION CONTROL BOARD
February 5, 2004

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 04-19
)	(IEPA No. 583-03-AC)
CHRISTOPHER COLEMAN,)	(Administrative Citation)
)	
Respondent.)	
)	

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

This matter comes before the Board on complainant's motion for reconsideration of the Board's December 18, 2004 order finding a violation and imposing a penalty. The motion is granted, the order is vacated, and this case is dismissed.

On October 22, 2003, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Christopher Coleman. *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that Christopher Coleman violated Section 21(p)(1) and (p)(7) of the Environmental Protection Act. 415 ILCS 5/21(p)(1) and (p)(7) (2002). The Agency further alleges that Christopher Coleman violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in litter and causing or allowing the open dumping of waste in a manner that resulted in accumulation of clean or general construction or demolition debris. This site is located northwest of the intersection of Route 127 and Main Street, Alto Pass, Union County.

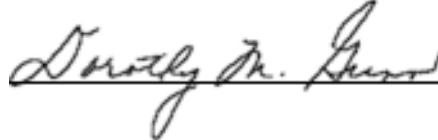
On December 18, 2004, the Board entered a default order against Christopher Coleman. The Board noted that Christopher Coleman filed his challenge to the administrative citation on December 8, 2003, postmarked December 3, 2003. The Board found that the postmark date of the challenge was 40 days after the Agency served the administrative citation on October 24, 2003. The Board concluded that Christopher Coleman had failed to timely file a petition within the 35 days allowed by law, and the Board entered an order finding that Christopher Coleman had violated Section 21(p) of the Act. *See* 35 Ill. Adm. Code 108.204, 108.404.

However, the Agency states, in a January 26, 2004 motion for reconsideration and to dismiss, that it failed to serve the administrative citation on Christopher Coleman 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). The Agency asserts that Christopher Coleman was out of state and did not receive a copy of the administrative citation until November 11, 2003. It was his sister, Nicci Coleman, who does not live with him, who picked up his mail on October 24, 2003.

The Board grants the Agency's motion to reconsider and vacates the December 18, 2003 order. The Agency failed to make service of the administrative citation within 60 days of the August 29, 2003 inspection, as required by Section 31(a) of the Act. 415 ILCS 5/31(a) (2002). The Board therefore dismisses this case and closes the docket. *See* 35 Ill. Adm. Code 108.402.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 5, 2004, by a vote of 4-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board