

ILLINOIS POLLUTION CONTROL BOARD

August 4, 2006

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 06-50
)	(IEPA No. 98-06-AC)
MARLA LEWIS GATES, MARK GATES and)	(Administrative Citation)
MARK KINGSLEY LEWIS,)	
)	
Respondents.)	

ORDER OF THE BOARD (by T.E. Johnson):

On June 2, 2006, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Marla Lewis Gates, Mark Gates, and Mark Kingsley Lewis (respondents). See 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). On July 25, 2006, respondent Mark Gates filed a petition to review the administrative citation.

For the reasons below, the Board directs respondent Mark Gates to amend his petition to contest the administrative citation or face dismissal of his appeal. Further, the Board directs the Agency to file sufficient proof of service as to Marla Lewis Gates and Mark Kingsley Lewis.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2004)), 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, 4(r), 21(o), (p), 31.1, 42(b)(4), (4-5) (2002); 35 Ill. Adm. Code 108.

The Agency alleges that the respondents violated Sections 21(p)(1) and (7) of the Act. 415 ILCS 5/21(p)(1) and (7) (2004). According to the Agency’s administrative citation, the respondents violated these provisions of the Act by causing or allowing the open dumping of waste, resulting in litter and the deposition of construction or demolition debris at a site located in part of the west ½ of the southwest 1/4 of Section 8 in Township 21 North and Range 2 West of the 3rd Principal Meridian in Logan County (site). The Agency asks the Board to impose a \$1,500 civil penalty on the respondents for the alleged violations.

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 he committed the violation alleged and impose the corresponding civil penalty. 415 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b), 108.406.

As required, the Agency served the administrative citation on Mark Gates 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). Specifically, the Agency submitted proof that Mark Gates had received personal service of the administrative citation on June 13, 2006; consequently, any timely petition for review for this respondent would have to be postmarked on or before July 18, 2006. *See* 35 Ill. Adm. Code 101.300(b)(2).

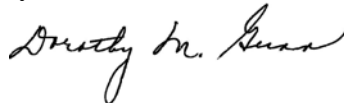
On July 18, 2006, Mark Gates timely filed a petition for review of the administrative citation. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). In the petition, Mark Gates denies that the facility is an open dump, and requests that the matter be set for hearing. Pet. at 1. The Board finds that the petition for review is deficient because it does not state a basis for the appeal, and therefore fails to meet the content requirements found at Section 108.206 of the Board regulations. *See* 35 Ill. Adm. Code 108.206.

The Board directs Mark Gates to file an amended petition for review that corrects these deficiencies on or before September 5, 2006. If Mark Gates fails to file an adequate amended petition, the Board may dismiss the appeal filed on July 18, 2006, as inadequate and enter an order of default against him, finding him in violation and assessing the statutory penalty sought by the Agency.

To date, the Agency has not filed adequate proof of service regarding remaining respondents Marla Lewis Gates and Mark Kingsley Lewis. In its June 26, 2006 filing, the Agency asserts that copies of the administrative citation for Marla Lewis Gates and Mark Kingsley Lewis were hand-delivered to Mark Gates on June 13, 2006. However, the Agency has not provided sufficient proof regarding personal service including, among other things, the usual place of abode for Marla Lewis Gates and Mark Kingsley Lewis. The Agency is directed to file the appropriate proof of service on or before September 5, 2006. If proof of service is not filed, the Board may dismiss the administrative citations against Marla Lewis Gates and Mark Kingsley Lewis.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 4, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board