

ILLINOIS POLLUTION CONTROL BOARD
August 17, 2006

COUNTY OF OGLE,)
)
 Complainant,)
)
 v.) AC 06-58
) (Administrative Citation)
 FRANCIS CASE,)
)
 Respondent.)

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

On June 27, 2006, complainant, the County of Ogle (County), timely filed an administrative citation against the respondent, Francis Case (Case). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns a facility located in Ogle County known as the “Case, Francis” site and designated with the Illinois Environmental Protection Agency (Agency) Site Code Number of 1418205009. For the reasons below, the Board finds that Case violated the Environmental Protection Act (Act) (415 ILCS 5 (2004)) and orders Case to pay \$3,000 in civil penalties.

Under the Act, 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) (2004); 35 Ill. Adm. Code 108.

In this case, the County alleges that Case violated Sections 21(p)(1) and (p)(3) of the Act (415 ILCS 5/21(p)(1), (p)(3) (2004)) by causing or allowing the open dumping of waste resulting in litter and open burning. The County asks the Board to impose on Case the statutorily-fixed civil penalty of \$1,500 for each of the two alleged violations, totaling \$3,000. As required, the County served the administrative citation on Case within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2004); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). Specifically, the County inspected the site on May 1, 2006, and Case was served with the administrative citation by certified mail on June 23, 2006.

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 violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 101.300(b), 108.204(b), 108.406.

Here, Case filed a petition for review, but failed to timely do so. Having been served with the administrative citation on June 23, 2006, Case had to file any appeal by July 28, 2006,

the 35th day after service. The Board received Case's petition for review on August 2, 2006. Generally, a document is considered "filed" with the Board when it is received by the Board. *See* 35 Ill. Adm. Code 101.300(b). Under the "mailbox rule" of the Board's procedural rules, however, a document sent by U.S. Mail and received after a filing deadline is considered filed on its postmark date, rather than on the date the Board receives the document. *See* 35 Ill. Adm. Code 101.300(b)(2). Case filed the petition by U.S. Mail, but the postmark date on Case's petition is July 31, 2006. The petition is therefore late. Accordingly, the Board finds that Case violated Sections 21(p)(1) and (p)(3) of the Act.

The civil penalty for violating any provision of Section 21(p) of the Act is \$1,500 for each violation of each provision, except that the amount is \$3,000 for each violation that is a second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500(a). There is no indication that this is a second or subsequent adjudicated violation for Case. Because there are two violations of Section 21(p), the total civil penalty is \$3,000. 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

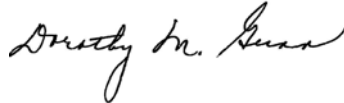
1. Case must pay a civil penalty of \$3,000 no later than September 18, 2006, which is the first business day following the 30th day after the date of this order.
2. Case must pay the civil penalty by certified check or money order, made payable to the Ogle County Solid Waste Fund. The case number, case name, and Case's social security number or federal employer identification number must be included on the certified check or money order.
3. Case must send the certified check or money order and the remittance form to:

Ogle County Treasurer
Attn: John Coffman
P.O. Box 40
Ogle County Courthouse
Oregon, Illinois 61061
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
5. Payment of this penalty does not prevent future prosecution if the violations continue.

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) (2004); *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 August 17, 2006, 2004, by a vote of 4-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board