

ILLINOIS POLLUTION CONTROL BOARD
July 20, 1995

WILL COUNTY,)	
)	
Complainant,)	
)	
v.)	AC 95-41
)	(County No. 95 AC 05)
CARL SMITS,)	(Administrative Citation)
)	
Respondent.)	

ORDER OF THE BOARD:

This matter comes before the Board upon the June 9, 1995 filing of an Administrative Citation (AC) pursuant to Section 31.1 of the Illinois Environmental Protection Act (Act) by Will County. Service of the Administrative Citation was made upon Carl Smits on June 6, 1995. Will County alleges that on May 31, 1995, Carl Smits present owner and/or operator of a facility located in Will County and commonly known to the County as Crete TWP./Smits Farm, violated Section 21(p)(1) of the Act.

On July 12, 1995, the Board received a motion dated July 7, 1995 requesting an extension of time through August 7, 1995 in which to file a petition for review in this matter. No response has been filed by the County.

Service was completed on Mr. Smits on June 6, 1995, as recited in the citation and evidenced by the green return receipt card filed by the County with the petition. Pursuant to Section 31(d)(2) of the Act, any petition for review must be filed within 35 days of service of the AC. This 35 day limit is jurisdictional in nature, and one which the Board is without authority to extend.

In this case, any petition was due to be filed on or before July 11, 1995; pursuant to 35 Ill. Adm. Code 101.102(d) "if received after any due date, the time of mailing shall be deemed the time of filing". Consequently, had Mr. Smits filed a petition for review rather than the instant motion, he would have preserved his right to review of this citation. Under these circumstances, the Board will construe the motion to extend as a procedurally deficient, but timely filed, petition for review. The Board accordingly directs Mr. Smits to file an amended petition for review on or before August 7. The amended petition for review must be correct in caption and in form and must set forth the grounds on which petitioner relies for his appeal (see Section 31.1(d)(2)). If an amended petition for review curing these deficiencies is not filed on or before August 7, 1995, this matter will be subject to dismissal.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 20th day of July, 1995, by a vote of 6-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board