

ILLINOIS POLLUTION CONTROL BOARD
August 17, 2006

COUNTY OF PERRY,)
)
Complainant,)
)
v.) AC 07-3
) (County No. PC-2006-010)
MIKE TILLEY,) (Administrative Citation)
)
Respondent.)

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

On July 12, 2006, complainant, the County of Perry (County), filed an administrative citation with the Board against respondent, Mike Tilley (Tilley). The administrative citation alleges that Tilley violated three provisions of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2004)) at his Perry County facility by causing or allowing the open dumping of waste resulting in litter, open burning, and the deposition of general or clean construction or demolition debris. The County seeks the fixed statutory penalties of \$1,500 for each alleged violation, totaling \$4,500 (415 ILCS 5/42(b)(4-5) (2004)). Tilley has not filed a petition for review. For the reasons below, however, the Board must dismiss this administrative citation for lack of jurisdiction.

The administrative citation filed with the Board was accompanied by a certified mail proof of service form, executed by Tilley. The proof of service form shows that the County served Tilley with the administrative citation on June 23, 2006. Section 31.1(c) of the Act requires a complainant to file a copy of the administrative citation with the Board “no later than 10 days after the date of service.” 415 ILCS 5/31.1(c) (2004); *see also* 35 Ill. Adm. Code 108.202(c). The Act’s 10-day filing requirement is a jurisdictional prerequisite for the Board to hear or enter a default judgment on an administrative citation. *See County of LaSalle v. Baugher*, AC 05-73 (June 16, 2005) (dismissing administrative citation for late filing under Section 31.1(c)). Here, the Board received the County’s administrative citation on July 12, 2006, more than ten days after the June 23, 2006 service of the citation on Tilley. Based on the service date, the Section 31.1(c) filing deadline was July 3, 2006.

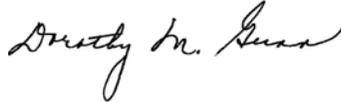
Generally, a document is considered “filed” with the Board when it is received by the Board. *See* 35 Ill. Adm. Code 101.300(b). Under the “mailbox rule” of the Board’s procedural rules, a document sent by U.S. Mail and received after a filing deadline is considered filed on its postmark date, rather than on the date the Board receives the document. *See* 35 Ill. Adm. Code 101.300(b)(2). This record, however, lacks any indication of whether the administrative citation was filed by U.S. Mail. Moreover, under the Board’s procedural rules, U.S. Mail delivery is presumed complete within four days after mailing. *See* 35 Ill. Adm. Code 101.300(c). The Board finds that the County filed the administrative citation on the date the Board received the citation, July 12, 2006.

The Board holds that under Section 31.1(c) of the Act, the County did not timely file the administrative citation against Tilley. The Board therefore lacks jurisdiction and accordingly dismisses the administrative citation. If the County can establish its compliance with the 10-day filing requirement of Section 31.1(c), the County may file a motion for the Board to reconsider this order. *See* 35 Ill. Adm. Code 101.520.

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 order on August 17, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board