

ILLINOIS POLLUTION CONTROL BOARD
April 3, 2008

COUNTY OF JACKSON,)
)
Complainant,)
)
v.) AC 08-25
) (Administrative Citation)
FRANK SMITH and DANNY SMITH,)
)
Respondents.)

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

On March 21, 2008, the County of Jackson (County) filed an administrative citation against Frank Smith and Danny Smith (the Smiths). *See* 415 ILCS 5/31.1 (2006); 35 Ill. Adm. Code 108. The administrative citation concerns a property commonly known to the Illinois Environmental Protection Agency as the “Murphysboro/Frank Smith” site, designated with Site Code No. 0770505065, and located at latitude 37.76789 and longitude -89.31392 in Murphysboro, Jackson County. The County alleged that the Smiths violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(7) (2006)) by open dumping waste in a manner resulting in litter and the deposition of general or clean construction or demolition debris.

On March 25, 2008, the County filed a motion to voluntarily dismiss the administrative citation for failure to serve the citation on the Smiths within 60 days after the date on which the County inspected the property. Motion at 1. The Board notes that on March 31, 2008, respondent Frank Smith filed a letter with the Board stating, among other things, that he owns “the property of 410 N. Cleveland St., Murphysboro,” that he resides and has for the last ten years resided in Arizona, and that he “will make sure that the premises [are] cleaned.” Letter at 1.

In the County’s motion to dismiss, the County seeks dismissal of this administrative citation “without prejudice.” Motion at 1. However, the County conducted the site inspection on which the citation was based on January 9, 2008. Citation at 2. As acknowledged in the County’s motion, the Act requires that an administrative citation be served by complainant on respondent “within not more than 60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2006). Failure to timely serve the citation deprives the Board of jurisdiction. *See, e.g., County of LaSalle v. Harriet and John Baugher*, AC 05-73, slip op. at 1 (June 16, 2005) (dismissal for lack of jurisdiction after citation served on 64th day after site inspection).

More than 60 days have elapsed since the County’s January 9, 2008 site inspection. Having failed to timely serve the Smiths, there is no administrative citation that can still be filed by the County based on the January 9, 2008 site inspection. *See* 415 ILCS 5/31.1(b), (c) (2006). Dismissal of this administrative citation therefore is necessarily *with* prejudice. Of course,

nothing in this order precludes the County from filing another administrative citation against the Smiths based on a later site inspection.

Accordingly, the Board grants the County's motion to dismiss this administrative citation, but does so with prejudice. The Board closes the docket.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 3, 2008, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board