

ILLINOIS POLLUTION CONTROL BOARD
April 12, 2018

COUNTY OF LASALLE,)
)
Complainant,)
)
v.) AC 18-9
) (Administrative Citation)
JEFFREY SCHUSTER,)
)
Respondents.)

ORDER OF THE BOARD (by C.M. Santos):

On March 7, 2018, the Board received from the County of LaSalle (County) an administrative citation (AC) against Jeffrey Schuster. *See* 415 ILCS 5/31.1(b) (2016); 35 Ill. Adm. Code 101.300(b), 108.200(a)(2). The administrative citation concerns Mr. Schuster’s property located at 290 N. 35th Road in Dimmick Township, LaSalle County. The property is known to the Illinois Environmental Protection Agency (Agency) as the “Schuster Property” and is designated with Site Code No. 0999285005. For the reasons below, the Board directs the County to file more information with the Board by May 3, 2018.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), 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. *See* 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2016); 35 Ill. Adm. Code 108.

In this case, the County alleges that on January 26, 2018, Mr. Schuster violated Sections 21(p)(1) and (p)(2) of the Act (415 ILCS 5/21(p)(1), (p)(2) (2016)) by causing or allowing open dumping of waste in a manner resulting in litter and scavenging at the Schuster Property. The County asks the Board to impose on Mr. Schuster the statutory \$1,500 civil penalty for each alleged violation, for a total civil penalty of \$3,000.

As required by the Act, the County served the administrative citation on Mr. Schuster within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2012); *see also* 35 Ill. Adm. Code 108.200(b)(1). The County filed proof of service showing that it personally served Mr. Schuster on February 22, 2018. AC at 8; *see* 35 Ill. Adm. Code 108.200(b)(2)(A).

The Act also requires that the County file a copy of the administrative citation with the Board within 10 days after serving the citation on Mr. Schuster. 415 ILCS 5/31.1(c) (2016); 35 Ill. Adm. Code 108.200(b)(3). “Compliance with 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.” County of Vermilion v. Henry Nosler and Brandon Bott d/b/a B&B Construction, AC

16-1, slip op. at 2 (Nov. 5, 2015); County of Perry v. Mike Tilley, AC 07-3 (Aug. 17, 2006) (dismissing citation filed more than 10 days after service for lack of jurisdiction). Having served Mr. Schuster on February 22, 2018, the County was required to file the citation with the Board by Monday, March 5, 2018, two days before the Board's Clerk received the citation. 415 ILCS 5/31.1(c) (2016); 35 Ill. Adm. Code 108.200(b)(3); *see also* 35 Ill. Adm. Code 101.300(a) (extending Sunday deadline).

The Board's procedural rules provide that, if the Clerk receives a document by U.S. Mail after a filing deadline, the document may be deemed filed on "[t]he date the document was provided to the U.S. Postal Service." 35 Ill. Adm. Code 101.300(b)(2)(A); *see also* 35 Ill. Adm. Code 101.300(b)(2)(B) (same for third-party commercial carrier if "for delivery to the Clerk within three business days"). By affidavit or certificate, the filing party must document the date on which it provided the U.S. Postal Service with a copy of the administrative citation for filing with the Board. 35 Ill. Adm. Code 101.300(b)(3); *see also id.* (same for third-party commercial carrier but the "affidavit or certificate must contain the filing party's representation that the charge for delivery to the Clerk within three business days was prepaid"). For filing by U.S. Mail without a recipient's signature upon delivery, the affidavit or certificate must provide "the date, the time by when, and the place the document was provided to the U.S. Postal Service . . . ; the address on the envelope or package containing the document; and that proper postage . . . was prepaid." 35 Ill. Adm. Code 101.304(d)(4); *see also id.* (same for third-party commercial carrier). The administrative citation filed with the Clerk did not include this documentation, and the Board cannot now determine whether the County met its statutory 10-day filing deadline.

This documentation must be filed before the Board can accept the County's administrative citation for hearing. The Board therefore directs the County to file information documenting that it filed the administrative citation within 10 days after serving Mr. Schuster. If this documentation is not filed with the Board by May 3, 2018, the Board may dismiss the administrative citation and close the docket.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 12, 2018, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board