

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

COUNTY OF JACKSON,)
)
 Complainant,)
)
 v.)
)
 FRANK SMITH & DANNY SMITH,)
)
 Respondents.)

AC 08 - 25

RECEIVED
 CLERK'S OFFICE
 MAR 21 2008
 STATE OF ILLINOIS
 Pollution Control Board

NOTICE OF FILING

To: Frank Smith, 725 Holiday Drive, West Memphis, AR 72301
 Danny Smith, 410 Cleveland St., Murphysboro, Illinois 62966

PLEASE TAKE NOTICE that I have filed with the Office of the Clerk of the Illinois Pollution Control Board the Complaint for Administrative Citation, a copy of which is herewith served upon you.



Daniel Brenner
 Assistant State's Attorney
 Jackson County Courthouse, 3rd Floor
 Murphysboro, IL 62966
 618-687-7200

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

COUNTY OF JACKSON,

Complainant,

v.

FRANK SMITH & DANNY SMITH,

Respondents.

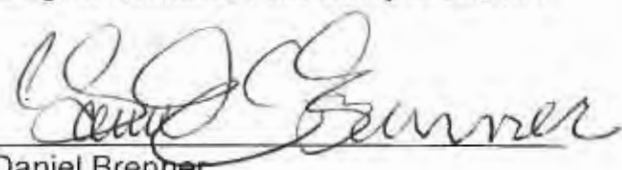
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AC 08 - 25

RECEIVED
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STATE OF ILLINOIS
Pollution Control Board

APPEARANCE

I hereby file my appearance in this proceeding, on behalf of the County of Jackson.



Daniel Brenner
Assistant State's Attorney
Jackson County Courthouse, 3rd Floor
Murphysboro, IL 62966
618-687-7200

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

COUNTY OF JACKSON,)
)
 Complainant,)
)
 v.)
)
 FRANK SMITH & DANNY SMITH,)
)
 Respondents.)

AC 08 - 25
Site Code: 0770505065

RECEIVED
CLERK'S OFFICE
MAR 21 2008
STATE OF ILLINOIS
Pollution Control Board

JURISDICTION

This Administrative Citation is issued pursuant to authority vested in the Illinois Environmental Protection Agency by 415 ILCS 5/1 *et. seq.* (2006), specifically 415 ILCS 5/31.1.

FACTS

1. The Respondent, Frank Smith, is the present owner and in control and possession of a facility located in the County of Jackson, State of Illinois.

2. The Respondent, Danny Smith, upon information and belief, is in control and possession and an occupant of a facility located in the County of Jackson, State of Illinois.

3. The facility is an open dump, operating without an Illinois Environmental Protection Agency Operating Permit, and designated with the Site Code # 0770505065. The facility is known to the Agency as the Murphysboro/Frank Smith site.

4. The Respondents have owned, occupied, controlled and/or operated the facility at all relevant times hereto.

5. On January 9, 2008, Don Terry, Field Inspector, Jackson County Health Department, inspected the facility. A true and correct copy of the inspection report, along with Mr. Terry's affidavit, are attached and incorporated herein by reference as Exhibit A.

VIOLATIONS

On the basis of Field Inspector, Don Terry's, direct observation, he has determined that the Respondents have caused or allowed open dumping at the above described facility in a manner that resulted in the following violations:

That on January 9, 2008, an on-site inspection of the facility disclosed the following:

1. The Respondents have caused or allowed litter at the facility in violation of 415 ILCS 5/21(p)(1).

2. The Respondents have caused or allowed the deposition of general construction or demolition; or clean construction or demolition debris in violation of 415 ILCS 5/21(p)(7).

CIVIL PENALTY

In accordance with 415 ILCS 5/42 (b)(4-5), the Respondents are subject to a civil penalty of \$1,500.00 for each of violations specified above. Additionally, should the Respondents select to petition the Illinois Pollution Control Board under the review process described below, after an adjudicatory hearing, the Respondents shall be assessed the hearing costs incurred by the Pollution Control Board. The hearing cost would be in addition to the \$3,000.00 fine.

If you acknowledge the violations cited herein above, the civil penalty shall be due and payable no later than March 15, 2007. If you do not petition the Pollution Control Board for review of the Administrative Citation within 35 days of service of the Administrative Citation, or contest the Citation, any judgment that may be rendered against you shall specify the due date of the civil fine and any additional costs assessed against you.

When payment is made, your check should be made payable to the Jackson County's Treasurer Office and mailed to the attention of Shirley Dillinger Booker, Jackson County Treasurer, Murphysboro, Illinois, 62966. Also, please complete and return the enclosed remittance form, along with your payment, to assure proper credit.

If any civil penalty is not paid within the prescribed time, the law allows for the accumulation and payment of interest on the remaining unpaid balance. If any civil penalty is not paid when due, the Office of the State's Attorney shall be requested to initiate proceedings in Circuit Court to collect the penalty. In addition to the civil penalty, hearing costs, and interest, if any, the Jackson County State's Attorney may seek to recover their costs of litigation.

PROCEDURE FOR CONTESTING ADMINISTRATIVE CITATION

You have the right to contest this Citation, pursuant to 415 ILCS 5/31.1. If you elect to contest this Citation, you must file a Petition For Review with the Clerk of the Illinois Pollution Control Board. A copy of the Petition For Review shall be filed with Daniel Brenner, Assistant State's Attorney, Jackson County Courthouse, Third Floor, Murphysboro, Il 62966. **YOUR PETITION FOR REVIEW MUST BE FILED WITHIN 35 DAYS OF THE DATE OF SERVICE OF THE PRESENT CITATION ON YOU. IF YOU FAIL TO FILE YOUR PETITION, A DEFAULT ORDER AGAINST YOU WILL BE ENTERED BY THE POLLUTION CONTROL BOARD.**

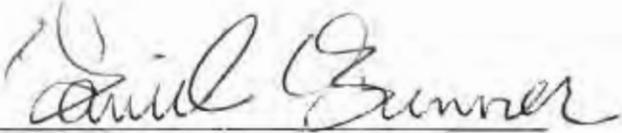
Your original Petition must be filed with the Clerk of the Board at:

Clerk
Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, Illinois 60601-3218

A copy must also be sent to:

Office of the State's Attorney
Daniel Brenner
Assistant State's Attorney
Jackson County Courthouse, 3rd Floor
Murphysboro, IL 62966

DATED: FEB 6 2008


Daniel Brenner
Assistant State's Attorney

REMITTANCE FORM

COUNTY OF JACKSON,)	
)	
Complainant,)	
)	
v.)	NO. AC 08 -
)	
FRANK SMITH & DANNY SMITH,)	
)	
Respondents,)	

FACILITY:	Murphysboro/Frank Smith Site
COUNTY:	JACKSON
DATE OF INSPECTION:	January 9, 2008
SITE CODE:	0770505065
CIVIL PENALTY:	\$3,000.00

Date Remitted _____

SS/FEIN # _____

Signature _____

NOTE

Please include the information on the blank lines. Mail this form with your check to:

Shirley Dillinger Booker
Jackson County Treasurer
Jackson County Courthouse
Murphysboro, Illinois, 62966

JACKSON COUNTY HEALTH DEPARTMENT

AFFIDAVIT

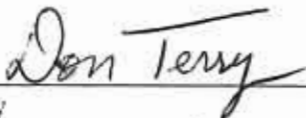
IN THE MATTER OF:

077 050 5065 / Jackson County
Murphysboro / Frank Smith
COMPLIANCE FILE

Respondent.

Affiant, Don Terry, being first duly sworn, voluntarily deposes and states as follows:

1. Affiant is a field inspector employed by Jackson County Health Department and has been so employed at all times pertinent hereto.
2. On January 9, 2008, between the hours of 10:45 a.m. and 10:50 a.m., Affiant conducted an inspection of the open dump site known as Murphysboro / Frank Smith, Jackson County, Illinois.
3. Affiant inspected said open dump site by an on-site inspection.
4. As a result of the activities referred to in Paragraphs 2 and 3 above, Affiant completed the Inspection Report form attached hereto and made a part hereof, which, to the best of Affiant's knowledge and belief, is an accurate representation of Affiant's observations and factual conclusions with respect to said Frank Smith, Murphysboro, Illinois, open dump site.



Don Terry
Environmental Compliance Inspector

Subscribed and Sworn To before me
this 31 day of January, 2008



Tracy L. Hartung
Notary Public



EXHIBIT

A

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Open Dump Inspection Checklist

County: Jackson LPC#: 077 050 5065 Region: 7 - Marion
 Location/Site Name: Murphysboro / Frank Smith
 Date: 01/09/2008 Time: From 10:45 am To 10:50 am Previous Inspection Date: 01/03/2007
 Inspector(s): Don Terry Weather: 43°F -- cloudy with calm winds
 No. of Photos Taken: # 10 Est. Amt. of Waste: 20 yds³ Samples Taken: Yes # No
 Interviewed: no one Complaint #: 2003--149
 Latitude: 37.76789 Longitude: -89.31392 Collection Point Description: Site Entrance -
 (Example: Lat.: 41.26493 Long.: -89.38294) Collection Method: GPS - Accuracy +/- 33 feet

Responsible Party
Mailing Address(es)
and Phone Number(s):

**** OWNER ****
 Mr. Frank Smith
 725 Holiday Drive
 West Memphis, AR 72301

**** OPERATOR ****
 Mr. Danny Smith
 410 Cleveland St.
 Murphysboro, IL 62966

	SECTION	DESCRIPTION	VIOL
ILLINOIS ENVIRONMENTAL PROTECTION ACT REQUIREMENTS			
1.	9(a)	CAUSE, THREATEN OR ALLOW AIR POLLUTION IN ILLINOIS	<input type="checkbox"/>
2.	9(c)	CAUSE OR ALLOW OPEN BURNING	<input type="checkbox"/>
3.	12(a)	CAUSE, THREATEN OR ALLOW WATER POLLUTION IN ILLINOIS	<input type="checkbox"/>
4.	12(d)	CREATE A WATER POLLUTION HAZARD	<input type="checkbox"/>
5.	21(a)	CAUSE OR ALLOW OPEN DUMPING	<input checked="" type="checkbox"/>
6.	21(d)	CONDUCT ANY WASTE-STORAGE, WASTE-TREATMENT, OR WASTE- DISPOSAL OPERATION:	
	(1)	Without a Permit	<input type="checkbox"/>
	(2)	In Violation of Any Regulations or Standards Adopted by the Board	<input type="checkbox"/>
7.	21(e)	DISPOSE, TREAT, STORE, OR ABANDON ANY WASTE, OR TRANSPORT ANY WASTE INTO THE STATE AT/TO SITES NOT MEETING REQUIREMENTS OF ACT	<input type="checkbox"/>
8.	21(p)	CAUSE OR ALLOW THE OPEN DUMPING OF ANY WASTE IN A MANNER WHICH RESULTS IN ANY OF THE FOLLOWING OCCURRENCES AT THE DUMP SITE:	
	(1)	Litter	<input checked="" type="checkbox"/>
	(2)	Scavenging	<input type="checkbox"/>
	(3)	Open Burning	<input type="checkbox"/>
	(4)	Deposition of Waste in Standing or Flowing Waters	<input type="checkbox"/>
	(5)	Proliferation of Disease Vectors	<input type="checkbox"/>
	(6)	Standing or Flowing Liquid Discharge from the Dump Site	<input type="checkbox"/>

LPC # 077 050 5065

Inspection Date: 01/09/2008

	(7)	Deposition of General Construction or Demolition Debris; or Clean Construction or Demolition Debris	<input checked="" type="checkbox"/>
9.	55(a)	NO PERSON SHALL:	
	(1)	Cause or Allow Open Dumping of Any Used or Waste Tire	<input checked="" type="checkbox"/>
	(2)	Cause or Allow Open Burning of Any Used or Waste Tire	<input type="checkbox"/>
35 ILLINOIS ADMINISTRATIVE CODE REQUIREMENTS SUBTITLE G			
10.	812.101(a)	FAILURE TO SUBMIT AN APPLICATION FOR A PERMIT TO DEVELOP AND OPERATE A LANDFILL	<input type="checkbox"/>
11.	722.111	HAZARDOUS WASTE DETERMINATION	<input type="checkbox"/>
12.	808.121	SPECIAL WASTE DETERMINATION	<input type="checkbox"/>
13.	809.302(a)	ACCEPTANCE OF SPECIAL WASTE FROM A WASTE TRANSPORTER WITHOUT A WASTE HAULING PERMIT, UNIFORM WASTE PROGRAM REGISTRATION AND PERMIT AND/OR MANIFEST	<input type="checkbox"/>
OTHER REQUIREMENTS			
14.		APPARENT VIOLATION OF: (<input type="checkbox"/>) PCB; (<input type="checkbox"/>) CIRCUIT COURT CASE NUMBER: ORDER ENTERED ON:	<input type="checkbox"/>
15.	OTHER:		<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>
			<input type="checkbox"/>

Informational Notes

1. [Illinois] Environmental Protection Act: 415 ILCS 5/4.
2. Illinois Pollution Control Board: 35 Ill. Adm. Code, Subtitle G.
3. Statutory and regulatory references herein are provided for convenience only and should not be construed as legal conclusions of the Agency or as limiting the Agency's statutory or regulatory powers. Requirements of some statutes and regulations cited are in summary format. Full text of requirements can be found in references listed in 1. and 2. above.
4. The provisions of subsection (p) of Section 21 of the [Illinois] Environmental Protection Act shall be enforceable either by administrative citation under Section 31.1 of the Act or by complaint under Section 31 of the Act.
5. This inspection was conducted in accordance with Sections 4(c) and 4(d) of the [Illinois] Environmental Protection Act: 415 ILCS 5/4(c) and (d).
6. Items marked with an "NE" were not evaluated at the time of this inspection.

Inspection Report Document: Open Dump Site Narrative

Date of Inspection: January 9, 2008

Inspector: Don Terry

Site Code: 077 050 5065

County: Jackson

Site Name: Murphysboro / Frank Smith

Time: 10:45 a.m. – 10:50 a.m.

Location: Lat 37.76789 Long -89.31392

GPS Accuracy: +/- 33 feet

Estimated Volume of Waste at Site: 20 cubic yards

GENERAL REMARKS

Background: This office first conducted an inspection of this site on September 19, 2003. At that time the open dumping and open burning of waste was observed. The individual who was at the site at that time conducting the burning (who was neither the owner or the resident) said that the material had been removed from the mobile home at the site and he was burning it to get rid of it. When it was determined that Mr. Frank Smith was the property owner, violation notice L-2005–JC129 was sent to him regarding the open dumping and open burning violations. Another violation notice, L-2005–JC130 was sent to the resident, the owner's son, Mr. Danny Smith. During an inspection conducted on November 15, 2004, this inspector spoke with Mr. Danny Smith and explained to him what he needed to do to avoid civil penalties. During this conversation, Mr. Smith confirmed that his father owned the property, that he was living at the site and he was responsible for having the waste burned which I observed during my 09/19/2003 inspection. As of January 28, 2008, the records at the Jackson County Assessor's Office show the site is owned by Frank Smith of West Memphis, Arkansas. The U. S. Post Office in Murphysboro, IL shows that Dan Smith has not submitted a change of address request to them.

During the stated date and time, I conducted an inspection of the site listed above. This inspection was made as a follow up to an inspection conducted on January 3, 2007 during which open dumping violations were observed. Weather conditions at the time of the inspection were: cloudy with calm winds and a temperature of approximately 43°F. I was accompanied on this inspection by Bart Hagston of the Jackson County Health Department.

I arrived at the site and called out in a loud voice to announce my presence. No one responded so I began my inspection. I went to an area southeast of the residence where I had observed open dumping during previous inspections. I observed open dumped waste in the same general location as observed during previous inspections (**Photos #1 - #3, Site Sketch**). The waste included, but was not limited to: plastic bags, plastic containers, metal cans, scrap metal, glass items and household garbage.

Page 2
077 050 5065
Murphysboro / Frank Smith
January 9, 2008

To the north I observed another area of open dumped waste (**Photos #4 - #6, Site Sketch**). The waste in this area included, but was not limited to: plastic containers, vehicle parts, dimensional lumber, aerosol cans, a vehicle engine and cardboard (**Photos #4 - #6, Site Sketch**).

Nearby I observed two abandoned vehicles (**Photos #7 - #10, Site Sketch**). I observed no current Illinois licence plates on either vehicle. Also, I observed that the yellow vehicle was missing its back window and the tires of both vehicles had vegetation growing up around them which would indicate that these vehicles had not been moved during this growing season. At the time of the inspection, these vehicles were not in use, were not useable in their current condition, and were not stored in such a way as to protect any future use (**Photos #7 - #10, Site Sketch**). Behind the blue-green vehicle I observed a pile of waste tires that had been open dumped (**Photo #8, Site Sketch**).

The total volume of waste at this site was approximately 20 cubic yards.

My inspection ended at approximately 10:50 a.m.

Violations Observed:

Item #5(21)(a): Cause or allow open dumping: **Item #8(21)(p)(1 and 7): Cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site: (1) Litter and (7) Deposition of general construction or demolition debris; or clean construction or demolition debris:** During the inspection, the open dumping of waste that resulted in litter and the deposition of general construction or demolition debris was observed.

Item #9(55)(a)(1): No person shall: Cause or allow open dumping of any used or waste tire: During the inspection, waste tires that had been open dumped were observed.

OPEN DUMP INSPECTION SITE SKETCH

Date Of Inspection: January 9, 2008

Inspector: Don Terry

Site Code: 077 050 5065

County: Jackson

Site Name: Murphysboro / Frank Smith

Time: 10:45 a.m. – 10:50 a.m.

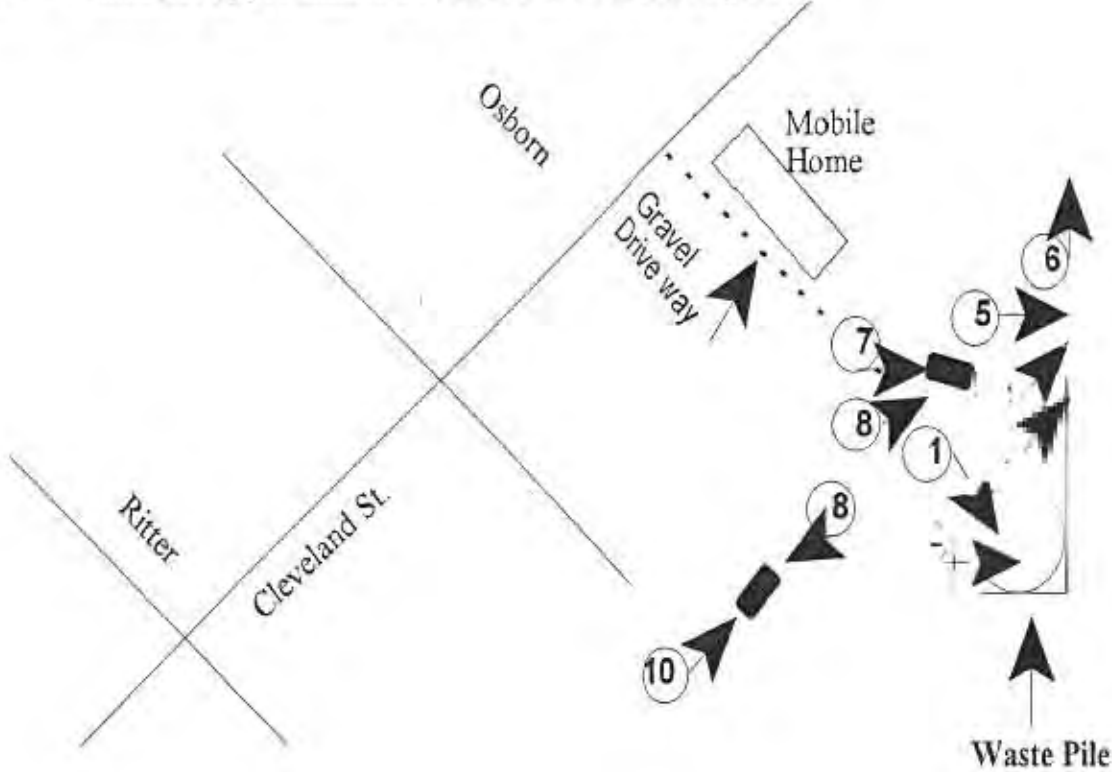
Location: Lat 37.76789 Long -89.31392

GPS Accuracy: +/- 33 feet

Not Drawn to Scale

All locations are approximate

○ → Indicates approximate direction and locations of photos



Route 13

■ = abandoned vehicle



Jackson County Inspection Digital Photo Sheet – Page 1

Date of Inspection: January 9, 2008
Photos by: Don Terry

Site #: 077 050 5065
Site Name: Murphysboro / Frank Smith

Photo Name:
0770505065-01092008-01

Time: 10:47 a.m.

Photo Taken Toward:
Southeast



Photo Name:
0770505065-01092008-02

Time: 10:47 a.m.

Photo Taken Toward:
East





Jackson County Inspection Digital Photo Sheet – Page 2

Date of Inspection: January 9, 2008
Photos by: Don Terry

Site #: 077 050 5065
Site Name: Murphysboro / Frank Smith

Photo Name:
0770505065-01092008-03

Time: 10:47 a.m.

Photo Taken Toward:
Northeast



Photo Name:
0770505065-01092008-04

Time: 10:47 a.m.

Photo Taken Toward:
Northeast





Jackson County Inspection Digital Photo Sheet – Page 3

Date of Inspection: January 9, 2008
Photos by: Don Terry

Site #: 077 050 5065
Site Name: Murphysboro / Frank Smith

Photo Name:
0770505065-01092008-05

Time: 10:47 a.m.

Photo Taken Toward:
East



Photo Name:
0770505065-01092008-06

Time: 10:48 a.m.

Photo Taken Toward:
North





Jackson County Inspection Digital Photo Sheet – Page 4

Date of Inspection: January 9, 2008
Photos by: Don Terry

Site #: 077 050 5065
Site Name: Murphysboro / Frank Smith

Photo Name:
0770505065-01092008-07

Time: 10:48 a.m.

Photo Taken Toward:
East



Photo Name:
0770505065-01092008-08

Time: 10:48 a.m.

Photo Taken Toward:
Northeast





Jackson County Inspection Digital Photo Sheet – Page 5

Date of Inspection: January 9, 2008
Photos by: Don Terry

Site #: 077 050 5065
Site Name: Murphysboro / Frank Smith

Photo Name:
0770505065-01092008-09

Time: 10:49 a.m.

Photo Taken Toward:
Southwest



Photo Name:
0770505065-01092008-10

Time: 10:49 a.m.

Photo Taken Toward:
Northeast





MICHAEL L. WEPSIEC
State's Attorney Jackson County
Jackson County Courthouse, Third Floor
Murphysboro, Illinois 62966
(618) 687-7200 FAX (618) 687-7215



RECEIVED
CLERK'S OFFICE
MAR 21 2008
STATE OF ILLINOIS
Pollution Control Board

March 18, 2008

Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

Re: Administrative Citation - Murphysboro/Frank Smith Site
Site Code 0770505065
Inspection Date: January 9, 2008

Dear Clerk:

Enclosed for filing with the Board is the Administrative Citation packet issued against Frank and Danny Smith, co-respondents. The site is known as the Murphysboro/Frank Smith site.

Frank Smith's mailing address is 725 Holiday Drive, West Memphis, AR 72301. I am awaiting on the proof of service. I spoke to Frank Smith on March 18, 2008 and it is anticipated he will request a hearing. Danny Smith cannot be served. I will eventually move to exclude him from the proceedings.

Please acknowledge receipt and filing of the enclosed materials. Thank you.

Sincerely,

Daniel Brenner
Assistant State's Attorney
Jackson County, Illinois

enclosures

cc: Jackson County Health Department