

ILLINOIS POLLUTION CONTROL BOARD
September 16, 2008

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 08-37
)	(IEPA No. 77-08-AC)
NANCY KOLTZENBURG d/b/a K & N)	(Administrative Citation)
EXCAVATING AND RENTALS,)	
)	
Respondent.)	

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

On June 20, 2008, the Illinois Environmental Protection Agency (Agency) filed an administrative citation against Nancy Koltzenburg, doing business as K & N Excavating and Rentals (Koltzenburg). *See* 415 ILCS 5/31.1 (2006); 35 Ill. Adm. Code 108. In today’s order, the Board dismisses this case because the Agency has failed to file proof of service of the administrative citation on Koltzenburg.

The administrative citation concerns a facility located at 2405 East Highway 136, Carthage, Hancock County. The property is commonly known to the Agency as “K & N Excavating and Rentals” and is designated with Site Code No. 0670255034. The Agency alleges that Koltzenburg violated Sections 21(p)(1), (p)(3), and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2006)) at the property by causing or allowing the open dumping of waste in a manner resulting in litter, open burning, and the deposition of general or clean construction or demolition debris. The Agency seeks the fixed statutory penalties of \$1,500 for each alleged violation, totaling \$4,500. *See* 415 ILCS 5/42(b)(4-5) (2006).

Section 31.1(b) of the Act requires the Agency to serve an administrative citation on a respondent “within not more than 60 days after the observed violation.” 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 108.202(b). 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). Additionally, the Agency is required 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) (2006); *see also* 35 Ill. Adm. Code 108.202(c). Compliance with the Act’s 10-day filing requirement is also a jurisdictional prerequisite for the Board to hear or enter a default judgment on an administrative citation. *See, e.g., County of Perry v. Mike Tilley*, AC 07-3, slip op. at 1 (Aug. 17, 2006) (dismissal for lack of jurisdiction after citation was filed with the Board more than 10 days after date of service).

Here, the administrative citation filed by the Agency on June 20, 2008, did not include the requisite proof of service. The Board has received no petition from Koltzenburg contesting the administrative citation. Despite repeated requests by the Clerk's Office over the last few months, the Agency has not yet filed proof that the administrative citation was served on Koltzenburg. Further, over 60 days has passed since the filing of the citation, thus, timely service and the timely requisite proof of service are unlikely to be had. *See* 415 ILCS 5/31.1(b), (c) (2006); *see also* 35 Ill. Adm. Code 108.202(b), (c). Due to the Agency's failure to file a proof of service, the Board cannot determine whether it has jurisdiction over this case. *See* 415 ILCS 5/31.1(b), (c) (2006). Under these circumstances, the Board dismisses the administrative citation and closes the docket. *See* 35 Ill. Adm. Code 108.402.

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) (2006); *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, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 16, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board