

ILLINOIS POLLUTION CONTROL BOARD
November 21, 2019

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| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | AC 20-1 |
| |) | (IEPA No. 131-19-AC) |
| SAMMY J. SHAFER, TAMMY J. SHAFER, |) | (Administrative Citation) |
| and S. SHAFER EXCAVATING INC., |) | |
| |) | |
| Respondents. |) | |

ORDER OF THE BOARD (by B.F. Currie):

On October 3, 2019, the Illinois Environmental Protection Agency (Agency) filed an administrative citation against Sammy J. Shafer, Tammy J. Shafer, and S. Shafer Excavating Inc. (respondents). The citation concerns alleged open dumping at a property located near the intersection of Illinois Route 159 and East Brookhaven Drive (parcel 03030300020) in Caseyville, St. Clair County. According to the Agency, Sammy J. Shafer and Tammy J. Shafer own the property and S. Shafer Excavating Inc. operates it.

The Agency's proper service of an administrative citation on a respondent is a jurisdictional prerequisite for the Board to decide an administrative citation case. For the reasons below, the Board finds that this record fails to establish that the persons served with the citation may receive service on behalf of these respondents. The Board therefore directs the Agency to file proof that it properly served the citation on all three respondents. The Board provides background before analyzing the service issues and reaching its conclusion.

BACKGROUND

Under the Environmental Protection Act (Act) (415 ILCS 5 (2018)), 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 at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/21(o), 21(p), 22.51, 22.51a, 31.1(c), 42(b)(4), 42(b)(4-5), 55(k) (2018); 35 Ill Adm. Code 108.

In this case, the Agency alleges that, based on an August 5, 2019 site inspection, respondents violated Sections 21(p)(1) and (7) of the Act. 415 ILCS 5/21(p)(1), (7) (2018). According to the administrative citation, respondents violated these provisions by causing or allowing the open dumping of waste, resulting in litter and the deposition of general or clean construction or demolition debris. The Agency asks the Board to impose a total civil penalty of \$3,000 on respondents for the two alleged violations, \$1,500 per violation.

SERVICE ISSUES

Under the Act, an administrative citation “shall be served upon the person named therein or such person’s authorized agent for service of process” 415 ILCS 5/31.1(b) (2018). On October 22, 2019, the Agency filed documentation of service consisting of both an affidavit of personal service concerning the individual respondents and a copy of a U.S. Postal Service certified mail return receipt concerning the corporate respondent. The Board addresses each in turn.

The affidavit describes an October 4, 2019 attempt to personally serve Sammy J. Shafer and Tammy J. Shafer. This service would be “within not more than 60 days after the date of the observed violation,” as required by the Act. 415 ILCS 5/31.1(b) (2018). In addition, under the Board’s procedural rules, personal service of an administrative citation is a permissible method of service; and an affidavit signed by the person making the personal delivery may document that service. *See* 35 Ill. Adm. Code 101.304(d)(1), 108.200(b)(2)(A). However, the Board’s procedural rules do not specify who may receive personal service of an administrative citation on behalf of an individual respondent named in the citation, *i.e.*, when someone other than that individual receives the citation. *Id.*

The Board may look to the Code of Civil Procedure for guidance when the Board’s procedural rules are silent. *See* 35 Ill. Adm. Code 101.100(b). The Illinois Code of Civil Procedure addresses service on individuals:

(a) Except as otherwise expressly provided, service of summons upon an individual defendant shall be made (1) by leaving a copy of the summons with the defendant personally, (2) by leaving a copy at the defendant’s usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the contents of the summons, provided the officer or other person making service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the defendant at his or her usual place of abode The certificate of the officer or affidavit of the person that he or she has sent the copy in pursuance of this Section is evidence that he or she has done so. ***

(b) The officer, in his or her certificate or in a record filed and maintained in the Sheriff’s office, or other person making service, in his or her affidavit or in a record filed and maintained in his or her employer’s office, shall (1) identify as to sex, race, and approximate age the defendant or other person with whom the summons was left and (2) state the place where (whenever possible in terms of an exact street address) and the date and time of the day when the summons was left with the defendant or other person. 735 ILCS 5/2-203(a), (b) (2018).

The affidavit here describes the attempted personal service on Sammy J. Shafer and Tammy J. Shafer as taking place at 15 Sycamore Drive in Caseyville. However, the proof of service attached to the administrative citation lists the address of the individual respondents as 14 Sycamore Drive. Further, the person served at 15 Sycamore Drive was “Rita Adams”; nothing

in the record indicates whether Ms. Adams resides at the address or is related to the Shafers. The Board finds that it is unclear whether the Agency properly served the citation on either Sammy J. Shafer or Tammy J. Shafer.

The certified mail return receipt was addressed to S. Shafer Excavating, Inc. and signed by "Sharon Gravos," with a delivery date of October 3, 2019. This service too would be "within not more than 60 days after the date of the observed violation," as required by the Act. 415 ILCS 5/31.1(b) (2018). In addition, service by U.S. Mail with a recipient's signature recorded by the U.S. Postal Service upon delivery is a permissible method of service; and a certified mail return receipt signed by the recipient may document that service. *See* 35 Ill. Adm. Code 101.304(d)(2), 108.200(b)(2)(B). However, Ms. Gavos' relationship to the S. Shafer Excavating Inc. is not disclosed in the record. Neither the "Agent" nor the "Addressee" box is checked on the receipt. The Agency's citation lists the registered agent of S. Shafer Excavating Inc. as "Sammy J. Shafer." Citation, Evaluation Report at 2. On this record, it is unclear whether the Agency served the citation on the corporation's "authorized agent for service of process." 415 ILCS 5/31.1(b) (2018).

CONCLUSION

For the reasons above, the Board finds that the Agency has not filed proof that it properly served the administrative citation on any of the three respondents. Absent proper service of the citation, the Board lacks jurisdiction to enter a default judgment in this case. *See, e.g., IEPA v. Upper Rock Island County Landfill*, AC 08-31, slip op. at 1-2 (Sept. 4, 2008); *Tazewell County v. Waste Management of Illinois, Inc.*, AC 88-31, slip op. at 2 (Aug. 4, 1988). The Board directs the Agency to file the appropriate proof of service by December 23, 2019. If adequate proof of service is not timely filed, the Board may dismiss the administrative citation.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 21, 2019, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board