

ILLINOIS POLLUTION CONTROL BOARD
June 17, 2004

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| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | AC 04-57 |
| |) | (IEPA No. 109-04-AC) |
| ARLYN RAY d/b/a ARLYN RAY |) | (Administrative Citation) |
| CONSTRUCTION, TOM ROMERO d/b/a |) | |
| ARYLYN RAY EXTERIORS, ROBERT J. |) | |
| ADAMS and RITA M. ADAMS, |) | |
| |) | |
| Respondents. |) | |

ORDER OF THE BOARD (by T.E. Johnson):

On March 24, 2004, the Agency timely filed an administrative citation against Arlyn Ray d/b/a Arlyn Ray Construction (Ray), Tom Romero d/b/a Aryln Ray Exteriors (Romero), Robert J. Adams and Rita M. Adams. *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Illinois Environmental Protection Agency (agency) alleges that respondents violated Sections 21(p)(1),(3),(4) and (7) of the Environmental Protection Act. 415 ILCS 5/21(p)(1),(3),(4) and (7) (2002). The Agency further alleges that respondents violated this provision by causing or allowing the open dumping of waste in a manner that resulted in litter, open burning, deposition of waste in standing or flowing waters, and deposition of construction or demolition debris at the a property located at 1776 County Road 850 E, Metamora in Woodford County.

SERVICE ISSUES

The Agency is required to serve the administrative citation on the respondents within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2002); *see also* 35 Ill. Adm. Code 108.202(b). On March 25, 2004, the Agency filed a proof of service indicating that Ray was served on March 18, 2004. On April 2, 2004, the Agency filed a proof of service showing service on Romero was achieved on March 18, 2004. On April 26, 2004, the Agency filed a proof of service indicating that service on Rita Adams was achieved on April 8, 2004.

After considering the proofs of service, the Board finds that proper service was achieved on Romero, Ray, and Rita Adams. However, whether service on Robert Adams was achieved is in question. Personal service was achieved on Rita Adams on April 8, 2004, but the record is unclear as to whether this is effective service on Robert Adams as well. The Agency is directed to address this service issue on or before July 1, 2004.

ROMERO'S PETITION FOR REVIEW

To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. If a respondent fails to do so, the Board must find that he committed the violation alleged and impose the corresponding civil penalty. 415 ILCS 31.1(d)(1) (2002); 35 Ill. Adm. Code 108.204(b), 108.406.

On April 19, 2004, Romero filed a petition for review of the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). In the petition, Romero asserts he has been improperly named as a party in this proceeding and did not cause or allow the open dumping of waste at the site as alleged in the citation. Romero contends that no one employed by him caused or allowed the open dumping of waste and that he does not own the subject property. The Board accepts Romero's petition for hearing.

The Board directs the hearing officer to proceed expeditiously to hearing on Romero's petition. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2002). By contesting the administrative citation, Romero may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available at the Board's offices and on the Board's Web site at www.ipcb.state.il.us/. 35 Ill. Adm. Code 504.

Romero may withdraw the petition to contest the administrative citation at any time before the Board enters its final decision. If Romero chooses to withdraw the petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Romero withdraws the petition after the hearing starts, the Board will require him to pay the hearing costs of the Board and the Agency. *See id.* at 108.500(c).

The Agency has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2002); 35 Ill. Adm. Code 108.400. If the Board finds that Romero violated Sections 21(p)(1),(3),(4) and (7) of the Act (415 ILCS 5/21(p)(1),(3),(4) and (7) (2002)) the Board will impose civil penalties. The civil penalty for violating Section 21(p) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500. However, if the Board finds that Romero "has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty." 415 ILCS 5/31.1(d)(2) (2002); *see also* 35 Ill. Adm. Code 108.500(b).

DEFAULT OF RITA ADAMS AND RAY

Ray was served on March 18, 2004, consequently any timely petition for review would have to be postmarked on or before April 22, 2004. Rita Adams was served on April 8, 2004, consequently any timely petition for review would have to be postmarked on or before May 13, 2004. To date neither Rita Adams nor Ray has filed a petition for review. Thus, Rita Adams and Ray have failed to timely file a petition within the 35 days allowed by the law. Accordingly, the Board finds that Rita Adams and Ray have violated Sections 21(p)(1),(3),(4) and (7) of the Act. 415 ILCS 5/21(p)(1),(3),(4) and (7) (2002). However, the Board will withhold issuing a final

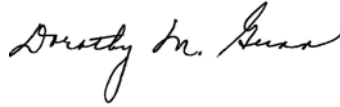
order concerning Rita Adams and Ray until a determination on respondents Robert Adams and Romero is made.

CONCLUSION

The Board accepts Romero's petition for review and directs the hearing officer to proceed to hearing on his petition. The Board finds Rita Adams and Ray in violation of Sections 21(p)(1),(3),(4) and (7) of the Act (415 ILCS 5/21(p)(1),(3),(4) and (7) (2002)) for failing to file a petition to review within 35 days after being served with the administrative citations. However, the Board will not issue a final order regarding Rita Adams and Ray until determinations have been made on Robert Adams and Romero. The Agency is directed to provide information showing effective service on Robert Adams on or before July 1, 2004.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 17, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board