

ILLINOIS POLLUTION CONTROL BOARD

August 5, 2004

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.)	

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

This matter is before the Board on a July 7, 2004 motion by the Illinois Environmental Protection Agency (Agency) to dismiss respondent Tom Romero (Romero) and to find respondent Robert J. Adams in default. On June 17, 2004, the Board issued an order that found Rita Adams and Arlyn Ray d/b/a Arlyn Ray Construction (Ray) in violation of Sections 21(p)(1),(3),(4) and (7) of the Illinois Environmental Protection Act (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. The order also accepted the petition to review filed by Romero and directed the Agency to provide information showing effective service on Robert Adams by July 1, 2004. The administrative citation involves 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.

For the reasons set forth below, the Board dismisses the administrative citation as to Romero and finds Robert Adams in default. The Board imposes the statutory penalty of \$6,000 on Robert Adams, Rita Adams and Ray.

The Agency attached an affidavit by Agency inspector Robert J. Wagner (Wagner) to the motion. Wagner swears that he personally hand-delivered the instant administrative citation on April 8, 2004, to Rita Adams at their residence, and informed her of the contents therein. Because Robert Adams lives with Rita Adams, proper service was achieved when Wagner served Rita Adams at their shared abode via hand-delivery.

The Agency also asserts that it has no evidence that Romero was involved in this matter other than as a representative of Arlyn Ray Exteriors, L.L.C., and asks that he be dismissed from the administrative citation.

To date, the Board has not received any response to the Agency's motion. If a party fails to file a response to a motion within 14 days the party will be deemed to have waived objection to the granting of the motion. *See* 35 Ill. Adm. Code 101.500(d).

The Board grants the Agency's motion and dismisses the administrative citation against Romero.

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). Based on the additional information supplied by the Agency in its motion, the Board finds that proper service was achieved on Robert Adams. Robert 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, he has not filed a petition for review. Thus, Robert Adams has failed to timely file a petition within the 35 days allowed by the law. Accordingly, the Board finds that Robert Adams has 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 found Rita Adams and Ray had violated those same sections of the Act on June 17, 2004.

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(a). Because there are four violations of Section 21(p) and these violations are first offenses, the total civil penalty is \$6,000. Under Section 31.1(d)(1) of the Act, the Board attaches the administrative citation and makes it a part of the order below.

This opinion constitutes the Board's finding of fact and conclusions of law.

ORDER

1. Respondents Robert J. Adams, Rita M. Adams and Arlyn Ray d/b/a Arlyn Ray Construction must pay a civil penalty of \$6,000 no later than September 6, 2004.
2. The respondents must pay the civil penalty by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and the respondents' social security number or federal employer identification number must be included on the certified check or money order.
3. The respondents must send the certified check or money order and the remittance form to:

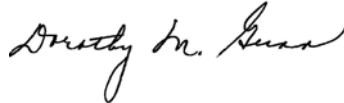
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
5. Payment of this penalty does not prevent future prosecution if the violation continues.

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) (2002); *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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 5, 2004, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board