

ILLINOIS POLLUTION CONTROL BOARD
March 3, 2005

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 05-54
)	(IEPA No. 33-05-AC)
RAY LOGSDON ESTATE, LOGSDON)	(Administrative Citation)
SAND AND GRAVEL, and M.K. O'HARA)	
CONSTRUCTION, INC.,)	
)	
Respondents.)	

ORDER OF THE BOARD (by J.P. Novak):

On February 10, 2005, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Ray Logsdon Estate, Logsdon Sand and Gravel, and M.K. O'Hara Construction, Inc., (respondents). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that on December 15, 2004, the respondents violated Section 21(p)(1), (p)(4), and (p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(4), and (p)(7) (2002)). The Agency further alleges that the respondents violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) litter; (2) deposition of waste in standing or flowing waters; and (3) deposition of general construction or demolition debris or clean construction or demolition debris at 300 West Main Street, Beardstown, Cass County.

As required, the Agency served 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 February 28, 2005, M.K. O'Hara Construction, Inc. timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). M.K. O'Hara Construction, Inc. alleges that it placed sand and brick on the lot for the purposes of leveling the lot, that it removed tin and iron from the fill material when it was discovered on the site, that it has no further involvement in the site, and that it has never been an operator of the site. *See* 35 Ill. Adm. Code 108.206. The Board accepts the petition for hearing.

The record indicates that the administrative citation was timely served on the respondents Ray Logsdon Estate and Logsdon Sand and Gravel on February 9, 2005. The Board has not yet received a petition for review from either of those two respondents, and the time for filing an appeal will not expire as to those two respondents until after March 16, 2005.

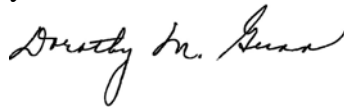
The Board accepts the petition for appeal of M.K. O'Hara Construction, Inc. as timely filed, pursuant to 35 Ill. Adm. Code 108.204. However, the Board finds that the petition was filed on behalf of M.K. O'Hara Construction, Inc. by Madalyn O'Hara. The Board's procedural

rules incorporate the requirement under Section 1 of the Illinois Attorney Act (705 ILCS 205/1 (2002)) and Section 1 of the Corporation Practice of Law Prohibition Act (705 ILCS 220/1 (2002)), that anyone other than an individual “must appear through an attorney-at-law licensed and registered to practice law.” 35 Ill. Adm. Code 101.400(a)(2).

The appeal filed by Madalyn O’Hara on behalf of M.K. O’Hara Construction, Inc. does not identify Madalyn O’Hara as an attorney, but as the president of M.K. O’Hara Construction, Inc.. Madalyn O’Hara cannot represent M.K. O’Hara Construction, Inc. in this proceeding unless she is an attorney. *See* 35 Ill. Adm. Code 101.400(a)(2). Nothing in the petition indicates that Madalyn O’Hara is an attorney. The Board directs M.K. O’Hara Construction, Inc. to retain an attorney prior to filing an amended petition for review in this matter. If an amended petition accompanied by an attorney’s appearance is not filed within 30 days of the date of this order, this petition will be dismissed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 3, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board