

ILLINOIS POLLUTION CONTROL BOARD
April 21, 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 A.S. Moore):

This is an administrative citation enforcement action brought by the Illinois Environmental Protection Agency (Agency) against three respondents: Ray Logsdon Estate (Estate); Logsdon Sand and Gravel (LSG); and M.K. O’Hara Construction, Inc. (M.K. O’Hara). The case concerns a site in Beardstown, Cass County. In this order, the Board dismisses the Estate on the Agency’s motion, accepts for hearing the petition of LSG contesting the administrative citation, and finds that M.K. O’Hara has defaulted. Before doing so, the Board provides the legal and procedural background for this case.

LEGAL BACKGROUND

Under the Environmental Protection Act (Act) (415 ILCS 5 (2002)), 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 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2002); 35 Ill. Adm. Code 108.

The Agency or delegated local authority must serve the administrative citation on the respondent 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). The Agency or delegated local authority also must file a copy of the administrative citation with the Board no later than ten days after serving the respondent. *See* 415 ILCS 5/31.1(c) (2002).

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

If the respondent timely contests the administrative citation, but the complainant proves the alleged violations at hearing, the respondent will be held liable not only for the civil penalty but also for the hearing costs of the Board and the complainant. *See* 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500. However, if the Board finds that the respondent “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).

PROCEDURAL BACKGROUND

In this case, on February 10, 2005, the Agency timely filed an administrative citation against the Estate, LSG, and M.K. O’Hara. The Agency alleges that respondents violated three provisions of the Act (415 ILCS 5/21(p)(1), (p)(4), (p)(7) (2002)) by causing or allowing open dumping at a site just south of 300 West Main Street, Beardstown, Cass County. The Agency seeks from respondents the statutorily-fixed civil penalty of \$1,500 per violation, for a total civil penalty of \$4,500. On February 18, 2005, the Agency filed proof that it timely served the administrative citation on the Estate and LSG on February 9, 2005, and on M.K O’Hara on February 10, 2005. The administrative citation states that the site visit on which the Agency based the alleged violations took place on December 15, 2004.

On February 28, 2005, M.K.O’Hara filed a petition to contest the administrative citation. On March 3, 2005, the Board accepted M.K. O’Hara’s petition as timely filed. However, because there was no indication that the petition was filed by an attorney, the Board gave M.K. O’Hara 30 days to have an attorney file an amended petition. The Agency filed a motion to reconsider on March 11, 2005, in which the Agency argues that the Board erred in accepting M.K. O’Hara’s petition. No amended petition has been filed by M.K. O’Hara.

On March 9, 2005, LSG filed a petition to contest the administrative citation. On March 16, 2005, LSG filed another petition. On March 23, 2005, the Agency filed a motion to voluntarily dismiss the Estate. The case has not been to hearing.

DISCUSSION

In this part of the order, the Board first considers the Agency’s motion to dismiss the Estate. The then Board decides whether to accept for hearing LSG’s petition contesting the administrative citation. Lastly, the Board discusses whether M.K. O’Hara has defaulted.

The Estate

The Agency filed a motion to voluntarily dismiss the Estate. According to the Agency, when it issued the administrative citation, the Agency believed the Estate was “involved in the ownership of the site that is the subject of this Citation.” Motion to Dismiss at 1. The Agency states, however, that since issuing the administrative citation, the Agency has learned that the Estate was closed in 1978 and that all Estate property and assets were transferred to LSG. *Id.* No respondent filed a response to the Agency’s motion, and therefore each waives any objection

to the Board granting the motion. *See* 35 Ill. Adm. Code 101.500(d). The Board grants the Agency's motion to voluntarily dismiss the Estate.

LSG

LSG filed a petition to contest the administrative citation on March 9, 2005. On March 16, 2005, LSG filed another petition. Both petitions were timely filed as both were filed within 35 days after the Agency served the administrative citation on LSG. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). LSG states that it filed the later petition in an "abundance of caution" after the Agency attorney informed LSG that the original petition was "improper." LSG 3/16/05 Petition at 3.

The Board notes that LSG's March 9 petition does not indicate whether it was filed by an attorney, and fails to state any grounds for appeal. *See* 35 Ill. Adm. Code 101.400(a)(2), 108.206. LSG's March 16 petition, on the other hand, was filed by an attorney and contests the administrative citation on the following grounds: (1) LSG did not cause or allow the alleged violations or the allegations do not otherwise constitute violations of the Act; and (2) the alleged violations resulted from uncontrollable circumstances. LSG 3/16/05 Petition at 2; *see* 35 Ill. Adm. Code 108.206.

The Board accepts LSG's March 16 petition and directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. *See* 35 Ill. Adm. Code 108.300; 415 ILCS 5/31.1(d)(2) (2002). By contesting the administrative citation, LSG 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 from the Clerk of the Board and on the Board's Web site at www.ipcb.state.il.us. *See* 35 Ill. Adm. Code 108.504.

LSG may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If LSG chooses to withdraw its petition, it must do so in writing, unless it does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If LSG withdraws its petition after the hearing starts, the Board will require LSG to pay the hearing costs of the Board and the Agency. *See* 35 Ill. Adm. Code 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 LSG violated Sections 21(p)(1), (p)(4), and (p)(7) of the Act as alleged, the Board will impose civil penalties on LSG, absent "uncontrollable circumstances." *See* 415 ILCS 5/31.1(d)(2) (2002); *see also* 35 Ill. Adm. Code 108.500(b). The civil penalty for violating any provision of Section 21(p) is \$ 1,500 for each violation of each such provision, except that the civil penalty amount is \$ 3,000 for each violation of any provision of Section 21(p) that is the person's second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500. As noted, the Agency seeks a \$4,500 total civil penalty from respondents in this case for the three alleged violations.

M.K. O'Hara

M.K. O'Hara filed a petition on February 28, 2005. The Board's March 3, 2005 order accepted M.K. O'Hara's petition as timely filed, but noted that the petition failed to indicate whether it was filed by an attorney. The Board further stated that under Illinois law, any party other than an individual must be represented by an attorney licensed and registered to practice law. *See* 35 Ill. Adm. Code 101.400(a). In that same order, the Board gave M.K. O'Hara 30 days to have an attorney file an amended petition for the company:

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. IEPA v. Ray Logsdon Estate, AC 05-54, slip op. at 2 (Mar. 3, 2005).

On March 11, 2005, the Agency moved the Board to reconsider accepting M.K. O'Hara's February 28, 2005 petition as timely filed. The Agency maintains that the Board erred in accepting the petition, arguing that because the petition's filing was not made by a licensed attorney, the filing failed to comply with the Board's procedural rules and was a nullity. Motion to Reconsider at 3-4. The Agency asks the Board to dismiss M.K. O'Hara's petition and "reestablish that the time to contest the [administrative citation] must be within 35 days of the date of service, which is March 17, 2005." *Id.* at 5.

The Board notes that M.K. O'Hara did not file a response to the Agency's motion to reconsider. More importantly, however, M.K. O'Hara also failed to file any amended petition, let alone one through an attorney, as required by the Board's March 3, 2005 order. The 30-day period for M.K. O'Hara to do so has expired. Accordingly, as provided in that Board order, the Board dismisses M.K. O'Hara's petition. Having done so, the Board denies as moot the Agency's motion to reconsider.

With the dismissal of M.K. O'Hara's February 28, 2005 petition and M.K. O'Hara's failure to file an amended petition, the Board finds that M.K. O'Hara has defaulted. *See* 35 Ill. Adm. Code 108.404, 108.406. The Board therefore finds that M.K. O'Hara committed the violations alleged in the administrative citation—that is, that M.K. O'Hara violated Sections 21(p)(1), (p)(4), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(4), (p)(7) (2002)) by causing or allowing open dumping at a site just south of 300 West Main Street, Beardstown, Cass County, resulting in litter, deposition of waste in standing or flowing waters, and deposition of general or clean construction or demolition debris. *See* 415 ILCS 31.1(d)(1) (2002). However, the Board will withhold issuing a final order concerning M.K. O'Hara until the Board makes a final decision concerning LSG. *See* IEPA v. Ray, AC 04-57 (June 17, 2004) (order accepting for hearing one respondent's petition, but defaulting two other respondents and reserving final order on defaulted respondents).

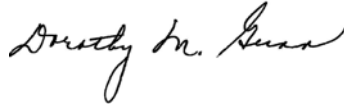
CONCLUSION

In today's order, the Board grants the Agency's motion to voluntarily dismiss the Estate. In addition, the Board accepts for hearing the petition of LSG. The Board also finds that M.K. O'Hara has defaulted by failing to file an amended petition to contest the administrative citation.

Accordingly, the Board further finds that M.K. O'Hara violated the Act as alleged, but withholds issuing its final order on M.K. O'Hara until the Board makes its final decision regarding LSG. With the dismissal of the Estate, the caption of future filings in this proceeding should reflect that there are now only two remaining respondents: LSG and M.K. O'Hara.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 21, 2005, by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board