

ILLINOIS POLLUTION CONTROL BOARD
December 1, 2005

COUNTY OF KANKAKEE,)	
)	
Complainant,)	
)	
v.)	
)	AC 05-80
SOUTH HOLLAND TRUST & SAVINGS)	(KC Site Code No. 0918075002)
BANK TRUST #10897, and JOHN & ELLA)	(Administrative Citation)
HALL,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

On October 17, 2005, the County of Kankakee (County) filed a motion to strike a letter submitted by John Hall, Jr. to the Board on July 27, 2005, and construed by the Board as a timely filed petition for review. For the reasons set forth below, the Board grants the County's motion to strike the July 27, 2005 letter, dismisses the petition for review, and finds John and Ella Hall in default.

On June 27, 2005, County timely filed an administrative citation against South Holland Trust & Savings Bank Trust #10897 (South Holland Trust & Savings) and John and Ella Hall (collectively, respondents). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The County of Kankakee alleges that on May 2, 2005, the respondents violated Sections 21(p)(1) and (p)(3) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) and (p)(3) (2004)). The County 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; and (2) open burning at 14805 East Route 114, Momence, Kankakee County. The alleged violations were observed during a May 2, 2005 inspection of the respondents' property by county inspector Donna Shehane.

On August 18, 2004, the Board found that respondent South Holland Trust & Savings failed to timely file a petition for review and had, therefore, defaulted. Accordingly, the Board found that the South Holland Trust & Savings violated Sections 21(p)(1) and (p)(3) of the Act, and assessed a civil penalty of \$3,000 for the two violations. 415 ILCS 5/21(p)(1), (p)(3) (2004). The Board withheld issuing a final appealable order concerning South Holland & Trust until making a final decision regarding John and Ella Hall.

Also on August 18, 2005, the Board construed a letter handwritten by John Hall, Jr. and received on July 27, 2005, as a timely filed petition to review the administrative citation. The Board accepted the matter for hearing.

On October 17, 2005, the County filed a motion to strike the July 27, 2005 letter written by John Hall, Jr. The County states that the letter bears the signature of Mr. John Hall, Jr., "who is apparently the son of the named Respondents, John and Ella Hall. The Halls, as named in the

Complaint, have not filed an answer.” For this reason, the County moved the Board to strike the July 27, 2005 letter and to find both John and Ella Hall in default for failing to timely file an answer.

To date, John and Ella Hall have not responded to the motion. A party that fails to object to a motion is deemed to have waived objection to the granting of the motion. 35 Ill. Adm. Code 101.500(d). Due to John and Ella Halls’ failure to respond to the motion, the Board grants the motion to strike the July 27, 2005 letter, finds that John and Ella Hall have committed the violations alleged, and imposes the corresponding civil penalty. As discussed above, 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) (2004); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(p) and these violations are first offenses, the total civil penalty is \$3,000.

The respondents are jointly and severally liable for the civil penalty. *See IEPA v. J&T Recycling and John A. Gordon*, AC 01-12 (Jan. 18, 2001). Under Section 31.1(d)(1) of the Act, the Board attaches the administrative citation and makes it part of the order below.

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

ORDER

1. The Board finds that South Holland Trust & Savings Bank Trust #10897 and John and Ella Hall (the respondents) violated Sections 21(p)(1) and (p)(3) of the Environmental Protection Act (Act). The respondents must pay a civil penalty of \$3,000 no later than December 19, 2005, which is the first business day after the 30th day after the date of this order.
2. The respondents must pay the civil penalty by certified check or money order, made payable to the County of Kankakee. The case number, case name, and each of the respondents’ social security numbers or federal employer identification numbers 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:

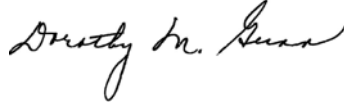
County of Kankakee
 Planning Department, Solid Waste Division
 189 East Court Street, Suite 200
 Kankakee, Illinois 60901
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).

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) (2004); 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 December 1, 2005, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board