

ILLINOIS POLLUTION CONTROL BOARD  
February 2, 2006

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

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

On January 31, 2006, the Illinois Environmental Protection Agency (Agency) filed a motion to dismiss respondent Logsdon Sand and Gravel (LSG) and for a final order. Below, the Board first reviews the procedural history of this proceeding before granting the Agency's motions, issuing its final order, assessing the statutory penalty, and closing the docket.

**PROCEDURAL HISTORY**

**Citation**

On February 10, 2005, the Agency timely filed an administrative citation against three respondents: the Ray Logsdon Estate (Logsdon Estate); LSG; and M.K. O'Hara Construction, Inc. (O'Hara). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The Agency alleged that on December 15, 2004, the three respondents violated Sections 21(p)(1), (p)(4), and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(4), (p)(7) (2004)). The Agency further alleges that the three 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.

The Agency provided proof of service of the citation upon respondents Logsdon Estate and LSG on February 9, 2005, and upon respondent O'Hara on February 10, 2005. Petitions for review of the citation were due on March 16, 2005 and March 17, 2005, respectively. *See* 425 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b).

**Respondent Logsdon Estate**

On March 23, 2005, the Agency filed a motion to dismiss respondent Logsdon Estate (Mot. Dism. 1). The Agency stated that it had originally considered the Logsdon Estate to be

involved with the site that is the subject of this citation. Mot Dism. 1 at 1. The Agency further stated that it had since “learned that the Ray Logsdon Estate was closed on December 29, 1978, and that all estate property and assets have been transferred” to LSG. *Id.*

Neither of the two other respondents responded to the Agency’s motion, and they therefore waived any objection to the granting of the motion. *See* 35 Ill. Adm. Code 101.500(d). In an order dated April 21, 2005, the Board granted the Agency’s motion to dismiss the Logsdon Estate. The Board further directed that, with the dismissal of the Logsdon Estate, the caption in future filings should reflect that only two respondents remained: LSG and O’Hara.

### **Respondent O’Hara**

On February 28, 2005, the Board received a letter from Madalyn O’Hara, O’Hara’s president. In a March 3, 2005 order, the Board accepted the letter as a timely-filed petition for review but also 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), citing 705 ILCS 205/1 (2004) (Attorney Act) and 705 ILCS 220/1 (2004) (Corporation Practice of Law Prohibition Act). In the same order, the Board gave O’Hara 30 days to have an attorney file an amended petition for the company and stated that the original petition would be dismissed if O’Hara did not do so within that 30-day period.

On March 11, 2005, the Agency filed a motion seeking to have the Board reconsider its order accepting Ms. O’Hara’s letter as a timely petition. Ultimately, O’Hara failed to file any amended petition as required by the Board’s March 3, 2005 order. Consequently, the Board in an April 21, 2005 order dismissed Ms. O’Hara’s original petition and denied the Agency’s motion to reconsider as moot. In the same order, the Board found that O’Hara had defaulted. *See* 35 Ill. Adm. Code 108.404, 108.406. Although the Board thus found that O’Hara had committed the violations alleged in the citation, it withheld issuing a final order until the Board made a final decision concerning LSG. *See, e.g., IEPA v. Ray*, AC 04-57 (June 17, 2004).

### **Respondent LSG**

In an April 21, 2005 order, the Board accepted for hearing a timely petition for review filed by LSG. On January 31, 2006, however, the Agency filed a motion to dismiss (Mot. Dism. 2) the pending action against LSG. The Agency states that, “based on newly-discovered circumstances surrounding this case, Illinois EPA believes that it is now appropriate to dismiss this Administrative Citation” against LSG. Mot. Dism. 2 at 2. The Agency further states that, if the Board grants the motion to dismiss LSG, O’Hara would be the only remaining respondent and that the case would be ripe for a final order. *Id.*

### **CONCLUSION**

The Board grants the Agency’s motion to dismiss respondent LSG. Having already determined that O’Hara, the only remaining respondent, has committed the violations alleged in the citation, the Board proceeds to issue a final order below.

The civil penalty for violating any provision of Section 21(p) is \$1,500 for each violation of each such provision for a first offense and \$3,000 for each violation of each such provision for a second or subsequent offense. 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500(a). Because there are three violations of Section 21(p) and these violations are first offenses, the total civil penalty is \$4,500. Under Section 31.1(d)(1) of the Act (415 ILCS 5/31.1(d)(1) (2004)), the Board attaches the administrative citation and makes it part of the order below.

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

### **ORDER**

1. The Board finds that M.K. O'Hara Construction, Inc. has violated Sections 21(p)(1), (p)(4), and (p)(7) of the Act as alleged. M.K. O'Hara Construction, Inc. must pay a civil penalty of \$4,500 no later than Monday, March 6, 2006, which is the first business day after the 30th day after the date of this order.
2. M. K. O'Hara Construction, Inc. 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 M.K. O'Hara Construction, Inc.'s social security number or federal employer identification number must be included on the certified check or money order.
3. M.K. O'Hara Construction, Inc. must send the certified check or money order and the remittance form to:

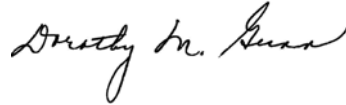
Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) 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 order on February 2, 2006, by a vote of 4-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board