

ILLINOIS POLLUTION CONTROL BOARD
September 7, 2006

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 06-20
)	(IEPA No. 459-05-AC)
GEORGIA SHANK and STEVE SHANK,)	(Administrative Citation)
)	
Respondents.)	

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

On August 17, 2006, the Illinois Environmental Protection Agency (Agency) filed a motion to dismiss respondent Georgia Shank. The Agency also requested that the Board issue a final order with regard to respondent Steve Shank. Below, the Board first reviews the procedural history of this proceeding before granting the Agency's motion, issuing its final order, assessing the statutory penalty, and closing the docket.

PROCEDURAL HISTORY

On January 6, 2006, the Agency timely filed an administrative citation against Georgia Shank and Steve Shank (respondents). *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). The Agency alleges that on November 15, 2005, respondents violated Sections 21(p)(1), (p)(3), and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2004)). The Agency further alleges that respondents violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) litter; (2) open burning; and (3) deposition of general construction or demolition debris or clean construction or demolition debris. The alleged violations occurred at Route 40 and Elm Street, Greenville, Bond County.

On February 9, 2006, one of the respondents, Georgia Shank, timely filed a letter relating to the administrative citation. In an order dated February 16, 2006, the Board construed the letter as a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). In that letter, Georgia Shank alleged that (1) she was unaware of the activities included in the complaint; and (2) she requested 60 days to correct conditions at the site because it is low-lying with soft, muddy soils and did not allow operation of equipment. *See* 35 Ill. Adm. Code 108.206.

In its February 16, 2006, order, the Board stated that it could not accept Georgia Shank's letter as a petition to contest the administrative citation and authorize a hearing pursuant to 35 Ill. Adm. Code 108.300. The Board further stated that the petition was deficient because it did not specify grounds for appeal, as required by 35 Ill. Adm. Code 108.206. In that order, the Board

directed respondent Georgia Shank to amend her petition for review to include this information within 30 days from the date of that order, on or before March 20, 2006, or the Board would dismiss the petition and enter a default in this matter pursuant to 35 Ill. Adm. Code 108.406. Also in that February 16, 2006 order, the Board noted that it had “not received any petition to contest from the second respondent, Steve Shank.”

On March 20, 2006, the Board received a document postmarked March 16, 2006. Although both respondents signed that document, the Board in an order dated April 6, 2006, addressed the two of them separately. First, with regard to Georgia Shank, the Board found that the document responded to the alleged violations by stating that the respondents did not cause or allow the open dumping of waste or open burning and that the respondents have the right to store certain clean construction debris on a temporary basis. With regard solely to Georgia Shank, the Board accepted the petition for hearing.

With regard to Steve Shank, the Board in its April 6, 2006, order noted that he failed within 35 days after service of the citation to file any petition for review, as required by 35 Ill. Adm. Code 108.204(b). *See* 415 ILCS 5/31.1(d)(1) (2004). Since Steve Shank failed to file a timely petition for review, the Board found that he committed the violations alleged in the citation. 415 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b), 108.406. Accordingly, the Board found that Steve Shank violated sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2004)). However, the Board withheld issuing a final order concerning Steve Shank and assessing the statutory penalties against him until the Board made a final decision concerning Georgia Shank. *See IEPA v. Ray Logsdon Estate, Logsdon Sand and Gravel, and M.K. O’Hara Construction, Inc.* AC 05-54, slip op. at 4-5 (Apr. 21, 2005) (dismissing one respondent, accepting for hearing the petition of a second respondent, and finding that a third respondent had defaulted, but withholding final order); *IEPA v. Ray*, AC 04-57 (June 17, 2004) (accepting for hearing one respondent’s petition and defaulting two other respondents but reserving final order on defaulted respondents).

MOTION TO WITHDRAW

On August 17, 2006, the Agency filed motion to withdraw administrative citation (Mot.). In its motion, the Agency notes that the respondents have indicated that they remain a legally married couple. Mot. at 2. “Because Illinois EPA is not seeking an additional penalty against Georgia Shank, and because her husband, Steve Shank, is already in default, Illinois EPA has determined that it is prudent to withdraw this Administrative Citation as to Respondent Georgia Shank at this time.” *Id.* Consequently, the Agency requests that the Board issue a final order with regard to respondent Steve Shank. *Id.*

CONCLUSION

The Board grants the Agency’s motion to withdraw the administrative citation as to respondent Georgia Shank. Having already determined that Steve Shank, the other respondent, has committed the violations alleged in the citation, the Board proceeds below to issue a final order.

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 Steve Shank has violated Sections 21(p)(1), (p)(3), and (p)(7) of the Act as alleged. Steve Shank must pay a civil penalty of \$4,500 no later than Monday, October 9, 2006, which is the first business day after the 30th day after the date of this order.
2. Steve Shank 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 Steve Shank's social security number or federal employer identification number must be included on the certified check or money order.
3. Steve Shank 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.

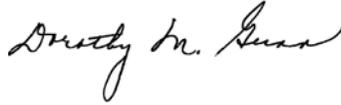
IT IS SO ORDERED.

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.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 7, 2006, by a vote of 4-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board