

ILLINOIS POLLUTION CONTROL BOARD
April 6, 2006

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 06-20
)	(IEPA No. 495-05-AC)
GEORGIA SHANK and STEVE SHANK,)	(Administrative Citation)
)	
Respondents.)	

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

On January 6, 2006, the Illinois Environmental Protection Agency (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.

In today's order the Board addresses both a March 20, 2006 filing designated both as a petition for review and a motion to dismiss and a March 27, 2006 filing designated only as a motion to dismiss. The draft also addresses complainant's response to motion to dismiss (Resp.) filed by the Agency on April 5, 2006.

PETITION FOR REVIEW

As required, the Agency served the administrative citation on respondents within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2004); *see also* 35 Ill. Adm. Code 108.202(b). As both respondents were served on January 7, 2006, any petition for review from either of the two was due to be filed by February 14, 2006. On February 9, 2006, one of the respondents, Georgia Shank, timely filed a letter relating to the administrative citation. 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). The Board notes that Steve Shank did not sign and is not mentioned in that letter, and further notes that parties in Board adjudicatory proceedings "appear on their own behalf." 35 Ill. Adm. Code 101.400(a)(1).

In the letter construed as a petition for review, 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 an order dated February 16, 2006, the Board stated that it could not accept that 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. 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 that document is signed by both respondents, the Board will address each of the two respondents separately. First, with regard to Georgia Shank, that document responds 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 accepts the petition for hearing.

With regard to Steve Shank, the Board notes 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 must find that he committed the violations alleged in the citation and impose the corresponding civil penalty. 415 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b), 108.406. Accordingly, the Board finds 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 will withhold issuing a final order concerning Steve Shank and assessing the statutory penalties against him until the Board makes 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).

The Board directs the hearing officer to proceed expeditiously to hearing on Georgia Shank’s petition for review. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2004). By contesting the administrative citation, Georgia Shank may have to pay the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500. A schedule of the Board’s hearing costs is available at the Board’s offices and on the Board’s Web site at www.ipcb.state.il.us. 35 Ill. Adm. Code 504.

Georgia Shank may withdraw her petition to contest the administrative citation at any time before the Board enters its final decision. If Georgia Shank chooses to withdraw her

petition, she must do so in writing, unless she does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Georgia Shank withdraws her petition after the hearing starts, the Board will require Georgia Shank 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) (2004); 35 Ill. Adm. Code 108.400. If the Board finds that Georgia Shank violated sections 21(p)(1), (p)(3), and (p)(7) of the Act, the Board will impose civil penalties on Georgia Shank. 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. However, if the Board finds that Georgia Shank “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) (2004); *see also* 35 Ill. Adm. Code 108.500(b).

MOTION TO DISMISS

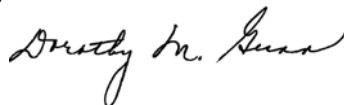
On March 27, 2006, the two respondents filed a document designated as a motion to dismiss. Although that document is signed by both respondents, the Board will again address each of the two respondents separately. First, with regard to Steve Shank, the Board above found that he failed to file a timely petition for review as required by 35 Ill. Adm. Code 108.204(b). *See* 415 ILCS 5/31.1(d)(1) (2004). The Board therefore found above 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)). *See* 415 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b), 108.406. Because Steve Shank failed to contest the administrative citation by filing a timely petition for review, and because the Board has found that Steve Shank committed the violations alleged in the citation, the Board cannot consider the motion to dismiss with regard to him.

With regard to Georgia Shank, the Agency notes that she “was served with the administrative citation in this matter on January 7, 2006.” Resp. at 2. The Agency argues that, under the Board’s procedural rules, all motions to dismiss “must be filed within 30 days after the service of the challenged document.” Resp. at 3, citing 35 Ill. Adm. Code 101.506. Accordingly, the Agency argues that Georgia Shank’s motion is untimely and should be denied on that basis.

The Board notes that Georgia Shank did not file a motion to dismiss the administrative citation within 30 days after it was served upon her. *See* 35 Ill. Adm. Code 101.506. The Board therefore denies the motion to dismiss with regard to Georgia Shank.

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 6, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board