

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

ADMINISTRATIVE CITATION

MAR 11 2005

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Complainant,)

v.)

RAY LOGSDON ESTATE, LOGSDON SAND)
and GRAVEL, and M.K. O'HARA)
CONSTRUCTION, INC.,)

Respondents.)

AC *05-54*
(IEPA No. 33-05-AC)

NOTICE OF FILING

To: Ray Logsdon Estate
c/o John Logsdon
617 W. Main Street
Beardstown, Illinois 62618

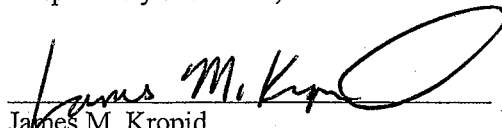
Logsdon Sand and Gravel
300 W. Main Street
P.O. Box 319
Beardstown, Illinois 62618

M.K. O'Hara Construction, Inc.
c/o Madalyn O'Hara, President
U.S. Highway 67 South
R.R. #2, Box 104
Beardstown, Illinois 62618

Craig Myers, Registered Agent
M.K. O'Hara Construction, Inc.
900 E. 15th Street, P.O. Box 139
Beardstown, Illinois 62618

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled MOTION FOR RECONSIDERATION.

Respectfully submitted,


James M. Kropid
Special Assistant Attorney General

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Dated: March 9, 2005

MAR 11 2005

STATE OF ILLINOIS
Pollution Control Board

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

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.)	

**MOTION FOR RECONSIDERATION
AND TO DISMISS PETITION FOR REVIEW**

NOW COMES the Complainant, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, James M. Kropid, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500 and 101.520, and by motion filed no later than 35 days following the receipt of an order entered by the Illinois Pollution Control Board ("Board") on March 3, 2005, hereby respectfully moves the Board to reconsider that order in that the Board erred in its decision. The Illinois EPA received service of the Board's order on March 8, 2005. In support of this motion, the Illinois EPA states as follows:

(1) The purpose of a motion for reconsideration is to bring to the court's or Board's attention newly-discovered evidence which was not available at the time of the hearing, changes in the law, or errors in the court's or Board's previous application of the existing law. Vogue Tyre & Rubber Company v. Office of the State Fire Marshal, PCB 95-78 (January 23, 2003), citing to, Citizens Against Regional Landfill v. County Board of Whiteside County, PCB 93-156 (March 11, 1993), and Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 572 N.E.2d 1154 (1st Dist. 1992).

(2) The Illinois EPA argues that the Board's order dated March 3, 2005 ("Order") was incorrect in that the Board erred in its application of existing law regarding its acceptance of a petition for review.

(3) On February 10, 2005, the Illinois EPA issued an Administrative Citation ("AC") to Respondents, Ray Logsdon Estate, Logsdon Sand and Gravel, and M.K. O'Hara Construction, Inc., based on an inspection conducted on December 15, 2004.

(4) On February 10, 2005, service was made on Respondent, M.K. O'Hara Construction, Inc., an Illinois corporation.

(5) Pursuant to 415 ILCS 5/31.1(d) and 35 Ill. Adm. Code 108.204(b), a petition for review was required to be filed in this matter by March 17, 2005.

(6) On February 28, 2005, Madalyn O'Hara filed a petition for review on behalf of M.K. O'Hara Construction, Inc. to contest the Administrative Citation.

(7) The petition does not identify Madalyn O'Hara as an attorney and nothing in the petition indicates that Madalyn O'Hara is in fact an attorney.

(8) In a March 3, 2005, order the Board accepted the petition as timely filed. The Board also noted that M.K. O'Hara Construction, Inc. could not be represented by Ms. O'Hara unless she is attorney and directed the corporation to retain an attorney prior to filing an amended petition for review in this matter. The Board extended the time in which this amended petition could be filed by 30 days from the date of the Order.

(9) Section 101.300(b) of the Board's rules (35 Ill. Adm. Code 101.300(b)) provides that documents will be considered filed when they are filed in conformance with the requirements found in Section 101.302 of the procedural rules and any other filing requirements specifically set out in other parts of the procedural rules.

(10) Section 101.400(a)(2) of the Board's procedural rules (35 Ill. Adm. Code 101.400(a)(2)) provides that any person other than individuals must appear through an attorney at law licensed and registered to practice law in Illinois.¹

(11) The March 3, 2005, order specifically noted the Board's procedural requirement that anyone other than an individual must appear through an attorney licensed and registered to practice law. Nevertheless, even though the petition for review was not filed by a licensed attorney, the Board accepted the petition of M.K. O'Hara Construction, Inc. as timely filed.

(12) The Board erred in accepting the February 28, 2005, petition for review as timely filed because the petition was not filed in conformance with its procedural rules, specifically the rule set forth in Section 101.400(a)(2).

(13) This petition for review was also not filed in compliance with Section 108.204(a) of the Board's procedural rules (35 Ill. Adm. Code 108.204(a)), which states that the AC Recipient may file a petition to contest the AC. In this matter, M.K. O'Hara Construction, Inc. is the AC Recipient, not Madalyn O'Hara.

(14) Furthermore and/or in the alternative, the failure to have a licensed attorney file the petition for review renders the filing itself a nullity.

(15) It is well-settled law in Illinois that a pleading signed by a person who is not licensed to practice law in the State is a nullity even if a duly licensed attorney subsequently appears in court. Blue v. People of the State of Illinois, 223 Ill. App. 3d 594, 596, 585 N.E.2d 625, 626 (2nd Dist. 1992) (Citing, Fruin v. Northwestern Medical Faculty Foundation, Inc., 194 Ill. App. 3d 1061, 1063, 551 N.E.2d 1010, 1012 (1st Dist. 1990)). The effect of a person's

¹ This requirement, also imposed pursuant to Section 1 of the Corporation Practice of Law Prohibition Act (705 ILCS 220/1) and Section 1 of the Attorney Act (705 ILCS 205/1), was adopted by the Board in recognition that its previous practice allowing non-attorneys to represent a corporation was not consistent with the Attorney Act and the Corporation Practice of Law Prohibition Act.

unauthorized practice on behalf of another is to dismiss the cause or to treat the particular action taken by that person as a nullity. Id.; See also, Pratt-Holdampf v. Trinity Medical Center, 338 Ill. App. 3d 1079, 1083, 789 N.E.2d 882, 886 (3rd Dist. 2003). The prohibition against the unauthorized practice of law does not differentiate between pretrial and trial practice. Marken Real Estate & Management Corp. v. Adams, 56 Ill. App. 3d 426, 430, 371 N.E. 2d 1192, 1195 (1st Dist. 1977).

(16) Under Illinois law, a corporation can file a complaint only through a licensed attorney, and any action filed without an attorney is null and void *ab initio*. Berg v. Mid-America Industrial, Inc., 293 Ill. App. 3d 731, 732, 688 N.E.2d 699, 700 (1st Dist. 1997). Corporations may not appear in court through a layperson, only by a licensed attorney. Any proceedings which ensue in a case involving a layperson representing a corporation are null and void. The purpose of the rule is to protect the litigants against the mistakes of those ignorant of the law and the schemes of the unscrupulous, and to protect the court itself in the administration of its proceedings from those lacking requisite legal skills. Berg, 293 Ill. App. 3d at 737, 688 N.E.2d at 704; Janiczek v. Dover Management Co., 134 Ill. App. 3d 543, 546, 481 N.E.2d 25, 26 (1st Dist. 1985).

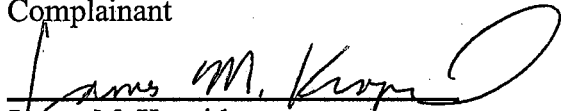
(17) This general rule has been found to extend beyond actions in circuit court; included in the type of actions within the scope of the general rule are administrative proceedings. Oak Grove Jubilee Center, Inc. v. City of Genoa, 347 Ill. App. 3d 973, 985, 808 N.E.2d 576, 588 (2nd Dist. 2004) (Citing to, Janiczek, 134 Ill. App. 3d at 545, 481 N.E.2d at 26)).

(18) Accordingly, the relevant and applicable case law requires that the Board treat the present petition for review as a nullity.

WHEREFORE, the failure of the Respondent, M.K. O'Hara Construction, Inc., to have a licensed attorney file the petition for review renders the filing null and void and because the petition for review could not be accepted as filed as it did not conform with the Board's requirements, the Illinois EPA respectfully requests that the Board reconsider its decision set forth its Order, dismiss the petition for review filed on February 28, 2005, and reestablish that the time to contest the AC must be within 35 days of the date of service, which is March 17, 2005.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Complainant



James M. Kropid
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: March 9, 2005

PROOF OF SERVICE

I hereby certify that I did on the 9th day of March 2005, send by U.S. Mail with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled MOTION FOR RECONSIDERATION

To: Ray Logsdon Estate
c/o John Logsdon
617 W. Main Street
Beardstown, Illinois 62618


Logsdon Sand and Gravel
300 W. Main Street
P.O. Box 319
Beardstown, Illinois 62618

M.K. O'Hara Construction, Inc.
c/o Madalyn O'Hara, President
U.S. Highway 67 South
R.R. #2, Box 104
Beardstown, Illinois 62618

Craig Myers, Registered Agent
M.K. O'Hara Construction, Inc.
900 E. 15th Street, P.O. Box 139
Beardstown, Illinois 62618

and the original and nine (9) true and correct copies of the same foregoing instruments on the same date by U.S. Mail with postage thereon fully prepaid

To: Dorothy Gunn, Clerk
Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601


James M. Kropid
Special Assistant Attorney General

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544