

ILLINOIS POLLUTION CONTROL BOARD
August 18, 2005

COUNTY OF KANKAKEE,)
)
Complainant,)
)
v.) AC 05-80
) (Administrative Citation)
SOUTH HOLLAND TRUST & SAVINGS)
BANK TRUST #10897 and JOHN and ELLA)
HALL,)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On June 27, 2005, the County of Kankakee 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 of Kankakee 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.

Proof of service shows both the Halls and the South Holland Trust & Savings were served with the administrative citation 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). To contest an administrative citation, a respondents must file a petition with the Board no later than 35 days after being served with the administrative citation. If the respondents fail to do so, the Board must find that the respondents committed the violations alleged and impose the corresponding civil penalty. 415 ILCS 31.1(d)(1) (2004); 35 Ill. Adm. Code 108.204(b), 108.406. If the Board finds that respondents have committed the violations alleged and impose the corresponding civil penalty, 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).

DEFAULT AGAINST SOUTH HOLLAND TRUST & SAVINGS

Here, South Holland Trust & Savings failed to timely file a petition. With the failure to file a petition, the Board finds that South Holland Trust & Savings has defaulted. *See* 35 Ill. Adm. Code 108.404, 108.406. Accordingly, the Board finds that the South Holland Trust & Savings violated Sections 21(p)(1) and (p)(3) of the Act. 415 ILCS 5/21(p)(1), (p)(3) (2004). 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 2 violations of Section 21(p) and these violations are first offenses, the total civil penalty is \$3,000. The Board withholds issuing a final appealable order concerning South Holland & Trust until making a final decision regarding Mr. and Mrs. Hall. *See IEPA v. Logsdon, et al.*, AC 05-54 (Apr. 21, 2005); citing *IEPA v. Ray*, AC 04-57 (Jun. 17, 2004).

ACCEPT MR. HALL'S PETITION FOR HEARING

On the other hand, John R. Hall, Jr. timely filed a petition to contest the administrative citation on July, 27, 2005. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). Mr. Hall alleges that he is disabled and that his son and two step-daughters took it upon themselves to clean the yard by burning the debris in the yard. *See* 35 Ill. Adm. Code 108.206. The Board accepts the Mr. Hall's petition for hearing.

The Board directs the hearing officer to proceed expeditiously to hearing. 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, John R. Hall Jr. may have to pay the hearing costs of the Board and the County of Kankakee. *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.

Mr. Hall may withdraw his petition to contest the administrative citation at any time before the Board enters its final decision. If Mr. Hall chooses to withdraw his petition, he must do so in writing, unless he does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If Mr. Hall withdraws his petition after the hearing starts, the Board will require Mr. Hall to pay the hearing costs of the Board and the County of Kankakee. *See id.* at 108.500(c).

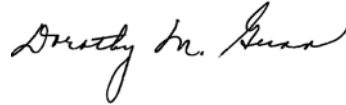
The County of Kankakee has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2004); 35 Ill. Adm. Code 108.400. If the Board finds that Mr. Hall violated Section 21(p)(1) and (p)(3), the Board will impose civil penalties on Mr. Hall. The civil penalty for violating Section 21(p) is \$1,500 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 Mr. Hall Jr. "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).

CONCLUSION

In today's order the Board accepts for hearing the petition of Mr. Hall. The Board also finds that South Holland Trust & Savings has defaulted by failing to timely file a petition to contest the administrative citation. Accordingly, the Board further finds that South Holland Trust & Savings violated the Act as alleged, but withholds issuing its final order on South Holland Trust & Savings until the Board makes its final decision regarding the Halls. The Board will also amend the caption of future filings to reflect the remaining respondents: Mr. and Mrs. Hall.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 18, 2005, 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