

ILLINOIS POLLUTION CONTROL BOARD

June 3, 2004

CITY OF CHICAGO DEPARTMENT OF ENVIRONMENT,	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	AC 04-71
	)	(CDOE No. 04-06-AC)
	)	(Administrative Citation)
K. HARRIS TRUCKING AND EXCAVATING COMPANY,	)	
	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by J.P. Novak):

On April 23, 2004, the City of Chicago Department of Environment timely filed an administrative citation against K. Harris Trucking and Excavating Company. See 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The City of Chicago Department of Environment alleged that K. Harris Trucking and Excavating Company violated Section 21(p)(1) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) and (p)(7) (2002)) (Act). The City of Chicago Department of Environment further alleges that K. Harris Trucking and Excavating Company violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) litter and (2) deposition of general construction or demolition debris or clean construction or demolition debris at 4802 West Chicago Avenue, Chicago, Cook County.

As required, the City of Chicago Department of Environment served the administrative citation on K. Harris Trucking and Excavating Company within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2002); *see also* 35 Ill. Adm. Code 108.202(b). To contest an administrative citation, a respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. If the respondent fails to do so, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. 415 ILCS 31.1(d)(1) (2002); 35 Ill. Adm. Code 108.204(b), 108.406. Here, K. Harris Trucking and Excavating Company failed to timely file a petition. Accordingly, the Board finds that K. Harris Trucking and Excavating Company violated Section 21(p) of the Act.

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) (2002); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(p) and these violations are first offenses, the total civil penalty is \$3,000. Under Section 31.1(d)(1) of the Act, the Board attaches the administrative citation and makes it part of the order below.

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

ORDER

1. K. Harris Trucking and Excavating Company must pay a civil penalty of \$3,000 no later than July 3, 2004, which is the 30th day after the date of this order.
2. K. Harris Trucking and Excavating Company must pay the civil penalty by certified check or money order, made payable to the City of Chicago. The case number, case name, and K. Harris Trucking and Excavating Company's social security number or federal employer identification number must be included on the certified check or money order.
3. K. Harris Trucking and Excavating Company must send the certified check or money order and the remittance form to:

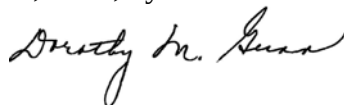
City of Chicago Department of Environment
Permitting and Enforcement Division
30 North LaSalle Street
Suite 2500
Chicago, Illinois 60602

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
5. Payment of this penalty does not prevent future prosecution if the violations continue.

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) (2002); *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 opinion and order on June 3, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board