

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

RECEIVED  
CLERK'S OFFICE

FEB 10 2006

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 05-8
	)	(IEPA No. 330-04-AC)
TED HARRISON and GERALD S. GILL,	)	(Administrative Citation)
	)	
Respondents.	)	

**RESPONDENT HARRISON'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES, Respondent, TED HARRISON, through his undersigned attorney, and for his motion for summary judgment, states as follows:

1. This administrative citation alleges that Ted Harrison and Gerald S. Gill are liable under the administrative citation provisions of the Environmental Protection Act, for waste materials allegedly seen at the site in question on May 26, 2004, by an Illinois Environment Protection Agency (IEPA) inspector.

2. Because Respondent Harrison did not cause or allow the deposition of waste materials alleged by the administrative citation, and because the inspector did not directly observe Mr. Harrison do anything on the date of the inspection, no genuine issue of material fact exists, and Respondent Harrison is entitled to this Board's summary judgment in his favor.

3. Respondent Harrison, like Respondent Gill, has been charged with violating Section 21(p)(1) of the Environmental Protection Act, 415 ILCS 5/21(p)(1). Specifically, they are alleged to have "caused or allowed the open dumping of waste in a manner resulting in litter."

4. In addition, the Respondents are alleged to have violated Section 21(p)(7) of the act, 415 ILCS 5/21(p)(7); the specific allegation is that they “caused or allowed the open dumping of waste in a manner resulting in deposition of general construction or demolition debris.”

5. The IEPA wants \$1,500 for each of these alleged violations.

6. Accompanying the administrative citation in this case is an affidavit purported to be signed by the IEPA inspector, testifying to the details of the alleged inspection. That affidavit admits that the inspection leading to the administrative citation allegations was conducted on May 26, 2004.

7. Attached as an exhibit to that affidavit is a purported inspection report, bearing the date of May 26, 2004, and allegedly detailing the circumstances of the inspection.

8. The first two and one half pages of the inspection report discuss a site not relevant to this administrative citation proceeding (that cite is permitted, and therefore if anything would be covered by Section 21(o), and not Section 21(p); moreover, no allegations of materials fitting the violations alleged in this matter are stated with respect to that site).

9. The narrative discussion of the areas for which the administrative citation was issued admits that “[p]er a Warranty Deed filed in Cass County on August 5, 2002, Ted and Margretta Harrison deeded this portion of the site to Mr. Gill on July 20, 2002.”

10. Attached hereto, is the Real Estate Agreement dated July 27, 2002, that resulted in the warranty deed acknowledged by the IEPA’s inspection report.

11. Paragraph 9 of the Real Estate Agreement deals with the materials on the site that are the subject of this administrative citation. That provision, among other things, allows Mr. Gill, as the buyer, to utilize \$20,000 of the purchase price to remove any of the remaining materials at the site after July 30, 2002. That provision specifically provides that "Except to the extent of the escrowed funds and the use thereof by Buyer to pay for removal of the rubber tires and the junk from the aforesaid premises, Buyer shall have no further claims against Seller for removal of such tires and junk."

12. As the IEPA admits, the transaction was closed on August 5, 2002. Pursuant to the Real Estate Agreement, Ted Harrison had no further right to do anything on the property subsequent to September 30, 2002.

13. In contrast, Mr. Gill took title to and responsibility for the entire premises, including the materials claimed to be junk, and effective September 30, 2002, had no further claim against anyone for the removal of those materials, but instead was solely responsible for their existence.

14. According to the IEPA, two years after the transaction closed (the approximate time of the IEPA's inspection), Mr. Gill still had not utilized his \$20,000 escrow fund to remove the alleged offending items.

15. As of May 26, 2004 (the date of the inspection), only Mr. Gill had any legal right, authority or responsibility with respect to the materials on the property, and Mr. Harrison would have been a criminal trespasser even if he had further responsibility for the materials. Moreover, contrary to the requirements expressed in Section 31.1 of the Environmental Protection Act, 415 ILCS 5/31.1 the IEPA inspector did not observe directly Mr. Harrison violate any statute as of May 26, 2004; Mr. Harrison had no legal

rights with respect to the property on that date, and was not present, according to the inspection report.

16. Attached hereto, in support of this motion, is the affidavit of Ted Harrison, authenticating the Real Estate Agreement.

WHEREFORE, Respondent TED HARRISON, requests that this Board enter a summary judgment in his favor, and against the Complainant Illinois Environmental Protection Agency, on the administrative citation issued in this case, and award to the Respondent all such other and further relief as this Board deems just and appropriate.

Respectfully submitted,

TED HARRISON,  
Respondent,  
By his attorney,

HEDINGER LAW OFFICE

By

  
Stephen F. Hedinger

HEDINGER LAW OFFICE  
2601 S. Fifth St.  
Springfield, IL 62703  
(217) 523-2753 phone  
(217) 523-4366 fax

STATE OF ILLINOIS                    )  
                                                  )  
COUNTY OF ADAMS                    )            SS

**AFFIDAVIT OF TED HARRISON**

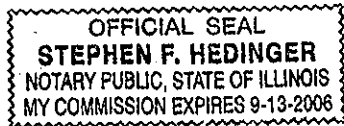
Affiant, TED HARRISON, first being duly sworn upon oath, deposes and states that, if called upon to testify in this matter, he would be competent to state upon personal knowledge as follows:

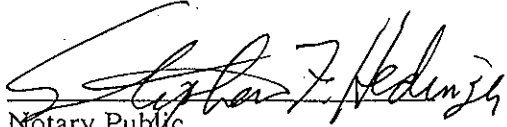
1. Affiant is a Respondent in an administrative citation proceeding pending before the Illinois Pollution Control Board in case Number AC-05-08.
2. Attached hereto as Ex. #1 is a true and correct copy of the Real Estate Agreement between Affiant and his wife as Sellers and Gerald S. Gill, who is also a Respondent in the above-referenced administrative citation proceeding, as Buyer.
3. Affiant further testifies that all facts set forth in the motion for summary judgment filed by this Affiant in the above-referenced administrative citation proceeding are true and correct, to the best of Affiant's knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
TED HARRISON

Subscribed and sworn to before me, a Notary Public, this 6<sup>th</sup> <sup>February</sup> day of ~~November~~, 2006.



  
Notary Public

REAL ESTATE AGREEMENT

THIS AGREEMENT, made this 27 day of July, 2002, by and between THEODORE HARRISON a/k/a TED HARRISON and MARGARETTA HARRISON, husband and wife, P.O. Box 3185, Quincy, Adams County Illinois 62305, hereinafter called SELLER, and GERALD S. GILL, whose address is 412 East Illini, Virginia, Illinois 62691, hereinafter called BUYER, WITNESSETH:

1. Seller, in consideration of ONE HUNDRED NINETY-FIVE THOUSAND EIGHT HUNDRED FORTY DOLLARS (\$195,840.00) to be paid as hereinafter provided, agrees to sell and convey by good and sufficient Warranty Deed, free and clear of dower, homestead, and all liens and encumbrances, and Buyer agrees to purchase therefore, the following described real estate, to wit:

See attached Exhibit A which is by reference incorporated herein.

2. Seller agrees to furnish and deliver to Buyer within a reasonable time a Title Insurance Policy Commitment issued by a reputable Title Insurance Company in standard form and in the amount of the purchase price showing good and merchantable title in Seller in the above described property prior to closing.

3. Buyer agrees to pay \$195,840.00 upon tender or delivery of a properly stamped deed, possession and satisfactory title as herein provided. The purchase price shall be allocated as follows:

Three (3) Grain Bins	\$ 7,500.00 (Each \$2,500.00)
Metal Building	\$ 20,000.00
Real Estate	\$ 168,340.00

4. If Buyer shall fail to complete the sale herein agreed upon without fault on the part of Seller, then Seller shall have the election to either retain said sums paid as a down payment as and for Seller's liquidated damages in full or to have all the rights and remedies for breach of the contract or for specific performance thereof, as may be permitted in law or equity.

5. Taxes upon said premises for the year 2001, due and payable in 2002 shall be paid by Seller. Taxes for 2002, due and payable in 2003 and all subsequent taxes shall be paid by Buyer.

6. Seller will cause notice of this contract to be given immediately to Seller's casualty insurance company or companies and will continue present insurance until final closing. If the property or any part thereof is damaged by fire or other casualty, one of the following shall



apply:

(a) If the damage can be repaired within thirty (30) days, the Sellers shall have the option of restoring the damaged property to its condition immediately prior to the occurrence causing the damage, in which event Buyers shall complete the transaction as originally planned.

(b) If the damage cannot reasonably be repaired or if Sellers elect not to repair damage as provided above, or if the property is entirely or substantially destroyed, Buyers shall have the option of taking the property as is, together with the proceeds of all insurance payable with respect to the damage or destruction, and paying the agreed purchase price therefor, or rescinding the contract, receiving a refund of all sums paid hereunder.

7. Seller warrants that no notice has been issued to or received by Seller or his agent, from any city, village, or other government authority of a Dwelling Code violation which may have existed before the execution of this contract.

8. The parties acknowledge and understand that an Act Relating to Disclosure by the Seller of Residential Real Property P.A. 88-111 approved July 20, 1993, effective October 1, 1994 (Act) (750 ILCS 77/1 et. seq.) requires the Seller to prepare and execute a "Disclosure Report" prior to the signing of a sales agreement. Seller and Buyer agree that the foregoing described property is not subject to the Disclosure Requirements of the Act for the reason that no residence is situated thereon. Buyer acknowledges that he/she has personally examined the property, premises and improvements thereon is satisfied as to its condition, "as is" and is relying on his/her own judgment and is not relying on any representations made by Seller, either orally or in writing.

9. Seller acknowledges that there are rubber tires and junk stored on the foregoing described premises. Seller further acknowledges that such tires and junk shall be removed by Seller on or before closing or September 30, 2002 whichever date last occurs. In the event the closing occurs prior to removal of the rubber tires and junk, Seller agrees Buyer may withhold \$20,000.00 of the purchase price to secure Seller's performance of this covenant. Such sum shall be held in an interest bearing escrow account (escrowed funds) at Petefish, Skiles & Co. Bank at Virginia, Illinois with interest thereon to accrue to Seller, payments to be made therefrom only upon joint signatures of Seller and Buyer. In the event Seller fails to remove such rubber tires and junk by September 30, 2002, Buyer may so remove the same utilizing the escrowed funds to pay for such removal and the escrowed funds not so used for such purpose shall be paid to Seller. Except to the extent of the escrowed funds and the use thereof by Buyer to pay for removal of the rubber tires and junk from the aforesaid premises, Buyer shall have no further claims against Seller for removal of such tires and junk.

10. The parties hereto agree that the foregoing described property contains no residential structures or buildings situated thereon and therefore the lead-based paint and/or lead-based paint hazard disclosure requirements are not required with respect to the foregoing

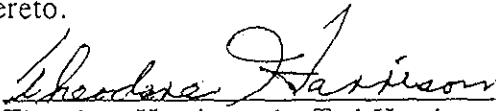
described property.

11. Title to be taken as follows: GERALD S. GILL
12. POSSESSION as follows: Upon Closing
13. PLACE OF CLOSING: Grosboll, Becker, Tice & Reif, Virginia, Illinois
14. DATE OF CLOSING: July 23, 2002 or such other time that is mutually convenient to the parties

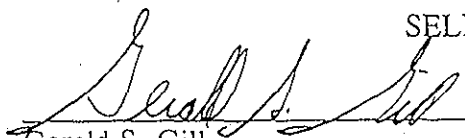
15. The covenants, agreements and warranties of the parties herein shall continue in full force and effect and shall not be merged nor terminated from and after the closing or completion of this Agreement and the payment in full of the sums due the respective parties herein, and shall otherwise be construed and deemed to survive the completion of this contract for the benefit of the parties hereto.

16. The use herein of the singular shall be deemed the plural, and the use of the plural shall be deemed the singular, the use of the masculine gender shall be deemed to be the feminine or neuter, the use of the feminine gender shall be deemed to be the masculine or neuter, and the use of the neuter gender shall be deemed to be the masculine or feminine, whenever the sense of this contract requires.

17. This Agreement shall be binding upon the heirs, devisees, legatees, representatives, and assigns of the parties hereto.

  
Theodore Harrison aka Ted Harrison

  
Margaretta Harrison

  
Gerald S. Gill

SELLER

BUYER



EXHIBIT A

PROPERTY DESCRIPTION

TRACT I:

The NORTHWEST Quarter of the SOUTHWEST Quarter of Section THIRTY-SIX (36) in Township EIGHTEEN (18) North, Range TEN (10) West of the Third Principal Meridian, Cass County, Illinois. EXCEPT all that part, if any, of the old J. & H. Railroad Right of Way.

TRACT II:

A. The NORTH HALF of the SOUTH EAST quarter of Section THIRTY-FIVE (35); and that part of the SOUTH HALF of the SOUTH EAST quarter of Section THIRTY-FIVE (35) lying NORTH of the following described line:

Beginning at the NORTHWEST CORNER of the SOUTH WEST quarter of the SOUTH EAST quarter of Section THIRTY-FIVE (35), running thence South One Thousand (1,000) feet, thence Northeast at a distance of Fifty (50) feet on the East side from the center of the track of the former Right-of-Way of the Jacksonville & Havana Railroad Company Eight Hundred Fifty (850) feet, thence East to the East line of Section THIRTY-FIVE (35), EXCEPT the old railroad right-of-way running through the SOUTHEAST QUARTER (SE1/4) of said Section THIRTY-FIVE (35).

Situated in Township EIGHTEEN (18) North, Range TEN (10) West of the Third Principal Meridian in Cass County, Illinois.

B. A part of the SOUTH WEST Quarter of the NORTH EAST Quarter of Section 36, Township 18 North, Range 10 West of the Third Principal Meridian in Cass County, Illinois described as follows:

Beginning at a point 530 feet South of the Northeast corner of said quarter quarter section, thence South along the section line 790 feet more or less to the Southeast corner of said quarter quarter section, thence West along the quarter Section line to the point where the quarter section line intersects with the center line of the Public Highway, thence Northeasterly along the center line of said Public Highway to the point directly west of the point of beginning, thence East parallel with the South line of said quarter quarter section to the point of beginning.

C. A strip of land One Hundred (100) feet in width running in a Northeasterly direction across the SOUTH HALF of Section THIRTY-FIVE (35), from the South line to the East line of said Section, being that part of the Jacksonville and Havana Right-of-Way running through the above-mentioned Section, in Township EIGHTEEN (18) North, Range TEN (10) West of the Third Principal Meridian in Cass County, Illinois.

D. A part of Section Thirty-five (35) in Township Eighteen (18) North, Range Ten (10) West, and a part of Section Two (2) in Township Seventeen (17) North, Range Ten (10) West of the Third Principal Meridian, in Cass County, Illinois, more particularly described as follows:

Beginning at a point Fifteen (15) Feet South of a point Twenty (20) rods East of the Southwest corner of the Southeast Quarter of the Southwest Quarter of said Section Thirty-five (35); running thence North Thirty (30) Feet; thence at right angles East to the center line of the former Right-of-Way of the Jacksonville & Havana Railroad Company; thence Southwesterly along said center line to a point directly East of the point of beginning; and thence West to said point of beginning.

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

RECEIVED  
CLERK'S OFFICE

FEB 10 2006

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. )  
TED HARRISON and GERALD S. GILL, )  
 )  
Respondents. )

AC 05-8  
(IEPA No. 330-04-AC)  
(Administrative Citation)

NOTICE OF FILING AND PROOF OF SERVICE

The undersigned certifies that an original and nine copies of the foregoing RESPONDENT HARRISON'S MOTION FOR SUMMARY JUDGMENT and of this Notice of Filing and Proof of Service, were served upon the Clerk of the Illinois Pollution Control Board, and one copy to each of the following parties of record and hearing officer in this cause by enclosing same in an envelope addressed to:

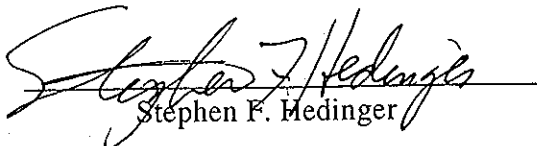
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601

Michelle M. Ryan  
IEPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East, P.O. Box 19274  
Springfield, IL 62796-9274

Mark S. Cochran  
Belatti, Barton, Hamill & Cochran, LLC  
944 Clock Tower Drive, Suite A  
Springfield, IL 62704

with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Springfield, Illinois before 5:30 p.m. on 8 February, 2006.

  
Stephen F. Hedinger

Hedinger Law Office  
2601 South Fifth Street  
Springfield, IL 62703  
(217) 523-2753 phone  
(217) 523-4366 fax

*This document prepared on recycled paper.*