

ILLINOIS POLLUTION CONTROL BOARD
January 24, 2008

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 06-33
) (IEPA No. 61-06-AC)
JOHNNY KEMPER, d/b/a/ KEMPER TREE) (Administrative Citation)
SERVICE,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

Today the Board accepts a proposed settlement and dismissal of this administrative citation enforcement action. By way of background, complainant, the Illinois Environmental Protection Agency (Agency), timely filed an administrative citation on April 3, 2006, against respondent Johnny Kemper, doing business as Kemper Tree Service (respondent). The Agency alleged that respondent violated Sections 21(p)(1) and (p)(3) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3) (2006)) by causing or allowing the open dumping of waste in a manner resulting in litter and open burning. The violations allegedly took place on March 1, 2006, at respondent's facility located in the SE 1/4 of Section 35, Township 14, Range 12W in Paris, Edgar County. The site is commonly known to the Agency as "Paris/Kemper, Johnny" and has been designated with Site Code No. 0458085005.

Respondent timely filed a petition to contest the administrative citation, which the Board accepted on May 18, 2006. On January 11, 2008, the parties filed a "stipulation of settlement and dismissal of respondent's petition for administrative review." Under its terms, respondent admits he violated Section 21(p)(1) of the Act by causing or allowing the open dumping of waste resulting in litter, and agrees to pay the statutory civil penalty of \$1,500 for this violation. Stipulation at 2. Respondent also agrees to the dismissal of his petition contesting the administrative citation. *Id.* at 3. The stipulation further states that the waste that was the subject of the administrative citation has been removed and properly disposed. *Id.* In addition, the Agency agrees not to refer the violations that are the subject of the administrative citation to the Office of the Illinois Attorney General or any other prosecuting authority to initiate a civil enforcement action. *Id.*

The Board accepts the stipulation and proposal for settlement. Under Section 31.1(d) of the Act (415 ILCS 5/31.1(d) (2006)), the Board therefore finds that respondent violated Section 21(p)(1) of the Act. Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2006)) establishes a civil penalty of \$1,500 for this violation. The Board accordingly assesses a civil penalty of \$1,500. To effectuate the parties' intent that respondent pay a total civil penalty of \$1,500, the Board dismisses the alleged violation of Section 21(p)(3) of the Act.

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

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. The Board finds that respondent violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2006)) by causing or allowing the open dumping of waste resulting in litter.
3. Respondent must pay a total civil penalty of \$1,500 by February 25, 2008, which is the first business day following the 30th day after the date of this order. Payment must be made by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and respondent's federal employer identification number or social security number must be included on the certified check or money order.
4. Respondent must send the certified check or money order to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
6. The Board dismisses the alleged violation of Section 21(p)(3) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2006)) and respondent's petition to contest the administrative citation.

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) (2006); *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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 24, 2008, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

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APR 03 2006

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
))
Complainant,)
))
v.)
))
JOHNNY KEMPER d/b/a KEMPER TREE,))
SERVICE and JOHNNY KEMPER)
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Respondents.)

AC *06-33*
(IEPA No. 61-06-AC)

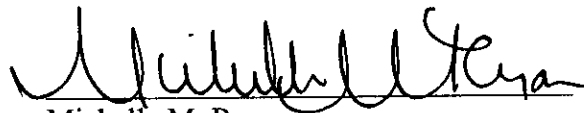
NOTICE OF FILING

To: Johnny Kemper d/b/a Kemper Tree Service
6370 Bonnie Avenue
Paris, IL 61944

Johnny Kemper
6370 Bonnie Avenue
Paris, IL 61944

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 ADMINISTRATIVE CITATION, AFFIDAVIT, and OPEN DUMP INSPECTION CHECKLIST.

Respectfully submitted,



Michelle M. Ryan
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 30, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

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STATE OF ILLINOIS
Pollution Control Board

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(IEPA No. 61-06-AC)

JURISDICTION

This Administrative Citation is issued pursuant to the authority vested in the Illinois Environmental Protection Agency by Section 31.1 of the Illinois Environmental Protection Act, 415 ILCS 5/31.1 (2004).

FACTS

1. That Johnnie Kemper, d/b/a Kemper Tree Service ("Respondent") is the present owner and operator of a facility located in the SE ¼ of Section 35 T14-R12W in the Township of Paris, Edgar County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Paris/Kemper, Johnny.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 0458085005.
3. That Respondent has owned and operated said facility at all times pertinent hereto.
4. That on March 1, 2006, Curt White of the Illinois Environmental Protection Agency's Collinsville Regional Office inspected the above-described facility. A copy of his inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

VIOLATIONS

Based upon direct observations made by Curt White during the course of his March 1, 2006 inspection of the above-named facility, the Illinois Environmental Protection Agency has determined that Respondent has violated the Illinois Environmental Protection Act (hereinafter, the "Act") as follows:

- (1) That Respondent caused or allowed the open dumping of waste in a manner resulting in litter, a violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2004).

- (2) That Respondents caused or allowed the open dumping of waste in a manner resulting in open burning, a violation of Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2004).

CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2004), respondent is subject to a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each of the violations identified above, for a total of Three Thousand Dollars (\$3,000.00). If Respondent elects not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than May 15, 2006, unless otherwise provided by order of the Illinois Pollution Control Board.

If Respondent elects to contest this Administrative Citation by petitioning the Illinois Pollution Control Board in accordance with Section 31.1 of the Act, 415 ILCS 5/31.1 (2004), and if the Illinois Pollution Control Board issues a finding of violation as alleged herein, after an adjudicatory hearing,

Respondent shall be assessed the associated hearing costs incurred by the Illinois Environmental Protection Agency and the Illinois Pollution Control Board. Those hearing costs shall be assessed in addition to the statutory civil penalty for each violation.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2004), if Respondent fails to petition or elects not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall adopt a final order, which shall include this Administrative Citation and findings of violation as alleged herein, and shall impose the statutory civil penalty specified above.

When payment is made, Respondent's check shall be made payable to the Illinois Environmental Protection Trust Fund and mailed to the attention of Fiscal Services, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Along with payment, Respondent shall complete and return the enclosed Remittance Form to ensure proper documentation of payment.

If any civil penalty and/or hearing costs are not paid within the time prescribed by order of the Illinois Pollution Control Board, interest on said penalty and/or hearing costs shall be assessed against the Respondent from the date payment is due up to and including the date that payment is received. The Office of the Illinois Attorney General may be requested to initiate proceedings against Respondent in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING THIS
ADMINISTRATIVE CITATION

Respondent has the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31/1 (2004). If Respondent elects to contest this Administrative Citation, then Respondent shall file a signed Petition for Review, including a Notice of Filing, Certificate of Service, and Notice of Appearance, with the Clerk of the Illinois Pollution Control Board, State of Illinois Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601. A copy of said Petition for Review shall be filed with the Illinois Environmental Protection Agency's Division of Legal Counsel at 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Section 31.1 of the Act provides that any Petition for Review shall be filed within thirty-five (35) days of the date of service of this Administrative Citation or the Illinois Pollution Control Board shall enter a default judgment against the Respondent.

Douglas P. Scott
Douglas P. Scott, Director *by me*
Illinois Environmental Protection Agency

Date: 3/30/06

Prepared by: Susan E. Konzelmann, Legal Assistant
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

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APR 03 2006

STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Complainant,)
v.)
JOHNNY KEMPER d/b/a KEMPER TREE)
SERVICE and JOHNNY KEMPER,)
Respondent.)

AC *06-33*
(IEPA No. 61-06-AC)

FACILITY: Paris/Kemper, Johnny
COUNTY: Edgar
DATE OF INSPECTION: March 1, 2006

SITE CODE NO.: 0458085005
CIVIL PENALTY: \$3,000.00

DATE REMITTED:
SS/FEIN NUMBER:
SIGNATURE:

NOTE

Please enter the date of your remittance, your Social Security number (SS) if an individual or Federal Employer Identification Number (FEIN) if a corporation, and sign this Remittance Form. Be sure your check is enclosed and mail, along with Remittance Form, to Illinois Environmental Protection Agency, Attn.: Fiscal Services, P.O. Box 19276, Springfield, Illinois 62794-9276.