

ILLINOIS POLLUTION CONTROL BOARD
February 5, 2015

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 13-60
)	(IEPA No. 126-13-AC)
JAMES HARRIS,)	(Administrative Citation)
)	
Respondent.)	

MICHELLE M. RYAN APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY; and

MARK V. KELLY APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On December 4, 2014, the Board issued an interim opinion and order finding that James Harris (Harris) violated Sections 21(p)(1), 21(p)(3), 21(p)(4), and 21(p)(7) of the Environmental Protection Act (Act). 415 ILCS 5/21(p)(1), (p)(3), (p)(4), (p)(7) (2012). This case concerns Harris' property, known to the Agency as Harris Property or Site, located at the end of Market Street at Haw Creek, in Knoxville, Knox County. The May 7, 2013 violations were alleged in a June 28, 2013 administrative citation filed by the Illinois Environmental Protection Agency (Agency).

In the December 4, 2014 order, after the Board found respondent had Sections 21(p)(1), 21(p)(3), 21(p)(4), and 21(p)(7) of the Act for a second time, the Board held that under Section 42(b)(4-5) of the Act, respondent was subject to the statutorily-fixed penalty of \$12,000. 415 ILCS 5/42(b)(4-5) (2012). In addition, the Board held that respondent, by unsuccessfully contesting the administrative citation at hearing, must pay the hearing costs of the Agency and the Board. The hearing in this case was held on August 27, 2014 in Galesburg, Knox County.

Because the record in this matter contained no information on hearing costs, the Board directed the Agency and the Clerk of the Board each to file documentation of the respective hearing costs, supported by an affidavit, and to serve the filing on respondent. The Board also gave respondent an opportunity to respond to the documentation of hearing costs and noted that after the time periods for these filings had expired, the Board would issue a final opinion and order assessing the civil penalty and any appropriate hearing costs.

On December 11, 2014, the Clerk of the Board submitted an affidavit of the Board's hearing costs totaling \$501.52, the entirety of which reflects the costs of court reporting. The Clerk served this documentation on respondent. On January 5, 2015, the Board received the

Agency's statement of hearing costs, supported by affidavit, which the Agency served on respondent. The Agency's hearing costs total \$170.52, consisting of mileage to and from the hearing along with copying fees. *See* 35 Ill. Adm. Code 108.502-108.506. Respondent did not file a response to either the Agency's statement of hearing costs or the Clerk's affidavit.

The Board finds the hearing costs of the Board and the Agency reasonable and orders respondent to pay those costs under Section 42(b)(4-5) of the Act. 415 ILCS 5/42(b)(4-5) (2012). The Board incorporates by reference the findings of fact and conclusions of law from its December 4, 2014 interim opinion and order. Under Section 31.1(d)(2) of the Act, the Board attaches the administrative citation and makes it part of the Board's final order. 415 ILCS 5/31.1(d)(2) (2012).

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

ORDER

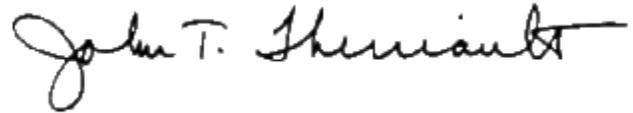
1. The Board finds that Respondent James Harris (Harris) violated Sections 21(p)(1), 21(p)(3), 21(p)(4), and 21(p)(7) of the Environmental Protection Act (Act). 415 ILCS 5/21(p)(1), (p)(3), (p)(4), (p)(7) (2012).
2. The Board assesses the statutory civil penalty of \$12,000 for the violations, as well as hearing costs totaling \$672.04, for a total amount of \$12,672.04. Respondent must pay \$12,672.04 no later than March 9, 2015, which is the first business day following the 30th day after the date of this order. Respondent must pay this amount by certified check or money order, made payable to the Illinois Environmental Protection Trust Fund. The case number, case name, and respondent's social security number or federal employer identification number must be included on the certified check or money order.
3. Respondent must send the certified check or money order to:

Illinois Environmental Protection Agency
Attn: Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act at the rate set forth in Section 1003(a) of the Illinois Income Tax Act. 415 ILCS 5/42(g) (2012); 35 ILCS 5/1003(a) (2012).
5. Payment of this penalty does not prevent future prosecution if the violation continues.

IT IS SO ORDERED.

Section 41(a) of the 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) (2012); *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, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 5, 2015, 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 extending to the right.

John T. Therriault, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

RECEIVED
CLERK'S OFFICE
JUN 28 2013
STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
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JAMES HARRIS,)
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Respondent.)

AC 13-60
(IEPA No. 126-13-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 (2010).

FACTS

1. That James Harris is the current owner and operator ("Respondent") of a facility located at the dead end of Market Street in Knoxville where the street ends at Haw Creek, Knox County, Illinois. The property is commonly known to the Illinois Environmental Protection Agency as Harris Property.
2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit and is designated with Site Code No. 0958120001.
3. That Respondent has owned and operated said facility at all times pertinent hereto.
4. That on May 7, 2013, Gene Figge of the Illinois Environmental Protection Agency's ("Illinois EPA") Peoria 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.

5. That on 6-26-2013 Illinois EPA sent this Administrative Citation via Certified Mail No. 7012 0470 0001 2998 5874.

VIOLATIONS

Based upon direct observations made by Gene Figge during the course of his May 7, 2013 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) (2010).
- (2) That Respondent 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) (2010).
- (3) That Respondent caused or allowed the open dumping of waste in a manner resulting in deposition of waste in standing or flowing waters, a violation of Section 21(p)(4) of the Act, 415 ILCS 5/21(p)(4) (2010).
- (4) That Respondent caused or allowed the open dumping of waste in a manner resulting in deposition of general construction or demolition debris: or clean construction or demolition debris, a violation of Section 21(p)(7) of the Act, 415 ILCS

5/21(p)(7) (2010).

CIVIL PENALTY

On October 6, 2011, the Board found James Harris in violation of Sections, 21(p)1, 21(p)3, 21(p)4, 21(p)5, 21(p)7 and 55(k)(1) of the Act in AC 11-27.

Because this Administrative Citation addresses a second or subsequent violation of Sections 21(p)(1), 21(p)(3), 21(p)(4) and 21(p)(7) of the Act, pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2010), Respondent is subject to a civil penalty of Three Thousand Dollars (\$3,000.00) for each violation, for a total of Twelve Thousand Dollars (\$12,000.00). 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 July 15, 2013, 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 (2010), 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 Three Thousand Dollar (\$3,000.00) statutory civil penalty for each violation.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2010), 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 (2010). 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.

 Lisa Bonnett *by SOP*

Lisa Bonnett, Director
Illinois Environmental Protection Agency

Date: 6/19/2013

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

RECEIVED
CLERK'S OFFICE
JUN 28 2013
STATE OF ILLINOIS
Pollution Control Board

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
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JAMES HARRIS,)
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Respondent.)

AC 13-60
(IEPA No. 126-13-AC)

FACILITY: Harris Property
SITE CODE NO.: 0958120001
COUNTY: Knox
CIVIL PENALTY: \$12,000.00
DATE OF INSPECTION: May 7, 2013

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.