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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

AUG 25 2004

ADMINISTRATIVE CITATION

STATE OF ILLINOIS
Pollution Control Board

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

AC 58
(IEPA No. 330-04-AC)

NOTICE OF FILING

To: Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Ted Harrison
P.O. Box 3185
Quincy, IL 62305

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the attached Petition for Review, Appearance and Certificate of Service.



Mark S. Cochran

August 20, 2004

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

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TED HARRISON and)
GERALD S. GILL,)
))
Respondents.)

AC 05-8

(IEPA No. 330-04-AC)

APPEARANCE

I hereby file my appearance in this proceeding, on behalf of
Gerald S. Gill, Respondent.



Mark S. Cochran

Mark S. Cochran
Bellatti, Barton, Hamill & Cochran, LLC
944 Clock Tower Drive, Suite A
Springfield, IL 62704
217-793-9300

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AC 05-8
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PETITION FOR REVIEW

On behalf of Respondent, Gerald S. Gill, this Petition for Review is being filed to contest the Administrative Citation issued in the above referenced matter.

FACTS

1. In July, 2002, Gerald S. Gill entered into an agreement ("Purchase Agreement") with Ted Harrison and Margaretta Harrison to purchase certain real estate more fully described in attached Exhibit A, hereinafter referred to as the "Site".

2. Paragraph 9 of the Purchase Agreement referenced above provided that:

"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."

3. Gerald S. Gill acquired possession of the Site on or about July 31, 2002.

4. Since July 31, 2002, no waste materials have been deposited on the Site by any person.

5. As a result of the Harrison's unwillingness or inability to fulfill the requirements of Paragraph 9 of the Purchase Agreement, Mr. Gill undertook a number of actions to remediate the site, including the following:

a) On December 4, 2002, scrap metals were removed and taken to Pherigo Salvage, Chandlerville, Illinois at a cost of \$2,500.00;

b) In April, 2003, an air conditioning unit was reclaimed by Mr. Don Bell;

c) Between April 13, 2003 and July 17, 2003, 1470 tires were removed and taken to Pherigo Salvage at a cost of \$6,847.05;

d) Three truck loads of general refuse were removed and disposed of at the Pike County Landfill on March 14, 2003, April 8, 2003 and November 20, 2003 at a cost of \$1,670.00

e) Between November, 2003 and August, 2004, 44,450 pounds of tire pieces were removed and taken to Pherigo Salvage at a cost of \$3,863.35; the delay in the deposition of these materials was due to the reluctance of reclaimers to accept tire pieces; and

f) As of August 20, 2004, a mobile home and several empty steel oil drums remain on the Site; these items will be picked up by a salvage firm prior to September 1, 2004.

6. Mr. Gill's first contact with the Illinois EPA was through a December 19, 2003 letter asserting his responsibility for site cleanup.

SUMMARY

Based upon the above recited facts, Mr. Gill did not cause or allow open dumping of waste in a manner resulting in litter, nor did he cause or allow the open dumping of waste in a manner resulting in deposition of general construction or demoli-

tion debris or clean construction or demolition debris. Quite to the contrary, Mr. Gill, of his own volition, undertook prompt and effective measures to cleanup the site once it became apparent that the responsible party would not. The failure of the Harrison's to fulfill their contractual responsibilities was beyond the control of Mr. Gill, as were the delays associated with the deposition of the tire pieces.

RELIEF

Respondent, Gerald S. Gill, requests that he be dismissed as a named respondent in the above mentioned Administrative Citation.

By:



Mark S. Cochran
Attorney for Respondent

Mark S. Cochran
Bellatti, Barton, Hamill & Cochran, LLC
944 Clock Tower Drive, Suite A
Springfield, IL 62704
Telephone: 217-793-9300
Telefax: 217-793-9301

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 35, 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 780 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.

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Pollution Control Board

CERTIFICATE OF SERVICE

I, the undersigned, certify that I did on the 20th day of August, 2004, send by certified mail, return receipt requested, with postage thereon fully prepaid, the attached Petition for Review, Appearance, and Notice of Filing to the following:

Division of Legal Counsel
Illinois Environmental
Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Ted Harrison
P.O. Box 3185
Quincy, IL 62305



Mark S. Cochran

Mark S. Cochran
Bellatti, Barton, Hamill & Cochran, LLC
944 Clock Tower Drive, Suite A
Springfield, IL 62704
217-793-9300

Dated: August 20, 2004