

ILLINOIS POLLUTION CONTROL BOARD

April 18, 1996

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 96-39
	)	(IEPA No. 38-96-AC)
M. K. O' HARA CONSTRUCTION, INC.,	)	(Administrative Citation)
KENNETH O' HARA and MADALYN	)	
O' HARA,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by G. T. Girard):

This matter comes before the Board upon the February 29, 1996 filing of an Administrative Citation pursuant to Section 31.1 of the Illinois Environmental Protection Act (Act) by the Illinois Environmental Protection Agency (Agency). A copy of that Administrative Citation is attached hereto, but will not be printed in the Board's opinion volumes. Service of the Administrative Citation was made upon M.K. O'Hara Construction, Inc., Kenneth O'Hara and Madalyn O'Hara on February 22, and February 24, 1996. The Agency alleges that on January 2, 1996, M.K. O'Hara Construction, Inc., Kenneth O'Hara and Madalyn O'Hara, present owners and/or operators of a facility located in Cass County and commonly known to the Agency as Beardstown/O'Hara #3, violated Section 21(p)(1) of the Act. The statutory penalty established for this violation is \$500.00 pursuant to Section 42(b)(4) of the Act.

M.K. O'Hara Construction, Inc., Kenneth O'Hara and Madalyn O'Hara have not filed a Petition for Review with the Clerk of the Board within 35 days of the date of service as allowed by Section 31.1(d)(2) of the Act. Therefore, pursuant to Section 31.1(d)(1), the Board finds that M.K. O'Hara Construction, Inc., Kenneth O'Hara and Madalyn O'Hara have violated the provision alleged in the Administrative Citation. Since there is (1) such violation, the total penalty to be imposed is set at \$500.00.

1. It is hereby ordered that, unless the penalty has already been paid, within 30 days of the date of this order M.K. O'Hara Construction, Inc., Kenneth O'Hara and Madalyn O'Hara shall, by certified check or money order payable to the Illinois Environmental Protection Trust Fund, pay a penalty in the amount of \$500.00, which is to be sent to:

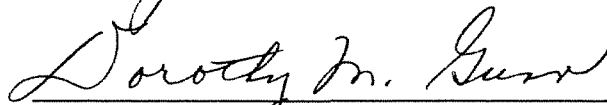
Fiscal Services  
Illinois Environmental Protection Agency  
2200 Churchill Road, P. O. Box 19276  
Springfield, Illinois 62794-9276

2. Respondents shall include the remittance form and write the case name and number and their social security or federal Employer Identification Number on the certified check or money order.
3. Penalties unpaid after the due date shall accrue interest pursuant to Section 42(g) of the Illinois Environmental Protection Act.
4. Payment of this penalty does not prevent future prosecution if the violation continues.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration.")

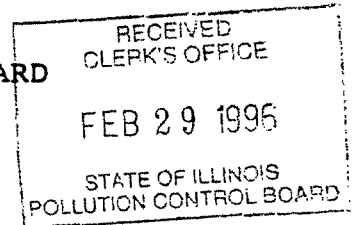
IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 18<sup>th</sup> day of April, 1996, by a vote of 5-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Complainant,

v.

M. K. O'HARA CONSTRUCTION, INC.,  
KENNETH O'HARA and MADALYN O'HARA,  
Respondents.

)  
)  
)  
) (AC 96-39  
) (IEPA No.83-96-AC)  
)  
)  
)

JURISDICTION

This Administrative Citation is issued pursuant to authority vested in the Illinois Environmental Protection Agency by 415 ILCS 5/31.1, (1994).

FACTS

1. That Respondents M.K. O'Hara Construction, Inc., Kenneth O'Hara and Madalyn O'Hara are the present owners and/or operators of a facility located in the County of Cass, State of Illinois.

2. That said facility is an open dump operating without an Illinois Environmental Protection Agency Operating Permit, and designated with Site Code No. 0170150020. Said facility is commonly known to the Agency as Beardstown/O'Hara #3.

3. That Respondents have owned and/or operated said facility at all times pertinent hereto.

4. That on January 2, 1996, Bill Walkenbach, of the Illinois Environmental Protection Agency, inspected the above-described facility. A copy of the inspection report setting forth the results of such inspection is attached hereto and made

a part hereof.

#### VIOLATIONS

On the basis of direct observation of Bill Walkenbach, the Illinois Environmental Protection Agency has determined that Respondents have caused or allowed open dumping at the above-described facility in a manner which resulted in the following occurrences:

A. That on January 2, 1996 an on-site inspection of said facility disclosed the following:

- (1) Causing or allowing litter in violation of 415 ILCS 5/21(p)(1), (1992).

#### CIVIL PENALTY

Pursuant to 415 ILCS 5/42(b)(4), (1992), Respondents herein are subject to a civil penalty of Five Hundred Dollars (\$500.00) for each violation specified above in Paragraph A, for a total of Five Hundred Dollars (\$500.00). Additionally, should Respondents elect to petition the Illinois Pollution Control Board under the review process described hereinbelow, and if there is a finding of the violations alleged herein, after an adjudicatory hearing, Respondents shall be assessed the associated hearing costs incurred by the Illinois Environmental Protection Agency and the Illinois Pollution Control Board, in addition to the Five Hundred Dollar (\$500.00) statutory penalty.

If you acknowledge the violations cited hereinabove, the civil penalty specified above shall be due and payable no later

than April 8, 1996

If you do not petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of service hereof or if you elect to contest this Administrative Citation, any judgment rendered against you shall specify the due date of the statutory civil penalty and any costs assessed against you.

When payment is made, your check should be made payable to the Illinois Environmental Protection Trust Fund and mailed to the attention of Fiscal Services, Illinois Environmental Protection Agency, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9276. Also, please complete and return the enclosed Remittance Form, along with your payment, to assure proper documentation of payment.

If any civil penalty imposed by the Illinois Pollution Control Board is not paid within the time prescribed in the order, interest on such penalty will be assessed for the period from the date payment is due until the date payment is received. If any civil penalty, by reason of acknowledgment, default or finding after adjudicatory hearing is not paid when due, the Office of the Illinois Attorney General shall be requested to initiate proceedings in Circuit Court to collect said civil penalty. In addition to the previously assessed civil penalty, interest, and hearing costs of the Illinois Environmental Protection Agency and the Illinois Pollution Control Board, if any, the Attorney General's Office will seek to recover their

costs of litigation.

PROCEDURE FOR CONTESTING THIS  
ADMINISTRATIVE CITATION

You have the right to contest this Administrative Citation. See 415 ILCS 5/31.1, (1992). If you elect to contest this Administrative Citation, you must file a Petition for Review with the Clerk of the Illinois Pollution Control Board. A copy of the Petition for Review should be filed with the Illinois Environmental Protection Agency. Such Petition for Review must be filed within thirty-five (35) days of the date of service of this Administrative Citation, or a default judgment shall be entered by the Pollution Control Board. The Petition for Review may be filed with the Clerk of the Illinois Pollution Control Board at the State of Illinois Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601; and, a copy of said Petition for Review filed with the Illinois Environmental Protection Agency at 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9276, Attention: Division of Legal Counsel.

*Mary A. Gade*

Mary A. Gade, Director *by wee*  
Illinois Environmental Protection Agency

Prepared by: Todd Rettig  
Illinois Environmental  
Protection Agency  
2200 Churchill Road  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217)782-5544

Date:

3-16-96

REMITTANCE FORM

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) EPA 83-96-AC  
 )  
M.K. O'HARA CONSTRUCTION, INC., )  
KENNETH O'HARA and MADALYN O'HARA, )  
Respondents )

FACILITY: Beardstown/O'Hara #3 SITE CODE NO: 0170150020  
COUNTY: Cass CIVIL PENALTY: \$ 500.00  
DATE OF INSPECTION: January 2, 1996

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, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9276.