

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

RECEIVED
CLERK'S OFFICE

SEP 28 2006

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Complainant,)

vs.)

FRANCIS E. MORRIS,)

Respondent.)

AC 07-12
(IEPA No. 183-06-AC)

PETITION FOR REVIEW

NOW COMES respondent, Francis E. Morris, also known as F. E. Morris, by his agent, Bertha Ann Morris, and by his counsel, Van Winkle and Van Winkle, and for his Petition for Review, states as follows:

1. Admitted that F. E. Morris is record title holder to the SE NE 21-7-8 Gallatin County, but denied that Francis E. Morris is the owner or operator of the alleged facility.
2. Denied.
3. Denied.
4. Respondent can neither admit nor deny what Maggie Stevenson is alleged to have done, but in all other respects the allegation is denied.

VIOLATIONS

1. Denied.
2. Denied.
3. Denied.
4. Denied.

CIVIL PENALTY

1. Denied.

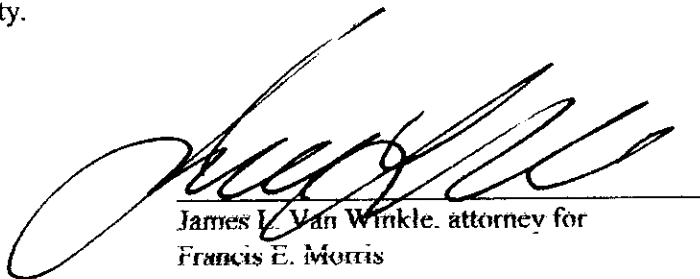
AFFIRMATIVE DEFENSES

1. The allegations of facts contained in the complaint are materially incorrect.
2. Francis E. Morris is an older individual, age 81, who because of his present physical and mental condition, is incapable of conducting any business or committing the acts alleged in the petition.
3. Francis E. Morris presently suffers from substantial physical disabilities as evident from the Affidavit of Bertha Morris.
3. As evident from the petition, the apparent violations were recent.
4. Francis E. Morris has not been engaged in business and has not in fact committed any of the acts described in the petition.
5. Francis E. Morris, although the nominal owner of the real property, is not in possession of the real property. (See lease to Scott Price below described.) F. E. Morris is not in control of the 'facility' as defined under 35 IAC 720.110.
6. Mere ownership of the real property is not sufficient grounds for imposition of a civil penalty. 35 IAC 720.110. F. E. Morris was not in control of the facility.
7. The real property has in fact been leased and is in possession of a person other than Francis E. Morris, as reflected by the lease, a copy of which is attached as Exhibit "A". Prior to filing the instant action, no effort was made to contact Francis E. Morris to discuss the alleged violation with Francis E. Morris.
8. The report filed by the investigator indicates that the investigator checked with the Assessor's Office to determine who received the tax bill. The person receiving the tax bill is not

automatically the person in possession.

9. The allegations that Francis E. Morris owned and operated the "facility" are materially incorrect.

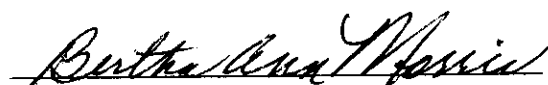
WHEREFORE, respondent requests review of the administrative citation and reversal of any finding that respondent is responsible for any alleged violation, and reversal of any finding that respondent is liable for any penalty.



James L. Van Winkle, attorney for
Francis E. Morris

CERTIFICATION

____ Under penalties of perjury as provided by law, and pursuant to Illinois Civil Code Section 1-109, the undersigned certifies that he has read the foregoing instrument, and knows the allegations contained in the foregoing to be true and correct, except for the items alleged on information and belief, the undersigned truly believes the same to be true and correct.



Agent for
Bertha Ann Morris
F. E. Morris

JAMES L. VAN WINKLE, #03124239, VAN WINKLE & VAN WINKLE, Attorneys at Law,
301 S. Jackson Street, P. O. Box 337, McLeansboro, IL 62859-0337, Telephone: (618) 643-4396,
Telefax: (618) 643-4241, E-Mail: ripvan@midwest.net
4/pleadings/06/M064301.petition for review revised mk.wpd
vw file: 06-430.1

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ADMINISTRATIVE CITATION

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SEP 23 2008

STATE OF ILLINOIS
Pollution Control Board

AC 07-17
(IEPA No. 183-06-AC)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
))
Complainant,)
))
vs.)
))
FRANCIS E. MORRIS,)
))
Respondent.)

MOTION TO DISMISS

NOW COMES respondent, Francis E. Morris, also known as F. E. Morris, by his agent, Bertha Ann Morris, and by his counsel, Van Winkle and Van Winkle, and for his Motion to Dismiss, represents to the Court as follows:

1. The allegations of facts contained in the complaint are materially incorrect.
2. Francis E. Morris is an older individual, age 81, who because of his present physical and mental condition, is incapable of conducting any business or committing the acts alleged in the petition.
3. Francis E. Morris presently suffers from substantial physical disabilities.
3. As evident from the petition, the apparent violations were recent.
4. Francis E. Morris has not been engaged in business and has not in fact committed any of the acts described in the petition.
5. Francis E. Morris, although the nominal owner of the real property, is not in possession of the real property.
6. A review of the public records of Gallatin County, Illinois, would indicate that

grounds for imposition of a civil penalty.

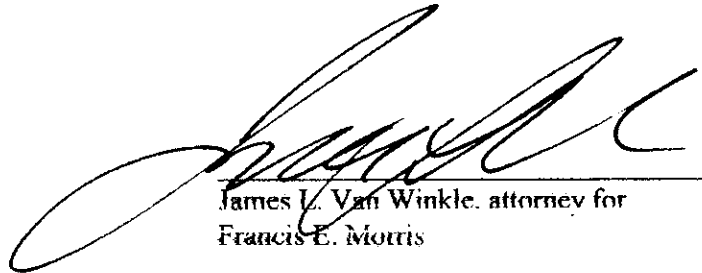
7. The real property has in fact been leased and is in possession of a person other than Francis E. Morris, as reflected by the lease, a copy of which is attached as Exhibit "A". Prior to filing the instant action, no effort was made to contact Francis E. Morris to discuss the alleged violation with Francis E. Morris.

8. The allegations that Francis E. Morris owned and operated the "facility" are materially incorrect.

WHEREFORE, Francis E. Morris moves to dismiss with prejudice the administrative citation filed.

In the alternative, Francis E. Morris moves to vacate the administrative citation.


Francis E. Morris further moves for recovery of his attorney's fees and costs.



James L. Van Winkle, attorney for
Francis E. Morris

CERTIFICATION

____ Under penalties of perjury as provided by law, and pursuant to Illinois Civil Code Section 1-109, the undersigned certifies that he has read the foregoing instrument, and knows the allegations contained in the foregoing to be true and correct, except for the items alleged on information and belief, the undersigned truly believes the same to be true and correct.



Bertha Ann Morris

JAMES L. VAN WINKLE, #03124239
VAN WINKLE & VAN WINKLE
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Telephone: (618) 643-4396
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4/pleadings/06/M064301 Motion to Dismiss revised mk.wpd
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Lease

This Lease is between F. E. Morris as landlord and Scott Price as tenant, as follows:

1 Landlord leases to tenant, on a year to year lease, the house and non-tillable land in Gallatin County known as the Effie Vineyard place, the Southeast Quarter of the Northeast Quarter, Section 21, T7S R8E.

2 The lease is a year to year lease, starting July 1, 1996, and automatically renews for repeating one year terms unless tenant elects to cancel the lease. Tenant can keep the lease as long as tenant keeps the property maintained in good condition.

3 Tenant can make improvements to the old house, remodel it, and redecorate it, but tenant is responsible for all of the costs to repair and maintain or improve the house. Any improvements become landlords.

4. Tenant will not be required to pay rent. Tenant fixing up the old house at his expense will be the rent.

5. Tenant will be responsible for his insurance on the household contents. Landlord will carry the liability and casualty insurance on the house and farm.

6. Landlord will keep control of the farm land and receive all crops, and pay all the real estate taxes.

7. Tenant can buy the property at landlord's death for the appraised value, both the house and the land. Appraised value to* be determined by neutral appraiser.

F. E. Morris
F. E. Morris

Scott Price
Scott Price

ILLINOIS POLLUTION CONTROL BOARD

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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Complainant,)

vs.)

FRANCIS E. MORRIS,)

Respondent.)

AC 07-12
(IEPA No. 183-06-AC)

AFFIDAVIT

The undersigned, Bertha Ann Morris, being duly sworn upon her oath, does depose and state as follows:

1. Affiant is the spouse of F. E. Morris, respondent in the above cause, and also holds a Power of Attorney for F. E. Morris.
2. Affiant knows of her own personal knowledge that the house and surrounding non-tillable land located in Gallatin County, Illinois, which is the subject of the pending case, was leased by F. E. Morris to Scott Price sometime prior to July 1996, and that for more than ten (10) years, Scott Price has been in exclusive possession of the house and non-tillable farmlands.
3. F. E. Morris had surgery on April 27, 2006. As a result of the surgery, F. E. Morris was completely disabled. Two or three days after the surgery, F. E. Morris suffered some type of a medical complication, first diagnosed as a stroke.
4. Since the surgery, F. E. Morris has not been able to work. He is eighty-one (81) years of age. He is unable to walk without the aid and benefit of a walker or a cane supported by

- other individuals. Since the surgery, F. E. Morris can walk at best twenty to thirty feet, and is incapable of picking up or carrying any objects, including but not limited to concrete blocks, tree limbs, lumber or anything that weighs more than a half pound.
5. Since at least six months before the surgery, F. E. Morris has not be physically capable of operating any heavy equipment, including but not limited to any semi-tractor trailer, bulldozer, trackhoe or backhoe.
 6. Since the April 27, 2006 surgery, he has been completely unable to do any physical work and has been extremely weak.
 7. Since before the surgery, F. E. Morris' health was deteriorating, and for at least six (6) months prior to the surgery, he was not actively engaged in any business or occupation, did not operate any heavy equipment, and did not perform any physical or manual labor.
 8. Since the surgery, F. E. Morris has rarely been outside the house, and has not been to the Gallatin County property at any time.
 9. Since the surgery, F. E. Morris has required twenty-four (24) hour care and supervision and either affiant or other family members have been in constant care for him.
 10. F. E. Morris had no personal involvement with or knowledge of any of the activities described in the Administrative Citation filed in this case.
 11. Affiant believes that F. E. Morris is not physically or mentally capable of dealing with or responding to the allegations in this case, and that he would suffer irreparable injury and harm if he is required to appear at any proceedings relating to the Citation.
 12. For at least six month prior to the surgery in April 2006, and strongly exacerbated since the surgery, F. E. Morris is extremely easy to upset. Anything out of the ordinary or unexpected causes him to become extremely agitated and upset.

13. F. E. Morris often does not sleep at night, but instead paces the floor or gets in and out of bed, and constantly inquires about old events repeatedly, not remembering the same questions that he has repeatedly asked that have been answered.
14. Affiant has inspected the area claimed by the State of Illinois to be an illegal dump as located on the property in Gallatin County, Illinois.
15. Affiant knows that F. E. Morris has not been in actual possession and control of that property for a least ten (10) years, and had absolutely nothing to do with or any knowledge of whatever activities that were conducted which caused or created the alleged condition.
16. Affiant further saith not.


Bertha Ann Morris

CERTIFICATION

Under penalties of perjury as provided by law, and pursuant to Illinois Civil Code Section 1-109, the undersigned certifies that he has read the foregoing instrument, and knows the allegations contained in the foregoing to be true and correct, except for the items alleged on information and belief, the undersigned truly believes the same to be true and correct.


Bertha Ann Morris

JAMES L. VAN WINKLE, #03124239
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mk/wp61b/Pleadings/2006/ M064301 Affidavit.wpd
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CERTIFICATE OF SERVICE

The undersigned, a member of the firm of Van Winkle and Van Winkle, certifies that a copy of the below described instrument was served upon the attorney of record of all parties to the above cause by enclosing the same in an envelope to such attorneys as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in McLeansboro, Illinois, on the 27 day of September, 2006, at the following addresses:

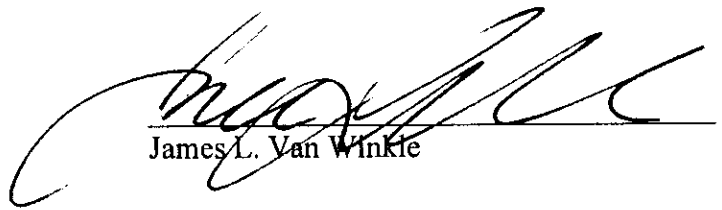
Michelle M. Ryan
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Springfield, IL 62794-9276

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

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

A copy of the following documents:

- Motion to Dismiss
- Petition for Review
- Affidavit of Bertha Ann Morris



James L. Van Winkle

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4/pleadings/06/certificate of service/gc
vw file: #