

ILLINOIS POLLUTION CONTROL BOARD

March 4, 2021

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 20-8
	)	(Enforcement - Land)
JOHN KIRBY, and individual, and POLLY	)	
KIRBY, an individual,	)	
	)	
Respondents.	)	

OPINION AND ORDER OF THE BOARD (by C.M. Santos):

On August 14, 2019, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed an 11-count complaint against William Mucci and Debra Mucci d/b/a B&M Properties (Muccis) and John Kirby and Polly Kirby (Kirbys) (collectively, respondents). The complaint concerns property owned by Muccis and possessed under a purchase contract subject to conditions by Kirbys. The property is located adjacent to Illinois Route 71 north and south of N 2725 Road in Ottawa, LaSalle County.

On December 19, 2019, the Board accepted a settlement between the People and Muccis. The Board’s order stated that “[t]he case against Kirbys continues.” People v. Mucci and Kirby, PCB 20-8, slip op. at 2, n.1 (Dec. 19, 2019). The Board added that “the caption of subsequent orders will not include Muccis.” *Id.*

The People and Kirbys - the remaining respondents - now seek to settle without a hearing. For the reasons below, the Board accepts the parties’ stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2018)), the Attorney General and the State’s Attorneys may bring actions before the Board on behalf of the People to enforce Illinois’ environmental requirements. See 415 ILCS 5/31 (2018); 35 Ill. Adm. Code 103.

In this case, the People alleged in Counts 1-8 that all of the original respondents violated Sections 21(a), 21(d)(1), 21(d)(2), 21(e), 21(p)(1), 21(p)(3), 21(p)(7), 55(a)(1), and 55(k)(1) of the Act (415 ILCS 5/21(a), 21(d)(1), 21(d)(2), 21(e), 21(p)(1), 21(p)(3), 21(p)(7), 55(a)(1), 55(k)(1) (2018)) and Section 812.101 of the Board’s waste disposal regulations (35 Ill. Adm. Code 812.101) by causing or allowing the open dumping of waste resulting in litter, open burning, and deposition of general and demolition debris; causing or allowing the open dumping of waste tires; causing or allowing water to accumulate in waste tires; storing, disposing, and abandoning waste at a site not permitted for storage or disposal of waste; conducting waste storage, treatment, and disposal without a permit; and developing and operating a waste storage and waste disposal facility without a development permit.

In Counts 9-11, the People also alleged that the Kirbys violated Sections 9(a), 9(c), and 55(a)(2) of the Act (415 ILCS 5/9(a), 9(c), 55(a)(2) (2018)) by causing, threatening, or allowing air pollution; the open burning of refuse; and the burning of waste tires.

On December 17, 2020, the People and Kirbys filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2018)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2018)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in *The Times of Ottawa* on February 4, 2021. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2018); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. *See* 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of Kirbys' operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2018)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Kirbys do not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2018)), which may mitigate or aggravate the civil penalty amount. Under the proposed settlement, Kirbys agree to pay a civil penalty of \$6,000 within 30 days after the date of this order. The People and Kirbys have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

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

### **ORDER**

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. John Kirby and Polly Kirby must pay a civil penalty of \$6,000 no later than Monday, April 5, 2021, which is the first business day following the 30th day after the date of this order. John Kirby and Polly Kirby must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name and case number must appear on the certified check or money order.
3. John Kirby and Polly Kirby must submit payment of the civil penalty to:

Illinois Environmental Protection Agency  
Fiscal Services Division

1021 North Grand Avenue East  
 P.O. Box 19276  
 Springfield, Illinois 62794-9276

John Kirby and Polly Kirby must send a copy of the certified check or money order and any transmittal letter to:

Christopher Grant  
 Illinois Attorney General’s Office Environmental Bureau  
 69 W. Washington, Suite 1800  
 Chicago, Illinois 60602  
 cgrant@atg.state.il.us

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2018)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2018)).
5. John Kirby and Polly Kirby must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject of the complaint.

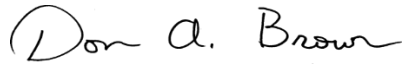
IT IS SO ORDERED.

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) (2018); *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. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

<b>Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court</b>	
<b>Parties</b>	<b>Board</b>
Illinois Attorney General’s Office Environmental Bureau Attn.: Christopher Grant 69 W. Washington, Suite 1800 Chicago, Illinois 60602 cgrant@atg.state.il.us	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601 don.brown@illinois.gov

Miskell Law Center LLC Attn.: Eric L. Miskell 218 W. Madison Street Ottawa, Illinois 61350-2819 Eric@miskelllaw.com	
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I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 4, 2021, by a vote of 4-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board