

**U.S. Department of Labor**

**Occupational Safety and Health Administration  
230 South Dearborn Street, Room 3244  
Chicago, Illinois 60604  
(312) 353-2220**



**MAY 29 2013**

Certified Mail # 7012 3460 0002 2195 9951

Prairie State Generating Company  
c/o Andrew Martone  
Attorney at Law  
1650 Des Peres Road, Suite 200  
St. Louis, MO 63131

Re: Headwaters Cooperation/Prairie State Generating Company/Hays/5-2962-13-010

Dear Sir or Madam:

The complaint in the above-captioned matter has been dismissed by this office. However, the Complainant is afforded the opportunity to file an appeal of this dismissal with the U.S. Department of Labor - OSHA, in Washington, D.C., within 15 days of receipt of the dismissal letter. In the event that no appeal action is taken by the Complainant, this case will be considered closed.

If at any time you have any questions or require any information regarding employee rights and employer responsibilities under Section 11(c) of the Occupational Safety and Health Act, please feel free to contact this office by mail or telephone.

Sincerely,

A handwritten signature in black ink, appearing to read "R. J. Kus".

Robert J. Kus  
Regional Supervisory Investigator  
Whistleblower Protection Programs

Encl: Secretary's Findings

U.S. Department of Labor

Occupational Safety and Health Administration  
230 South Dearborn Street, Room 3244  
Chicago, Illinois 60604  
(312) 353-2220



MAY 7 9 2013

Certified Mail # 7012 3460 0002 2195 9937

Paul Hays  
c/o Stephen McGlynn  
Attorney at Law  
116 S Charles Street  
Belleville, IL 62220

Re: Headwaters Cooperation/Prairie State Generating Company/Hays/5-2962-13-010

Dear Mr. Hays:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by you (Complainant) against Headwaters Cooperation and Prairie State Generating Company (herein after referred to as Respondent otherwise specified) on December 6, 2012, under Section 11(c)(1) of the Occupational Safety and Health Act, 29 USC §660 (c). In brief, you alleged that Respondent terminated your employment in reprisal for reporting safety concerns.

Following an investigation by a duly authorized investigator, the Secretary of Labor, acting through his agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region V, issues the following findings.

#### **Secretary's Findings**

Respondent (Headwaters), is a person within the meaning of 29 U.S.C. §652(4). Respondent is also a business affecting commerce. Respondent primarily engages in the disposal of fly ash with a facility located in Marissa, Illinois.

Respondent (Prairie State), is a person within the meaning of 29 U.S.C. §652(4). Respondent is also a business affecting commerce. Respondent primarily engages in the production of electrical service with a facility located in Marissa, Illinois.

Complainant worked at Respondents' Marissa facility for Respondent (Headwaters), as a Safety Coordinator, contracted to Respondent (Prairie State). Complainant is an employee within the meaning of 29 U.S.C. §652(6).

On December 6, 2012, Complainant filed a complaint with the Secretary of Labor alleging that Respondents discriminated against him in violation of 29 USC §660(c). As this complaint was filed within 30 days of an alleged adverse action, it is deemed timely.

In February 2009, Complainant was hired by Respondent (Headwaters) as a Safety Coordinator and contracted by Respondent (Prairie State).

On November 2, 2012, Complainant's supervisor sent an email, that was drafted by Complainant, on behalf of both parties, to Respondent (Prairie State), addressing hazards with an electrical box that resulted in an injury to an employee.

On November 3, 2012, Respondent (Prairie State) sent a response email to Respondent (Headwaters) thanking them for the information.

On November 8, 2012, Complainant was terminated by Respondent (Headwaters).

On December 6, 2012, Complainant filed a complaint with OSHA under 11(c).

A preponderance of the evidence supports Respondents' position that Complainant's alleged protected activity was not the motivating factor in his removal from the work assignment. Respondent terminated Complainant's employment for performance issues. Consequently, this complaint is dismissed.

This case will be closed unless Complainant files an appeal by sending a letter to:

Director of Enforcement Programs  
U.S. Department of Labor-OSHA  
Occupational Safety & Health Administration  
200 Constitution Avenue  
Washington, D.C. 20210

With a copy to:

Timothy McCoy  
Headwaters Corporate Counsel  
10653 S River Front Parkway  
South Jordan, UT 84095

Andrew Martone  
Attorney at Law  
1650 Des Peres Road, Suite 200  
St. Louis, MO 63131

Nick A. Walters  
Regional Administrator  
U.S. Department of Labor, OSHA  
230 S. Dearborn, RM 3244  
Chicago, IL 60604

Mary Ann Howe, CFE  
Assistant Regional Administrator  
U.S. Department of Labor-OSHA

365 Smoke Tree Plaza  
North Aurora, IL 60542

Your appeal should explain with specificity the reason for the appeal. To be considered, an appeal must be postmarked within 15 days of receipt of this letter. If this finding is appealed, the Regional Administrator will review the case file to determine whether the investigation dealt adequately with all factual issues and the investigation was conducted fairly and in accordance with applicable laws. The outcome of an appeal is either the return of the case to the investigator for further investigation or denial of the appeal, after which the case is closed.

Sincerely,

A handwritten signature in black ink, appearing to read "R. J. Kus", written in a cursive style.

Robert J. Kus  
Regional Supervisory Investigator  
Whistleblower Protection Programs

cc: Respondents