

ILLINOIS POLLUTION CONTROL BOARD

July 8, 2004

CITY OF CHICAGO DEPARTMENT OF	)	
ENVIRONMENT,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 04-79
	)	(CDOE No. 04-09-AC)
NATIONAL MATERIAL LIMITED	)	(Administrative Citation)
PARTNERSHIP,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by A.S. Moore):

On May 18, 2004, the City of Chicago Department of Environment (CDOE) timely filed an administrative citation against National Material Limited Partnership (NMLP). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). For the reasons below, the Board accepts NMLP's petition to contest the administrative citation.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2002)), an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Illinois Environmental Protection Agency (Agency) or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 4(r), 21(o), (p), 31.1, 42(b)(4), (4-5) (2002); 35 Ill. Adm. Code 108. CDOE is a delegated unit.

CDOE alleges that NMLP violated Sections 21(p)(4) and (p)(6) of the Act (415 ILCS 5/21(p)(4), (p)(6) (2002)). According to CDOE's administrative citation, NMLP violated these provisions of the Act by causing or allowing the open dumping of waste resulting in (1) deposition of waste in standing or flowing waters and (2) standing or flowing liquid discharge from the dump site at 12950 South Stony Island Avenue, Chicago, Cook County. CDOE asks the Board to impose a \$3,000 civil penalty on NMLP for these two alleged violations.

As required, CDOE served the administrative citation on NMLP within "60 days after the date of the observed violation." 415 ILCS 5/31.1(b) (2002); *see also* 35 Ill. Adm. Code 108.202(b). On June 22, 2004, NMLP timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). NMLP disputes the designation of the materials at issue as waste. NMLP also contends that the inspected conditions resulted from unusually heavy rainfall and uncontrollable circumstances, an act of God. NMLP further asserts that it did not cause or allow the violations alleged and that it never operated at the site. *See* 35 Ill. Adm. Code 108.206. The Board accepts the petition for hearing.

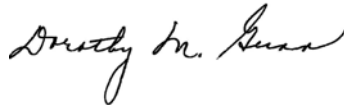
The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. *See* 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2002). By contesting the administrative citation, NMLP may have to pay the hearing costs of the Board and CDOE. *See* 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available from the Clerk of the Board and on the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). *See* 35 Ill. Adm. Code 108.504.

NMLP may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If NMLP chooses to withdraw its petition, it must do so in writing, unless it does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If NMLP withdraws its petition after the hearing starts, the Board will require NMLP to pay the hearing costs of the Board and CDOE if CDOE prevails. *See id.* at 108.500(c).

CDOE has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2002); 35 Ill. Adm. Code 108.400. If the Board finds that NMLP violated Sections 21(p)(4) and (p)(6), the Board will impose civil penalties on NMLP. The civil penalty for violating any provision of Section 21(p) is \$1,500 for each violation of each such provision, except that the penalty amount imposed will be \$3,000 for each violation of any provision of Section 21(p) that is the respondent's second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500. However, if the Board finds that NMLP "has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty." 415 ILCS 5/31.1(d)(2) (2002); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 8, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board