

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
ADMINISTRATIVE CITATION

RECEIVED  
CLERK'S OFFICE

DEC 05 2008

STATE OF ILLINOIS  
Pollution Control Board

Illinois EPA,

Complainant,

v.

Reynolds Service Co., Inc.,

Respondent.

AC 09-14

REPLY TO COMPLAINANT'S RESPONSE TO  
MOTION TO CLARIFY RECORD

On behalf of the Respondent, Reynolds Service Co., Inc., Thomas J. Immel, of the law firm of Feldman, Wasser Draper and Cox, hereby files this Reply to Complainant's Response to the Motion to Clarify Record, previously filed by the undersigned in an attempt to clarify the record in the instant case as regards the Respondent's receipt of the above referenced Administrative Citation, and states as follows:

1. Complainant's Response to Motion to Clarify Record arrived in the weekend mail on Saturday, November 22, 2008 and was seen for the first time by the undersigned on Monday, November 24<sup>th</sup>. This brief Reply is prompted by the commentary offered in Complainant's Response.
2. Respondent's business involves the destruction of outdated or damaged mobile homes and trailers and the recovery and recycling of metals and other valuable materials recovered in that process. Unusable material generated in

the process is ultimately removed from Respondent's property for off-site disposal. The operation is, by its nature, messy while in process.

3. The Respondent receives its mail at a post office box. On Monday, September 29, 2008, Respondent advises that it picked up two mailed packages at the post office which came from the office of Complainant, consisting of two 9x12 envelopes, the faces of which are attached hereto as Exhibits 1 & 2.
4. The envelope marked as Exhibit 1 is postmarked September 23, 2008 and, on information and belief, contained a copy of the Administrative Citation which is the subject of this proceeding.
5. The envelope marked as Exhibit 2 is postmarked September 25, 2008 and, on information and belief, contained a "Notice of Corrective Action Required...", consisting of two pages, and a multi-page copy of an August 4, 2008 inspection report generated by Complainant. The two page Notice of Corrective Action Required is attached hereto as Exhibit 3, and makes mention of the Administrative Citation.
6. On information and belief the foregoing documents were all received by Respondent on the same day, September 29, 2008, being the date that the Respondent picked up the aforesaid mail, and September 29<sup>th</sup> has been treated by the undersigned as the trigger date for Respondent's 35 day deadline to file a Petition for Review of the Administrative Citation,

notwithstanding what the Complainant now says about an earlier mailing, the substance of which is unknown.

7. At Paragraph 10 on page 3 of its Response to the Motion to Clarify Record, Complainant makes at least one misstatement: *“The only other document sent to Respondent regarding this case was the proof of service, sent via US mail on September 22, 2008, which clearly indicated the petition for Review deadline of October 16, 2008.”* About that statement it should be noted:

- a) Respondent has no mail from Complainant postmarked September 22, 2008.
- b) The statement made is contradicted by the mailed “Notice of Corrective Action Required (See Exhibits 2 & 3). Indeed, there was other mail to Respondent.
- c) In fact, the referenced *“proof of service”* is not to be found in mail received by Respondent, but was recovered from the Board Clerk’s website posting by the undersigned on October 30, 2008 and seen for the first time on that date.

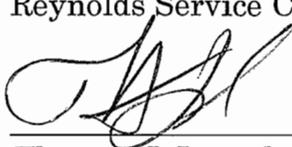
8. The undersigned filed Respondent’s Petition for Review via U.S. Mail on October 30, 2008, within the time prescribed by law, and Respondent should not be subject to a default order in the instant matter, given the circumstances described hereinabove.

9. Complainant takes issues with the substance of the Petition for Review that has been filed because it does not specify by chapter and verse why the Administrative Citation was improperly issued. Rather, the Petition filed requests that the Board consider the evidence to be presented at hearing, and then dismiss the entire Administrative Citation with prejudice. Of course, for the Board to do that it would have to conclude that the allegations of the Citation were “wrong”, and – being “wrong” – the Citation should not have issued. The only reasonable inference to be drawn from the face to the Petition for Review filed is that the Respondent is contesting 100% of the charges made because they are “wrong”. Indeed, Respondent verily believes that the Citation is entirely “wrong” because Respondent does not engage in the “dumping” of anything on its property or dispose of any materials on its site. The adding of those words to its Petition for Review would in no way substantively change (or illuminate) what it was asking the Board to do when it requested that the Board hear the evidence at hearing and dismiss the entire proceeding with prejudice.
10. The Complainant’s convenience might be served by a default, but axiomatic hornbook law does not favor defaults; and Respondent’s substantive and procedural rights ought not be overrun by Complainant’s enthusiasm for the vagaries of its mail system. Defaults should be reserved for people who never show up – not this case at all.

11. Respondent therefore requests that this matter be set down for hearing at a time and place mutually convenient to the parties, where the parties may be heard and allowed to develop a record that either does or does not support the allegations of the Citation. The Respondent is certainly entitled to that, regardless of the Complainant's feelings on the matter.

Respectfully submitted,

Reynolds Service Co., Inc.,

By: 

\_\_\_\_\_  
Thomas J. Immel

**VERIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Complaint are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

  
\_\_\_\_\_  
Thomas J. Immel



1400 North Grand Avenue, East  
19276

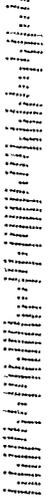
Chicago, IL 62794-9276

R: DC #21

Reynolds Service Co., INC.  
ATTN: Terry Reynolds  
2875 Route 146 West  
Jonesboro, IL 62952

FRIEND'S  
RESPONDENT'S  
EXHIBIT  
#1

02 1M  
0004216751 SEP 23 2005  
MAILED FROM ZIP CODE 62702





West Main Street  
116  
7, Illinois 62959

7004 2510 0002 6337 4888

*Signal 9/14/00 Det 3970-08*

02 1P  
0003069049 SPT 25 2418  
MAILED FROM ZIP CODE 62959  
\$ 006.40

Reynolds Service Company, Inc.  
Attn: Terry Reynolds  
2875 Rkoute 146 West  
P.O. Box 786  
Jonesboro, IL 62952

*Bulky  
Capable Dump  
Fee*

RESPONDENT'S  
EXHIBIT  
# 7



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

NOTICE OF CORRECTIVE ACTION REQUIRED FOR OPEN DUMPS

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Complainant vs.

#1818565001 - Union County Jonesboro/Reynolds Service Company, Inc. COMPLIANCE FILE

Reynolds, Service Company, Inc., Respondent

WARNING: CORRECTIVE ACTION REQUIRED

To contest the Administrative Citation you have received you must follow the instructions provided in the Administrative Citation. You may be served with additional Administrative Citations if you fail to complete the following corrective actions, and are found to be in violation of Section 21(p) of the [Illinois] Environmental Protection Act. Additional inspection(s) will be conducted to verify cleanup and compliance.

YOU MUST COMPLETE THE FOLLOWING CORRECTIVE ACTIONS:

- 1. Immediately cease all open dumping. Do not dispose of any of the waste by open burning.
2. By November 30, 2008, remove all waste to a permitted landfill or transfer station. Scrap metal not disposed at a landfill can be taken to a scrap metal facility or recycling center.

Please Note: If local ordinances allow a salvage business at your location, the scrap metal should be kept organized, and moved off-site on a regular basis. NO burning of waste, including the burning of insulation off of metal wire, or open dumping of automotive fluids is allowed.

- 3. By November 30, 2008, remove all used or waste tires to registered tire storage or tire disposal facility. Used or waste tires cannot be taken to a landfill or transfer station for the purpose of disposal. Do not open burn any of the tires. Loads of more than 20 tires must hauled by a registered tire transporter.

RESPONDENT'S EXHIBIT # 3

**Notice of Corrective Action Required for Open Dumps**

#1818565001 – Union County

Jonesboro/Reynolds Service Company, Inc.

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4. By November 30, 2008, remove all white goods (i.e., large appliances) to a facility that can legitimately accept them for recycling. White goods cannot be taken to a landfill or transfer station for the purpose of disposal.
5. By December 14, 2008, submit to the Illinois EPA copies of receipts that document the proper disposal or recycling of the wastes.

Any written response submitted in reply to the corrective action requirements of this notice must be sent to:

Illinois Environmental Protection Agency  
Bureau of Land  
Attn: Sheila Williams  
Field Operations Section  
Regional Office Name and Address  
Regional Office Contact

On any correspondence you send concerning this matter, please reference the IEPA designated facility number and facility name listed on the first page of this notice.

Should you have any questions concerning this notice or need further assistance, contact Sheila Williams at 618/993-7200.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: *Carol E. Strick*  
Regional Manager  
Field Operations Section  
Bureau of Land

Date: *Sept. 26, 2008*

CERTIFIED MAIL #: 7004 2510 0002 6337 4888

GES:SRW:jkb/37871/09-25-08

Enclosure

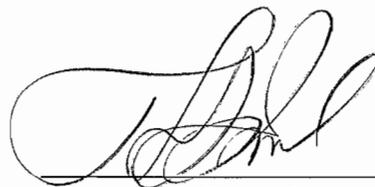
**CERTIFICATE OF SERVICE**

The undersigned of FELDMAN, WASSER, DRAPER & COX hereby certifies that a copy of the foregoing document was served upon each of the addressees hereinafter set forth by enclosing the same in an envelope plainly addressed to each of the said addresses, with postage fully prepaid, and depositing same in a U.S. Mail Box in Springfield, Illinois on this 3rd day of December, 2008:

Michelle Ryan  
IEPA Bureau of Legal Counsel  
1021 North Grand Avenue East  
PO Box 19276  
Springfield, IL 62794-9276

and that the original and 10 copies was mailed to:

John Therriault, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 West Randolph  
Chicago, IL 60601



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Thomas J. Immel