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JUN 15 2009

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

v.

THE BLICKHAN FAMILY CORPORATION,
INC. and BLICK'S CONSTRUCTION CO.
INC.,

Respondents.

AC 09-43

(IEPA NO. 79-09-AC)

NOTICE OF FILING

TO: Mr. John Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

(SEE PERSONS ON ATTACHED CERTIFICATE OF SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a *Petition to Contest Administrative Citation*, copies of which are herewith served upon you.

Dated: June 12, 2009

Respectfully submitted,

THE BLICKHAN FAMILY CORPORATION,
INC. and BLICK'S CONSTRUCTION CO.
INC., Respondents



Jon S. Faletto
One of His Attorneys

Jon S. Faletto
Hinshaw & Culbertson LLP
416 Main Street, 6th Floor
Peoria, IL 61602
309-674-1025

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PETITION TO CONTEST ADMINISTRATIVE CITATION

NOW COMES Respondents, THE BLICKHAN FAMILY CORPORATION, INC. and BLICK'S CONSTRUCTION CO. INC., by and through their attorneys, HINSHAW & CULBERTSON LLP, and pursuant to 35 Ill. Admin Code §108.204, hereby contest the Administrative Citation ("AC") improperly issued by Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("IEPA"), in the above-entitled case and in support thereof, states as follows:

1. On or about May 6, 2009, Complainant IEPA filed an AC with the Illinois Pollution Control Board ("Board") alleging, *inter alia*, that the Respondents owned and operated a "facility" which constitutes an "open dump" operating without an IEPA-issued Operating Permit. See Administrative Citation, *Illinois Environmental Protection Agency v. The BLickhan Family Corporation, Inc. & Blick's Construction Co. Inc.*, (IEPA No. 79-09-AC).

2. The AC issued by IEPA failed to identify the location of the alleged "facility" that constitutes an "open dump" other than a reference to the "Quincy/Blick's Construction Co. Inc."

3. Attached to the AC was the March 17, 2009 Inspection Report of IEPA Official Paul Eisenbrandt, which provided additional detail regarding the alleged violations of §21(p) of

the Illinois Environmental Protection Act (“Act”) cited in the AC. The Inspection Report also provided additional detail regarding the general locations where IEPA Official Eisenbrandt claims to have observed the alleged violations.

4. As more fully identified and described in the Inspection Report of IEPA Official Paul Eisenbrandt, the alleged violations of §21(p) of the Act were identified as involving the placement or abandonment of certain materials characterized by Mr. Eisenbrandt as not meeting the “definition of clean construction and demolition debris” at the subject location(s).

5. Contrary to the conclusions or characterizations reached by IEPA inspector Eisenbrandt, the material he observed was not “waste” material and instead, was valuable scrap metal and other materials being stored temporarily for later sale, reuse, or recycling. Additional materials observed at the subject properties by IEPA inspector Eisenbrandt met the definition of “clean construction or demolition debris” as that term is defined in Section 3.160(b) of the Act (415 ILCS 5/3.16((b)), and did not constitute “waste” materials because they were being used as fill material outside of a setback zone or were in the process of being separated or processed for return to the economic mainstream in the form of raw materials or products, as expressly provided by Section 3.160(b) of the Act (415 ILCS 5/3.16((b)).

6. Section 108.206 of the Board’s Regulations applicable to Administrative Citations provides, in relevant part, “*A formal Petition to Contest must include any reasons why the AC recipient believes the AC was improperly issued, including: ... (b) The AC recipient did not cause or allow the alleged violations; ... and (d) the alleged violation was a result of uncontrollable circumstances.*” (35 Ill. Admin. Code §108.206(a)(b)).

7. The Respondents in this proceeding were not engaged in “open dumping” by consolidating “refuse” from one or more sources at a disposal site that does not fulfill the

requirements of a sanitary landfill. As stated in Section 3.385 of the Act, "refuse" means waste. (415 ILCS 5/3.385). While the Respondents own certain parcels of property in the area believed to have been visited on March 17, 2009 by Mr. Eisenbrandt, there were no instances of "waste," as that term is defined by Section 3.535 of the Act (415 ILCS 5/3.535), being "open dumped" as prohibited by Sections 21(a) or (p) of the Act (415 ILCS 5/21(a) & (p)), on the subject property.

8. Therefore, the AC was improperly issued to Respondents. Alternatively, if such violations occurred as alleged, the Respondents did not cause or allow the alleged violations or they occurred as a result of uncontrollable circumstances within the meaning of 35 Ill. Admin. Code §108.206(d).

WHEREFORE, Respondents THE BLICKHAN FAMILY CORPORATION, INC. and BLICK'S CONSTRUCTION CO. INC., request that the Illinois Pollution Control Board enter an Order dismissing the Administrative Citation as improperly issued pursuant to §31.1 of the Act and implementing regulations, and denying the civil penalties and any other relief sought therein.

Dated: June 12, 2009

Respectfully submitted,

THE BLICKHAN FAMILY CORPORATION,
INC. and BLICK'S CONSTRUCTION CO.
INC., Respondents



By: Jon S. Faletto
One of Their Attorneys

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Respondents.

CERTIFICATE OF SERVICE

I, Jon S. Faletto, the undersigned, hereby certify that I have served the attached *Petition*

to Contest Administrative Citation upon:

Michelle M. Ryan, Esq.
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, IL 60601

By depositing said documents in the United States Mail, postage prepaid, in Peoria, Illinois, on
June 12, 2009.



Jon S. Faletto