

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

CITY OF CHICAGO DEPARTMENT )  
OF ENVIRONMENT, )  
 )  
Complainant, )  
 )  
v. )  
 )  
CITY WIDE DISPOSAL, INC., )  
 )  
Respondent. )

AC 03-11  
(CDOE No. 02-05-AC)

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STATE OF ILLINOIS  
Pollution Control Board

**NOTICE OF FILING**

TO: City of Chicago Department of Environment  
Field Operations Division  
30 North LaSalle Street, Suite 2500  
Chicago, Illinois 60602

Charles A. King, Esq.  
Assistant Corporation Counsel  
Chicago Department of Law  
30 North LaSalle Street #900  
Chicago, Illinois 60602

Mr. Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center #11500  
100 West Randolph Street  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the RESPONDENT CITY WIDE DISPOSAL, INC.'S POST-HEARING BRIEF of the Respondent's attorneys, FRANK & ASSOCIATES, INC., a copy of which is served upon you.



Name of Attorney or Other Representative  
Edward W. Pirok

Date: July 28, 2003

Name: EDWARD W. PIROK, FRANK & ASSOCIATES, LTD.  
Address: 734 North Wells Street, Chicago, IL 60610  
Telephone Number: 312.654.9020

## CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I have served the attached RESPONDENT CITY WIDE DISPOSAL, INC.'S POST-HEARING BRIEF and NOTICE OF FILING by mail, upon the following persons:

City of Chicago Department of Environment  
Field Operations Division  
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Chicago, Illinois 60601

by depositing the aforementioned documents in the United States Post Office Box at Franklin Street and Superior Street in Chicago, Illinois, in a sealed envelope, with postage fully pre-paid, addressed as shown above on July 28, 2003.



---

Edward W. Pirok  
Attorney at Law

EDWARD W. PIROK, ESQ.  
FRANK & ASSOCIATES, LTD.  
734 North Wells Street  
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**RESPONDENT CITY WIDE DISPOSAL, INC.'S POST-HEARING BRIEF**

The Respondent, CITY WIDE DISPOSAL, INC., by and through its attorneys, CARL J. FRANK and EDWARD W. PIROK, submits this Brief in opposition to any finding of liability on the two charged violations in the above-entitled administrative citation.

**FACTS**

Mr. Anthony Barbara, the Owner of the Respondent, CITY WIDE DISPOSAL, INC., met with Mr. Lafayette Robertson, Supervisor with the Department of Environment of the City of Chicago, on August 28, 2002, the date of the alleged violation. Hearing Transcript (hereinafter "Tr.") at 38. At that time, Mr. Barbara advised Mr. Robertson that he did not know that a driver had dumped construction debris as shown in Exhibit A and then went to the back of the property to observe what Mr. Robertson had advised him of. Tr. at 38, 39. He then had a laborer load up the construction debris and had it taken to the Shred-All Recycling transfer station with which the Respondent had a contract. Tr. at 39. The Shred-All transfer station is located at 43<sup>rd</sup> Street and Racine and has two separate areas or transfer stations which are referred to as the front and the back; when a party enters, the personnel at Shred-All advise what direction to go, whether to the

front or to the back. Tr. at 40. All of the construction debris shown in the photograph was loaded onto one vehicle which was a 20-yard dumpster. Tr. at 40,41.

Mr. Barbara then talked to the Respondent's dispatcher and two drivers and was advised by them that a fill-in driver that works for the Respondent part-time had been instructed by the dispatcher to take his load and dump it in the back of the Shred-All Recycling transfer station on 43<sup>rd</sup> and Racine. Tr. at 41. However, the driver misunderstood and dumped it in the back of the property leased by the Respondent at 39<sup>th</sup> Street. Tr. at 41. The dispatcher, Dominic Falano, did not see the part-time driver because of the heavy traffic in the leased premises which is shared with four additional companies which had trucks blocking the dispatcher's window. Tr. at 41, 42. For the four months prior to August 28, 2002, the dispatcher had directed people bringing truckloads of construction debris to the Shred-All transfer station, and Mr. Falano would specifically direct driver's to bring the construction debris to the back transfer station of Shred-All because the Respondent had contracted with Shred-All for the use of the back transfer station to dump at and was not able to dump in the front transfer station of Shred-All. Tr. at 42, 43. Mr. Barbara also spoke with the part-time driver, Orhelio Garcia; Mr. Garcia, when asked why he dumped it in the back of the Respondent's property, said that the dispatcher had told him to dump it in the back; when the dispatcher was asked if he told Mr. Garcia to take the truck to the back at the 43<sup>rd</sup> Street transfer station or just told him "in the back," the dispatcher admitted that he had merely told him "in the back" and did not specifically tell him in the back at 43<sup>rd</sup> Street. Tr. at 43, 44. The Respondent on August 28, 2002, did not cause or allow the dumping of construction debris to occur on its property, and any construction debris that came on the property would be sent to the transfer station that the Respondent had contracted with, namely the Shred-All

Recycling back transfer station at 43<sup>rd</sup> Street. Tr. at 44. Other trucks that came in with construction debris on August 28 and the four months before were sent to the Shred-All back transfer station. Tr. at 44. Although the Respondent uses some other transfer stations that are in Melrose Park, Illinois, everything in the City of Chicago goes to the Shred-All Recycling back transfer station in Chicago. Tr. at 45.

The miscommunication between the dispatcher and Mr. Garcia was an uncontrollable circumstance, and Mr. Barbara immediately took measures to stop any future miscommunications or occurrences of a similar nature by explaining to all the part-time drivers what was meant by “back” and by explaining to the dispatcher that “when you say ‘the back,’ say ‘43<sup>rd</sup> Street;” this same information was posted on a sheet of paper in the dispatch room. Tr. at 45. When Mr. Barbara explained the circumstances to Mr. Robertson when Mr. Robertson returned to issue the citation, Mr. Robertson advised that he had to do his job and write the citation. Tr. at 46, 47.

The very brief and simple testimony of the part-time driver, Mr. Orhelio Garcia, reveals the accuracy of the statement that there was a clear misunderstanding and miscommunication between the dispatcher and Mr. Garcia; indeed, even counsel for the Complainant questioned whether Mr. Garcia understood the very simple questions he was being asked at the Hearing itself. Tr. at 49, 50, 51, and 52. Mr. Garcia testified as follows:

Q. Would you state your name, sir?

A. Orhelio Garcia.

Q. What is your address?

A. 4925 Somolda.

Q. What was your employer on August 28, 2002?

A. City Wide Disposal.

Q. Did you place anything on the ground at 3910 South Loomis in Chicago on that day?

A. Pardon?

Q. Did you place anything on the ground from your truck at the City Wide facility in

Chicago on August 28, 2002?

- A. I don't understand.
- Q. Did you unload a truck on May 28, 2002?
- A. Yes, yes.
- Q. Where?
- A. They say dump in the back.
- Q. That is the back of the property of City Wide?
- A. I don't – no communication. When you say dump in the back, me no understand. We go in the back and dump it.
- Q. Okay. When you dumped it, was it on the site at City Wide?
- A. Yes.
- Q. Okay. Are you a part-time or full-time driver?
- A. Part-time.
- Q. How many times do you work per month for City Wide?
- A. Maybe five days.
- Q. Did you talk to the dispatcher about where to put – where to dump the material?
- A. I don't understand.
- Q. Did you talk to the dispatcher to find out where to dump the material?
- A. Yes.
- Q. And what did he tell you, if anything?
- A. He say dump it in back.
- Q. And then you took it to the back at 39<sup>th</sup> Street at City Wide?
- A. Yes.
- Q. Did you at any time find out you had made a mistake?
- A. Yes.
- Q. When?
- A. (No response.)
- Q. Do you know when, sir, you found out you made a mistake or how you found out you made a mistake?
- A. I don't understand.
- Q. After you dumped the material at City Wide –
- A. Yes.
- Q. – did you find out you were supposed to dump it at Shred-All at 43<sup>rd</sup> Street at the back?
- A. Yes, yes.

MR. KING: I'm going to object to the leading nature of these questions. I'm not sure with the – with all respect to Mr. Garcia, I don't know that he understands what's being asked.

HEARING OFFICER HALLORAN: We could continue this, but – I'm going to close the door, but I agree, Mr. Pirok. I know there is a communication problem, but half the questions you have been asking have

been leading and I understand what's going on. So we're going to have to – I sustain Mr. King's objection. If you could, ask questions that are – have a little more open endedness, please.

MR. PIROK: I have no further questions.

Tr. 49, 50, 51, and 52.

**THE EVIDENCE IN THE PRESENT CASE IS INSUFFICIENT TO SUPPORT A FINDING THAT THE RESPONDENT VIOLATED THE ENVIRONMENTAL PROTECTION ACT.**

In Rochelle Disposal Service, Inc. v. Illinois Pollution Control Board, 266 Ill. App. 3d 192, 639 N.E. 2d 988, 203 Ill. Dec. 429 (2nd Dist. 1994), the court held that the evidence was sufficient to support a finding that a landfill operator had violated the Environmental Protection Act by permitting refuse to remain uncovered overnight, as the investigator testified that he saw no pile of cover soil and no soil mixed in with refuse that would indicate that refuse had been covered the previous night and then uncovered. The court found that the evidence was sufficient to support a finding that the landfill operator violated the Environmental Protection Act by failing to contain and collect litter at the site by the end of the operating day, since no uncontrollable circumstances existed on the day in question. The court also noted that the operator's president had testified that not all loose litter was frozen to the ground and that the operator failed to indicate why it did not hire temporary help when litter pickers were out sick.

This opinion, in essence, goes to the spirit of the statute and the regulations that there must be an act, not an inadvertent act caused by uncontrollable circumstances. When the court states that the uncovered refuse had to be there overnight, it supports the view that if debris is inadvertently on the ground for an hour or two until it is discovered but when discovered is immediately taken to the standard transfer station, as in the present case, the inadvertent

placement is not, in fact, a true violation. In the present case, as soon as the construction debris was discovered, it was immediately taken to the standard Shred-All transfer station, a transfer station which had been the standard transfer station for the Respondent for the four months prior to the alleged violation.

In the present case, at the time of the alleged incident, the specific procedure was in place that the Respondent's dispatcher would send any load of construction debris out to the Shred-All 43<sup>rd</sup> Street back transfer station as the Respondent had a contract with Shred-All to use the back transfer station at 43<sup>rd</sup> Street. In the normal course of business, the dispatcher would instruct any party that came in with construction debris to the Respondent's facility on Loomis Street to take it to the back transfer station, and they would do so. In the particular instance of the present case, one individual, Orhelio Garcia, who was a part-time driver and who clearly and admittedly does not understand or speak English fluently, apparently misunderstood the standard instruction and inadvertently placed his load in the back of the Respondent's facility at 39<sup>th</sup> Street. When the owner was advised by Mr. Robertson on August 28, 2001, the same day the construction debris had been dumped, he immediately caused it to be cleaned up and sent over to the Shred-All transfer station. All of the debris fit in one truck and was taken to the back transfer station at Shred-All. The Respondent then immediately investigated what happened and took steps to make certain that nothing of the same nature would happen again. If a truck comes to the Respondent's facility and uses it as a transfer station and places its load on the ground, that is certainly a violation of the Act. Even if the debris is on the ground for ten seconds, it is a violation of the Act. On the other hand, if the clear policy is to take all such loads to the Shred-All facility back transfer station and by mistake a part-time driver puts debris on the ground and then as soon as



the debris is discovered it is taken and sent to the proper Shred-All back transfer station, such an incident is not a violation of the Act in the way the statutes and the regulations have been promulgated under the reasoning underlying the decision in the Rochelle Disposal case. Under the facts of the present case, an uncontrollable circumstance which arose from the misunderstanding of directions by a part-time driver who is not fluent in English is not and does not constitute a violation of the Act.

**CONCLUSION**

Based upon the facts and principles of law set forth above, the Respondent, CITY WIDE DISPOSAL, INC., respectfully requests that the Board find that the Respondent did not violate Section 21(p)(1) and (7) of the Act and impose no statutory fine.

Respectfully submitted,

~~CITY WIDE DISPOSAL, INC.,~~  
Respondent

By: 

**EDWARD W. PIROK**  
One of its Attorneys

**CARL J. FRANK, ESQ.**  
**EDWARD W. PIROK, ESQ.**  
**FRANK & ASSOCIATES, LTD.**  
Attorneys for Respondent  
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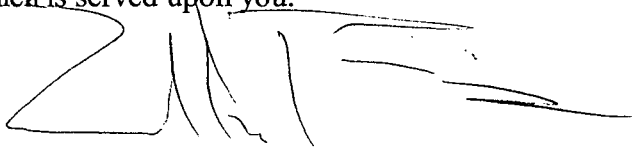
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