

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SEP 13 2004

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)

STATE OF ILLINOIS
Pollution Control Board

Complainant,)

AC 2005-017

vs.)

(IEPA No. 349-04-AC)

ROGER MILLER and JOAN KAY MILLER)

Respondents.)

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

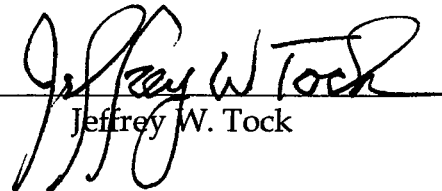
Michelle M. Ryan
Assistant Counsel, Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of a Petition for Review and Entry of Appearance of Jeffrey W. Tock, copies of which are herewith served upon you.

Respectfully submitted,

Roger Miller and Joan Kay
Miller, by their attorneys,
Harrington & Tock

By:


Jeffrey W. Tock

Dated: September 10, 2004

Jeffrey W. Tock, Esq.
HARRINGTON & TOCK
201 West Springfield Avenue, Suite 601
P.O. Box 1550
Champaign, Illinois 61824-1550
Telephone: (217) 352-4167

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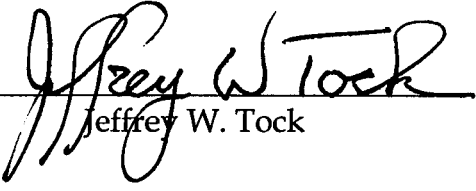
CERTIFICATE OF SERVICE

I, Jeffrey W. Tock, the undersigned, hereby certify that I have served a copy of the attached Petition for Review and Entry of Appearance of Jeffrey W. Tock upon:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

Michelle M. Ryan
Assistant Counsel, Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

by depositing said documents in the United States Mail in Champaign, Illinois, postage prepaid, on September 10, 2004.


Jeffrey W. Tock

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ROGER MILLER and JOAN KAY MILLER)

Respondents.)

ENTRY OF APPEARANCE OF JEFFREY W. TOCK

NOW COMES Jeffrey W. Tock, of the law firm of HARRINGTON &
TOCK, and hereby enters his appearance on behalf of Respondents, ROGER
MILLER and JOAN KAY MILLER.

Respectfully submitted,

Roger Miller and Joan Kay
Miller, by their attorneys,
Harrington & Tock

By: 

Jeffrey W. Tock

Prepared By:

Jeffrey W. Tock, Esq.
HARRINGTON & TOCK
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Respondents.)

AC 2005-017

(IEPA No. 349-04-AC)

PETITION FOR REVIEW

COME NOW the Respondents, ROGER MILLER and JOAN KAY MILLER, by their attorneys, Harrington & Tock, and, pursuant to Section 31.1 of the Illinois Environmental Protection Act (415 ILCS 5/31.1) and 35 Ill.Admin.Code § 108.204, submit this Petition for Review ("Petition") of the Administration Citation issued by the Illinois Environmental Protection Agency. In support of this Petition, the Respondents state as follows:

1. The Administrative Citation issued to Respondents alleges that the Respondents have violated the Illinois Environmental Protection Act as follows:

(a) That Respondents caused or allowed the open dumping of waste in a manner resulting in litter, a violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2002).

- (b) That Respondents caused or allowed the open dumping of waste in a manner resulting in open burning, a violation of Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2002).
- (c) That Respondents caused or allowed the open dumping of waste in a manner resulting in deposition of general construction or demolition debris or clean construction or demolition debris, a violation of Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2002).

2. The People of the State of Illinois have previously filed a Complaint against these Respondents for the same type of violations as set forth in Paragraphs (a) and (c) above, alleging that the Respondents are open dumping waste and creating litter. That case is presently before the Illinois Supreme Court on the Respondents' Petition for Leave to Appeal the decision of the Fourth District Appellate Court in that matter. (IllSct case no. 95727.) Until such time as the Illinois Supreme Court makes a final determination on the Respondents' Petition for Leave to Appeal and a determination as to the definition of "waste" and "litter", there remains open the issue as a matter of law as to whether or not the Respondents have allowed the open dumping of "waste" or "litter" as alleged in the Complaint by the People of the State of Illinois and as alleged now in this current Administrative Citation.

3. The Respondents deny that they have open dumped any waste or created litter as alleged in the Administrative Citation.
4. The site of the alleged violations is in excess of 20 acres in area and is partially wooded. From time to time, areas of the site are cleared of landscape material growing on site through the use of a bulldozer. The bulldozer is used to accumulate such landscape material which is then burned on-site as allowed by 35 Ill.Admin.Code §237.120(c).
5. At the time of the alleged violation as set forth in (b) above for open burning, the Respondents were on a trip in Alaska. The Respondent Roger Miller was unable to supervise the burning of the on-site landscape waste.
6. Based upon the report of the EPA inspector, there apparently was a diminimus amount of non-landscape waste material that was pushed into a landscape waste burn pile that was burned along with the landscape waste.
7. The Respondent Roger Miller understands the restriction imposed by 35 Ill.Admin.Code §237.120(c). If the Respondent Roger Miller had been present, he would have made a review of the material to be burned and would have removed the diminimus non-landscape material.
8. Due to the absence of the Respondent Roger Miller from the site due to his trip to Alaska, the circumstances surrounding the burn of the non-

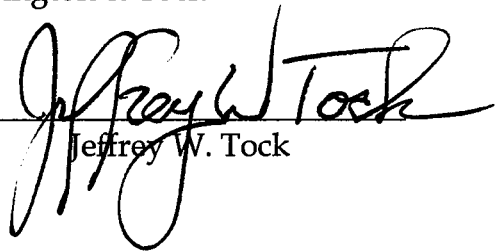
landscape material mixed in with the landscape waste was an uncontrollable circumstance as to which an Administrative Citation is not warranted.

WHEREFORE, for the above reasons, Respondents Roger Miller and Joan Kay Miller pray that this Board dismiss the Administrative Citation filed herein by the Illinois Environmental Protection Agency and grant all other just and proper relief in this matter.

Respectfully submitted,

Roger Miller and Joan Kay
Miller, by their attorneys,
Harrington & Tock

By: _____



Jeffrey W. Tock

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