

ILLINOIS POLLUTION CONTROL BOARD

October 7, 2004

|                                      |   |                           |
|--------------------------------------|---|---------------------------|
| ILLINOIS ENVIRONMENTAL               | ) |                           |
| PROTECTION AGENCY,                   | ) |                           |
|                                      | ) |                           |
| Complainant,                         | ) |                           |
|                                      | ) |                           |
| v.                                   | ) | AC 05-19                  |
|                                      | ) | (IEPA No. 359-04-AC)      |
| DAVID and SHELBY HILL and N.E. FINCH | ) | (Administrative Citation) |
| CO.,                                 | ) |                           |
|                                      | ) |                           |
| Respondents.                         | ) |                           |

ORDER OF THE BOARD (by J.P. Novak):

On August 26, 2004, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against David and Shelby Hill and N.E. Finch Co. (respondents). See 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The Agency alleges that on June 29, 2004 the respondents violated Section 21(p)(1), (p)(3), and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2002)). The Agency further alleges that the respondents violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) litter; (2) open burning; and (3) deposition of general construction or demolition debris or clean construction or demolition debris at St. David, Fulton County.

As required, the Agency served the administrative citation on the respondents 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 September 24, 2004, David and Shelby Hill (Hills) timely filed a petition to contest the administrative citation. N.E. Finch Co. filed a separate petition the same day. See 415 ILCS 5/31.1(d) (2002); 35 Ill. Adm. Code 108.204(b). The Hills allege that (1) they did not cause the violations of Sections (p)(1) and (p)(3) of the Act (415 ILCS 5/21(p)(1) and (p)(3) (2002)); (2) the Hills have taken all corrective actions requested by the Agency; and (3) the administrative citation was improperly issued and should be dismissed. N.E. Finch Co. alleges that (1) it does not own the property on which the alleged violations occurred; (2) it did not cause the violations of Sections (p)(2) of the Act (415 ILCS 5/21(p)(2) (2002)); (3) N.E. Finch Co. has taken all corrective actions requested by the Agency; and (4) the administrative citation was improperly issued and should be dismissed. 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. 35 Ill. Adm. Code 108.300; see also 415 ILCS 5/31.1(d)(2) (2002). By contesting the administrative citation, the respondents may have to pay the hearing costs of the Board and the Agency. See 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500. A schedule of the Board’s hearing costs is

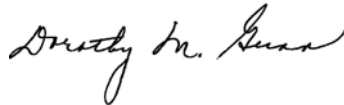
available at the Board's offices and on the Board's Web site at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). 35 Ill. Adm. Code 504.

The respondents may withdraw their petitions to contest the administrative citation at any time before the Board enters its final decision. If the respondents choose to withdraw their petitions, they must do so in writing, unless they do so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If the respondents withdraw their petitions after the hearing starts, the Board will require the respondents to pay the hearing costs of the Board and the Agency. *See id.* at 108.500(c).

The Agency 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 the respondents violated Section 21(p)(1), (p)(3), and (p)(7) (2002), the Board will impose civil penalties on the respondents. The civil penalty for violating Section 21(p) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b)(4-5) (2002); 35 Ill. Adm. Code 108.500. However, if the Board finds that the respondents "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 October 7, 2004, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board