

COPY

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

RECEIVED
CLERK'S OFFICE

MAR 24 2008

STATE OF ILLINOIS
Pollution Control Board

AC

PCB No. 2008-0019

(IEPA NO. 23-08-AC)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
C. JOHN BLICKHAN,)
)
Respondent.)

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


(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an **ENTRY OF APPEARANCE OF JON S. FALETTO** and **PETITION TO CONTEST ADMINISTRATIVE CITATION**, copies of which are herewith served upon you.

Dated: March 20, 2008

Respectfully submitted,

C. JOHN BLICKHAN,
Respondent



Jon S. Faletto
One of His Attorneys

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

CERTIFICATE OF SERVICE

I, Jon S. Faletto, the undersigned, hereby certify that I have served the attached ENTRY OF APPEARANCE OF JON S. FALETTO and PETITION TO CONTEST ADMINISTRATIVE CITATION upon:

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

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

By depositing said documents in the United States Mail, postage prepaid, in Peoria, Illinois, on March 20, 2008.



Jon S. Faletto

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ENTRY OF APPEARANCE OF JON S. FALETTO

NOW COMES Jon S. Faletto, of the law firm Hinshaw & Culbertson LLP, and hereby enters his appearance on behalf of Respondent, C. JOHN BLICKHAN, in this matter.

Dated: March 20, 2008

Respectfully submitted,

C. JOHN BLICKHAN,
Respondent



Jon S. Faletto
One of His Attorneys

Jon S. Faletto
Hinshaw & Culbertson LLP
416 Main Street, 6th Floor
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PETITION TO CONTEST ADMINISTRATIVE CITATION

NOW COMES Respondent, C. JOHN BLICKHAN, by and through his attorneys, HINSHAW & CULBERTSON LLP, and pursuant to 35 Ill. Admin Code §108.204, hereby contests 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 February 29, 2008, Complainant IEPA filed an AC with the Illinois Pollution Control Board (“Board”) alleging, *inter alia*, that Mr. C. John Blickhan operates a “facility” which constitutes an “open dump” operating without an IEPA-issued Operating Permit. See Administrative Citation, *Illinois Environmental Protection Agency v. C. John Blickhan AC 08-19* (IEPA No. 23-08-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/Blickhan Landfill.”
3. Attached to the AC was the January 15, 2008 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 precise locations where IEPA Official Eisenbrandt identified 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 occurring at six separate residential properties located within a development known as “Blick’s Village” located at the common address of Blick’s Village Court in Quincy, Illinois. Alternatively, the location of the alleged violations were identified in the Eisenbrandt Inspection Report as having occurred on property located immediately east of the residential property constituting Blick’s Village and at a location referred to as the “construction fill area.”

5. The Complainant states that the “Respondent has owned and operated said facility at all times pertinent hereto.” To the extent Complaint equates “said facility” with the locations where Inspector Eisenbrandt observed the §21(p) alleged violations, Complainant’s allegation is false and denied.

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. C. John Blickhan, the Respondent and recipient of the Complainant’s AC, did not cause or allow the alleged violations as stated in the AC filed by IEPA. While the Respondent owns certain property identified as “Blick’s Village,” he has lawfully transferred possession and control of those properties pursuant to written and oral lease agreements. To the extent the alleged violations were observed at the locations identified by IEPA Official Paul Eisenbrandt,

the Respondent is not liable for those violations because he did not cause or allow the alleged violations. Alternatively, conditions observed at the "construction fill area" identified in the Inspection Report prepared by IEPA Official Eisenbrandt do not constitute violations of §21(p) of the Act.

8. Therefore, the AC was improperly issued to Respondent C. John Blickhan.


9. Further, on information and belief, the Respondent did not cause or allow the alleged violations of §21(p) which, if such violations occurred as alleged, was a result of uncontrollable circumstances pursuant to 35 Ill. Admin. Code §108.206(b) and (d).

WHEREFORE, Respondent C. JOHN BLICKHAN, requests 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: March 20, 2008

Respectfully submitted,

C. JOHN BLICKHAN,
Respondent



Jon S. Faletto
One of His Attorneys

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