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STATE OF ILLINOIS  
Pollution Control Board**FAX TRANSMISSION**

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To: Honorable Dorothy Gunn  
Clerk of the Illinois Pollution  
Control Board

Date: March 8, 2007

Fax #: 1-312-814-3669

Pages: 13, including this cover sheet.

From: Lewis B. Kaplan

Subject: ILLINOIS ENVIROMENTAL PROTECTION AGENCY V. NORTHERN  
ILLINOIS SERVICE COMPANY  
AC 05-40; IEPA No. 567-04-AC

**COMMENTS:****CONFIDENTIALITY NOTICE: PLEASE READ**

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STATE OF ILLINOIS  
Pollution Control Board  
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**LEWIS B. KAPLAN**

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PLEASE REPLY TO:  
P.O. BOX 1254  
ROCKFORD, IL 61105-1254

March 8, 2007

**FAXED 1-312-814-3669 AND CERTIFIED-RETURN RECEIPT REQUESTED MAIL**

Honorable Dorothy Gunn  
Clerk of the Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601

**RE: ILLINOIS ENVIRONMENTAL PROTECTION AGENCY VS.  
NORTHERN ILLINOIS SERVICE COMPANY  
AC 05-40; IEPA No. 567-04-AC**

Dear Ms. Gunn:

I am writing to you in follow-up to my March 8, 2007 discussion with Attorney Richard McGill, Jr. of your office. I am enclosing for consideration by the Illinois Pollution Control Board a Motion for Modification of Administrative Order. Attorney McGill advised me that he was authorized to tell me that your office had authorized filing the Motion by facsimile pursuant to Rule 101.302(d) of the Rules of the Illinois Pollution Control Board. It is my understanding that filing of this Motion automatically stays the January 26, 2007 Order of the Illinois Pollution Control Board until a decision has been made on the Motion. I understand that the next time this could occur would be at the March 15, 2007 meeting of the Illinois Pollution Control Board. Thank you for your consideration in this matter.

Very truly yours,

  
Lewis B. Kaplan

LBK:lmh  
Enclosures  
cc: Michelle M. Ryan  
Special Assistant Attorney General

ILLINOIS POLLUTION CONTROL BOARD  
January 26, 2007

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CLERK'S OFFICE

MAR 08 2007

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainit,	)	
	)	AC 05-40
vs.	)	(IEPA No. 567-04-AC)
	)	
NORTHERN ILLINOIS SERVICE	)	(Administrative Citation
COMPANY,	)	
	)	
Respondent.	)	

**MOTION FOR MODIFICATION OF ADMINISTRATIVE ORDER**

TO: Dorothy Gunn, Clerk - Certified Mail and facsimile  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601

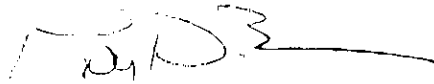
Michelle M. Ryan – Regular Mail  
Special Assistant Attorney General  
Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

NOW COMES respondent NORTHERN ILLINOIS SERVICE COMPANY by  
PETER DeBRUYNE, P.C. and Lewis B. Kaplan, its attorneys, and pursuant to the  
applicable rules of the Illinois Pollution Control Board moves that the Illinois Pollution  
Control Board modify its Order which it adopted on January 26, 2007, a copy of which is  
attached hereto marked Exhibit "A" and made a part hereof, which requires payment by  
respondent NORTHERN ILLINOIS SERVICE COMPANY of a Civil Penalty and costs  
in the total amount of \$3,672.25 no later than March 12, 2007 by requiring the payment

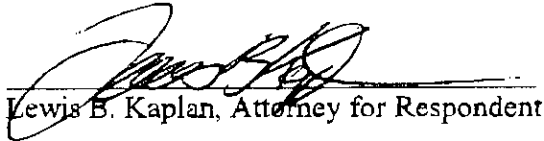
of only the sum of \$1,500 for violation of Section 21(p)(7) of the Environmental Protection Act as the alleged violation of Section 21(p)(1) of the Environmental Protection Act is the subject of the appeal of the aforesaid January 26, 2007 Order of the Illinois Pollution Control Board to the Appellate Court of Illinois, Second Judicial District in its case No. 02-07-0213.

NORTHERN ILLINOIS SERVICE  
COMPANY, Respondent,

By PETER DeBRUYNE, P.C.



Peter DeBruyne  
Attorney for Respondent

  
Lewis B. Kaplan, Attorney for Respondent

Peter DeBruyne  
Peter DeBruyne, P.C.  
838 North Main Street  
Rockford, IL 61103  
Telephone (815) 964-3810

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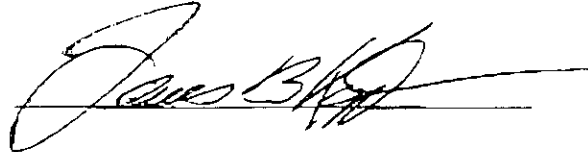
Attorneys for Respondent, NORTHERN ILLINOIS SERVICE COMPANY

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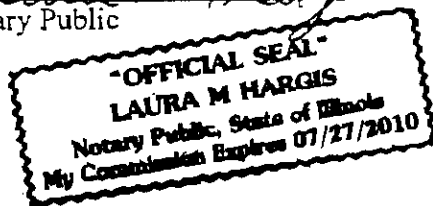
## AFFIDAVIT OF SERVICE

MAR 08 2007

Lewis B. Kaplan on oath states: On the 8<sup>th</sup> day of March, 2007, I signed this Motion for Modification of Administrative Order by mailing a copy to each person to whom it is directed and pursuant to Rule 101.302(d) of the Rules of the Illinois Pollution Control Board faxed a copy of the Motion for Modification of Administrative Order to Dorothy Gunn, Clerk of the Illinois Pollution Control Board - fax number 1-312-814-3669 from 1-815-964-3813.



SUBSCRIBED and sworn to before me

this 8<sup>th</sup> day of March, 2007.  
Notary Public

January 26, 2007

DECLASSIFIED

Respondent.

AC 05-40  
(IEPA No. 567-04-AC)  
(Administrative Citation)

LEWIS B. KAPLAN AND PETER D. DeBRUYNE APPEARED ON BEHALF OF THE RESPONDENT.

On September 21, 2006, the Board issued an interim opinion and order, finding that respondent Northern Illinois Service Company (NISC) violated two open dumping provisions of the Environmental Protection Act (Act) (415 ILCS 5 (2004)) at a site in Roscoe, Winnebago County. Having received documentation of hearing costs in this administrative citation enforcement action, the Board today issues its final opinion and order.

In the interim opinion and order of September 21, 2006, the Board found that NISC violated Sections 21(p)(1) and (7) of the Act by causing the open dumping of waste resulting in litter and the deposition of general construction or demolition debris at 4690 Rockton Road, Roscoe, Winnebago County (Roscoe Quarry). 415 ILCS 5/21(p)(1), (7) (2004). The Illinois Environmental Protection Agency (Agency) filed this administrative citation with the Board on November 22, 2004, based on an October 4, 2004 inspection by the Agency of the Roscoe Quarry.

Because there were two violations of Section 21(p) and the violations are first offenses, the Board found that under Section 42(b)(4-5) of the Act, the total civil penalty is \$3,000. 415 ILCS 5/42(b)(4-5) (2004). The Board also found that because Northern did not succeed at hearing, it must pay the hearing costs of both the Agency and the Board. 35 Ill. Adm. Code 108.502, 108.504. The Board ordered the Agency and the Clerk of the Board to submit hearing costs by October 11, 2006 and gave NISC time to respond to costs. On September 25, 2006, the Clerk of the Board submitted an affidavit of the Board's hearing costs totaling \$406.50. NISC did not file a response.

Exhibit A

On November 16, 2006, the Board issued a final opinion and order finding that NISC had violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2004)), imposing the corresponding statutory civil penalty of \$3,000, and assessing the Board's hearing costs.

On December 1, 2006, the Board received the Agency's statement of hearing costs in the amount of \$265.75. The proof of service showed that the Agency timely mailed the statement by U.S. mail on October 11, 2006. Because of the seven-week delay between the time it was mailed and the statement's arrival in the Board's office, the Board on its own motion reconsidered the final decision of November 16, 2006, and vacated that order on December 7, 2006. The Board allowed NISC time to respond to the Agency's claimed costs. *See* 35 Ill. Adm. Code 108.506(a). NISC did not file a response.

On December 8, 2006, NISC filed a petition for review of the November 16, 2006 order with the Second District Appellate Court, docketed as case No. 02-06-1237. On December 18, 2006, NISC moved the Board to stay enforcement of the Board's November 16, 2006 order. NISC requested that the Board stay the assessed civil penalty and costs pending review by the appellate court.

On January 19, 2007, the Second District Appellate Court granted the Board's motion to dismiss NISC's appeal for lack of jurisdiction. The appellate court granted the motion because there was no final appealable Board order.

### **DISCUSSION**

Within its motion for stay, NISC seeks to stay a Board order that has been vacated and asks that the stay be in effect during an appeal that has been dismissed. The Board denies NISC's motion to stay as moot.

The Board finds the hearing costs of the Board and the Agency reasonable and orders Northern to pay those costs under Section 42(b)(4-5) of the Act. 415 ILCS 5/42(b)(4-5) (2004). The Board incorporates by reference the findings of fact and conclusions of law from its September 21, 2006 interim opinion and order. Under Section 31.1(d)(2) of the Act, the Board attaches the administrative citation and makes it part of the Board's final order.

This opinion and order constitutes the Board's findings of fact and conclusions of law.

### **ORDER**

1. The Board finds that respondent Northern Illinois Service Company (Northern) violated Section 21(p)(1) and (7) of the Environmental Protection Act at its property in Roscoe, Winnebago County. 415 ILCS 5/21(p)(1), (7) (2004).
2. The Board assesses the civil penalty of \$3,000 for the violations, as well as hearing costs totaling \$672.25, for a total amount due of \$3,672.25. Northern must pay \$3,672.25 no later than March 12, 2007, which is the first business day

following the 45th day after the date of this order. Northern must pay this amount by certified check, money order or electronic funds transfer, made payable to the Environmental Protection Trust Fund. The case numbers, case name, and Northern's federal employer identification number must be included on the certified check, money order or electronic funds transfer.

3. Northern must send the certified check, money order or electronic funds transfer to:

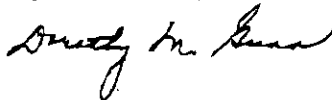
Illinois Environmental Protection Agency  
Fiscal Services  
1020 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
5. Payment of this penalty does not prevent future prosecution if the violations continue.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2004); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 26, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board



STATE OF ILLINOIS  
Pollution Control Board

(IEPA No. 567-04-AC)

4. That on October 4, 2004, Kaare Jacobsen of the Illinois Environmental Protection Agency's Rockford Regional Office inspected the above-described facility. A copy of his inspection report setting forth the results of said inspection is attached hereto and made a part hereof.

### VIOLATIONS

Based upon direct observations made by Kaare Jacobsen during the course of his October 4, 2004 inspection of the above-named facility, the Illinois Environmental Protection Agency has determined that Respondent has violated the Illinois Environmental Protection Act (hereinafter, the "Act") as follows:

- (1) That Respondent 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).
- (2) That Respondent 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).

### CIVIL PENALTY

Pursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2002), Respondent is subject to a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) for each of the violations identified above, for a total of Three Thousand Dollars (\$3,000.00). If Respondent elects not to petition the Illinois Pollution Control Board, the statutory civil penalty specified above shall be due and payable no later than December 15, 2004, unless otherwise provided by order of the Illinois Pollution Control Board.

If Respondent elects to contest this Administrative Citation by petitioning the Illinois Pollution Control Board in accordance with Section 31.1 of the Act, 415 ILCS 5/31.1 (2002), and if the Illinois Pollution Control Board issues a finding of violation as alleged herein, after an adjudicatory hearing,

Respondent shall be assessed the associated hearing costs incurred by the Illinois Environmental Protection Agency and the Illinois Pollution Control Board. Those hearing costs shall be assessed in addition to the One Thousand Five Hundred Dollar (\$1,500.00) statutory civil penalty for each violation.

Pursuant to Section 31.1(d)(1) of the Act, 415 ILCS 5/31.1(d)(1) (2002), if Respondent fails to petition or elects not to petition the Illinois Pollution Control Board for review of this Administrative Citation within thirty-five (35) days of the date of service, the Illinois Pollution Control Board shall adopt a final order, which shall include this Administrative Citation and findings of violation as alleged herein, and shall impose the statutory civil penalty specified above.

When payment is made, Respondent's check shall be made payable to the Illinois Environmental Protection Trust Fund and mailed to the attention of Fiscal Services, Illinois Environmental Protection Agency, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Along with payment, Respondent shall complete and return the enclosed Remittance Form to ensure proper documentation of payment.

If any civil penalty and/or hearing costs are not paid within the time prescribed by order of the Illinois Pollution Control Board, interest on said penalty and/or hearing costs shall be assessed against the Respondent from the date payment is due up to and including the date that payment is received. The Office of the Illinois Attorney General may be requested to initiate proceedings against Respondent in Circuit Court to collect said penalty and/or hearing costs, plus any interest accrued.

PROCEDURE FOR CONTESTING THIS  
ADMINISTRATIVE CITATION

Respondent has the right to contest this Administrative Citation pursuant to and in accordance with Section 31.1 of the Act, 415 ILCS 5/31/1 (2002). If Respondent elects to contest this Administrative Citation, then Respondent shall file a signed Petition for Review, including a Notice of Filing, Certificate of Service, and Notice of Appearance, with the Clerk of the Illinois Pollution Control Board, State of Illinois Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601. A copy of said Petition for Review shall be filed with the Illinois Environmental Protection Agency's Division of Legal Counsel at 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. Section 31.1 of the Act provides that any Petition for Review shall be filed within thirty-five (35) days of the date of service of this Administrative Citation or the Illinois Pollution Control Board shall enter a default judgment against the Respondent.

Renee Cipriano  
Renee Cipriano, Director *by wcc*  
Illinois Environmental Protection Agency

Date: 11/18/04

Prepared by: Susan E. Konzelmann, Legal Assistant  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

# ORIGINAL

## REMITTANCE FORM

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NOV 22 2004

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Complainant,

v.

NORTHERN ILLINOIS SERVICE  
COMPANY,

Respondent.

AC 05-40  
(IEPA No. 567-04-AC)

FACILITY: Northern IL Service Co. (Roscoe Quarry)

SITE CODE NO.: 2010405051

COUNTY: Winnebago

CIVIL PENALTY: \$3,000.00

DATE OF INSPECTION: October 4, 2004

DATE REMITTED:

SS/FEIN NUMBER:

SIGNATURE:

### NOTE

Please enter the date of your remittance, your Social Security number (SS) if an individual or Federal Employer Identification Number (FEIN) if a corporation, and sign this Remittance Form. Be sure your check is enclosed and mail, along with Remittance Form, to Illinois Environmental Protection Agency, Attn.: Fiscal Services, P.O. Box 19276, Springfield, Illinois 62794-9276.