

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY)
)
Complainant,)
)
v.)
)
NORTHERN ILLINOIS)
SERVICE COMPANY,)
)
Respondent.)

AC 12-51
(IEPA No. 87-12-AC)
(Administrative Citation)

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STATE OF ILLINOIS
Pollution Control Board

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NOTICE

John T. Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

PLEASE TAKE NOTICE that I have today caused to be filed a MOTION FOR LEAVE TO FILE AN AMENDED ADMINISTRATIVE CITATION with the Illinois Pollution Control Board, a copy of which is served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Dated: December 26, 2012

Scott B. Sievers
Attorney Registration No. 6275924
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Complainant,

BY:



Scott B. Sievers
Special Assistant Attorney General

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PROTECTION AGENCY)
Complainant,)
NORTHERN ILLINOIS)
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MOTION FOR LEAVE TO FILE
AN AMENDED ADMINISTRATIVE CITATION

NOW COMES the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by and through its counsel, Special Assistant Attorney General Scott B. Sievers, and, pursuant to 735 ILCS 5/2-616(a) and 35 Ill. Adm. Code 101.500 and 103.206, moves this honorable Board for leave to file an amended Administrative Citation in this action. The Complainant states the following in support:

1. Illinois has a liberal policy of allowing amendments to pleadings. *1515 North Wells, L.P. v. 1513 North Wells, L.L.C.*, 392 Ill. App. 3d 863, 870 (1st Dist. 2009). Section 2-616(a) of the Illinois Code of Civil Procedure, applicable through 35 Ill. Adm. Code 101.500(a), provides that, on just and reasonable terms, amendments to pleadings may be allowed at any time before final judgment. 735 ILCS 5/2-616(a).

2. Section 42(b)(4-5) of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, provides that, in an administrative citation action under Section 31.1 of the Act, any person found to have violated any provision of subsection (p) of Section 21 or subsection (k) of Section 55 of the Act, among other provisions, "shall pay a civil penalty of \$1,500 for each violation of each

such provision, plus any hearing costs incurred by the Board and the Agency, except that the civil penalty amount shall be \$3,000 for each violation of any provision of subsection (p) of Section 21 ... or subsection (k) of Section 55 that is the person's second or subsequent adjudication violation of that provision." 415 ILCS 5/42(b)(4-5) (West 2012).

3. On May 7, 2012, the Complainant filed an Administrative Citation against the Respondent in the instant action.

4. The Administrative Citation stated that, "[p]ursuant to Section 42(b)(4-5) of the Act, 415 ILCS 5/42(b)(4-5) (2010), Respondent is subject to a civil penalty of One Thousand Five Hundred Dollars (\$1,500) for each of the violations identified above, for a total of Four Thousand Five Hundred Dollars (\$4,500.00)." Adm. Cit. at 2.

5. However, the instant Administrative Citation action is the second in which the Respondent has faced allegations that it violated Sections 21(p)(1) and 21(p)(7) of the Act:

A. On January 26, 2007, this Board entered its Final Opinion And Order in AC 05-40 finding that the Respondent, Northern Illinois Service Company, violated Sections 21(p)(1) and 21(p)(7) of the Act. *Ill. Env'tl. Prot. Agency v. Northern Ill. Serv. Co.*, PCB No. AC 05-40 (Jan. 26, 2007). Because it found the Respondent violated these two provisions and the violations were first offenses, the Board assessed a total civil penalty of \$3,000 plus \$672.25 in hearing costs. *Id.*

B. While the Respondent did not appeal the Board's finding of a Section 21(p)(7) violation, the Respondent did subsequently appeal the Board's finding of a Section 21(p)(1) violation. On March 11, 2008, the Appellate Court of Illinois, Second District, affirmed the Board's finding of the Section 21(p)(1) violation. *Northern Ill. Serv. Co. v. Environmental Prot. Agency*, 381 Ill. App. 3d 171 (2d Dist. 2008).

6. As the violations of Sections 21(p)(1) and 21(p)(7) of the Act alleged in the instant Administrative Citation will, if proven, constitute the Respondent's second adjudicated violations of those provisions, the Complainant seeks leave to amend the Administrative Citation to reflect that the Respondent is subject to a civil penalty of Three Thousand Dollars (\$3,000) each for the Section 21(p)(1) and 21(p)(7) violations and One Thousand Five Hundred Dollars (\$1,500) for the Section 55(k)(1) violation, for a total of Seven Thousand Five Hundred Dollars (\$7,500).

7. The Complainant therefore seeks leave to file an amended Administrative Citation within fourteen (14) days of this Board's ruling upon the instant motion.

8. Because the Respondent also was the Respondent in the prior Board adjudication giving rise to this motion, the Respondent will not be unduly burdened, prejudiced, or surprised by this proposed amendment.

WHEREFORE, the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, moves this honorable Board for leave to file an amended Administrative Citation within fourteen (14) days of this Board's ruling upon the instant motion.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

Dated: December 26, 2012

Scott B. Sievers
Attorney Registration No. 6275924
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

BY:



Scott B. Sievers
Special Assistant Attorney General

Illinois EPA v. Northern Illinois Service Company
Pollution Control Board No. AC 12-51

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Pollution Control Board

CERTIFICATE OF SERVICE

Scott B. Sievers, Special Assistant Attorney General, herein certifies that he has served a copy of the foregoing **MOTION FOR LEAVE TO FILE AN AMENDED**

ADMINISTRATIVE CITATION upon:

John T. Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Peter DeBruyne
Peter DeBruyne, P.C.
838 North Main Street
Rockford, IL 61103

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

by mailing true copies thereof to the addresses referred to above in envelopes duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois, on December 26, 2012.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Dated: December 26, 2012

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