

ILLINOIS POLLUTION CONTROL BOARD  
November 20, 2014

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 12-51
	)	(IEPA No. 87-12-AC)
NORTHERN ILLINOIS SERVICE	)	(Administrative Citation)
COMPANY,	)	
	)	
Respondent.	)	

SCOTT B. SIEVERS APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY; AND

PETER DEBRUYNE APPEARED ON BEHALF OF NORTHERN ILLINOIS SERVICE COMPANY.

INTERIM OPINION AND ORDER OF THE BOARD (by J.A. Burke):

The Illinois Environmental Protection Agency (Agency) filed an administrative citation against Northern Illinois Service Company (Northern) alleging open dumping and accumulation of water in used or waste tires at Northern’s facility located at 4781 Sandy Hollow Road, Rockford, Winnebago County (site). Northern filed a petition to contest the administrative citation.

After holding a hearing and considering the evidence, the Board finds that Northern violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Illinois Environmental Protection Act (Act). 415 ILCS 5/21(p)(1), (p)(7), 55(k)(1)(2012). The Board directs the Agency and the Clerk of the Board to file hearing cost documentation, to which Northern may respond. The Board will then issue a final opinion and order assessing the civil penalty and appropriate hearing costs.

**ADMINISTRATIVE CITATION PROCESS**

Section 31.1 of the Act authorizes the Agency to enforce specified provisions of the Act through an administrative citation. 415 ILCS 5/31.1 (2012). To contest the administrative citation, the respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. 415 ILCS 5/31.1(d) (2012). If the Agency proves the alleged violations at hearing, the respondent will be held liable for the civil penalty as well as the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2012). Because the Act specifies the penalty for a violation in an administrative citation action, the Board cannot consider mitigating or aggravating factors when determining penalty amounts. *Id.* However, if the Board finds that the respondent “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) (2012).

### **PROCEDURAL BACKGROUND**

On May 7, 2012, the Agency filed an administrative citation (AC) alleging that, on March 14, 2012, Northern violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (p)(7), 55(k)(1) (2012)) at the site. AC at 2. The property is known to the Agency as the “Rockford/Northern Illinois Service” site and is designated with Site Code No. 2010301120. *Id.* at 1. The Agency filed proof that it served the administrative citation on May 7, 2012 on Northern. On June 11, 2012, Northern filed a petition for review (Pet.).

On December 31, 2012, the Agency filed a motion for leave to file an amended citation. The Agency sought to amend the citation to correct the civil penalty amount that Northern may be subject to. On January 22, 2013, Northern filed a memorandum opposing the Agency’s motion. On March 21, 2013, the Board denied the motion for leave to file an amended citation as unnecessary.

On February 18, 2014, the Agency filed a motion for summary judgment (Motion). Northern responded to the motion on April 7, 2014 (Response). The Agency filed a reply on May 2, 2014. On June 5, 2014, the Board denied the motion for summary judgment.

A hearing was held before Board Hearing Officer Bradley P. Halloran on July 24, 2014. Donna Shehane, a field inspector with the Agency, testified at hearing. Paul Munson, a project manager for Northern, and William Hoff, a superintendent for Northern, also testified. The Board received the hearing transcript (Tr.) on July 30, 2014.

The Agency filed its post-hearing brief on September 19, 2014 (Agency Br.). Northern filed its post-hearing brief on October 20, 2014 (Response Br.). The Agency filed its reply on November 5, 2014 (Reply Br.).

### **FACTS**

#### **Facility Background**

Northern owns the subject property located at 4781 Sandy Hollow Road in Rockford. Tr. at 96. Northern is an excavation and demolition site and utility contractor, that does both construction and demolition work. *Id.* Northern stores materials and equipment, including trucks and vehicles, at the site. *Id.* at 99. Northern also operates a concrete recycling facility at the site. *Id.* at 98. The site is approximately twenty to thirty acres and contains a building that is approximately eighty-thousand square feet. *Id.*

#### **March 14, 2012 Inspection**

Donna Shehane is a field inspector employed by the Land Pollution Control Division of the Agency. *See* Shehane Affidavit (attached to Administrative Citation). Inspector Shehane

conducted an inspection of the site on March 14, 2012. Pet. at 1; Shehane Affidavit. Mr. Munson and Mr. Hoff were at the site at the time of the inspection. Tr. at 100, 118. Neither Mr. Munson nor Mr. Hoff accompanied the inspector during the inspection. *Id.* at 100-101, 118. The inspection was a follow-up to one that took place on December 7, 2011, for which an Open Dump Administrative Citation Warning Notice was issued. *See* Narrative Inspection Report Document (attached to Administrative Citation) (Report).

The inspector observed four large tires at the southwest corner of the site. *See* Inspection Report attached to Administrative Citation (Inspection Report) (photographs 1 and 2). The tires had accumulated water. *Id.*; Tr. at 104-105. The inspector also observed on-rim tires and used tires hooked together with chains. Inspection Report (photograph 3). Further, the inspector observed a pile of materials on the ground. Inspection Report (photograph 4). The inspector previously observed a pile of materials on the site during inspections on December 7, 2011, and September 15, 2009. *See* Report.

### **Open Dumping**

Northern is the source of the material in the photographed pile. Respondent's Second Supplemental Answers to Complainant's First Interrogatories to Respondent (attached as Exhibit B to Motion) (Interr. Resp.) at 6. The material depicted in the pile had been "collected for a matter of weeks." *Id.* at 5. The material in the pile was generated at Northern's on-site repair shop and from job sites. Interr. Resp. at 3, Hoff Deposition (attached as Exhibit D to Motion) (Hoff Dep.) at 22. When the inspector noted to Mr. Munson that the site is not allowed to bring off-site generated material to the site, Mr. Munson stated that he tries to tell other employees not to leave materials on the ground. Munson Deposition (attached as Exhibit C to Motion) (Munson Dep.) at 28. The pile has since been removed. *Id.* at 38.

The pile included pallets, dimensional lumber, plastic, plastic pipe, and brick. Munson Dep. at 39. The pile also included PVC pipe, packaging materials, silt fence from excavation sites, packaging and wood materials from Northern's job sites, and plastic visqueen. Hoff Dep. at 23, 25. The plastic pipe is "from an underground job." *Id.* at 25. The pile also included a large piece of lumber used at the recycling plant on the site. *Id.* at 24. Mr. Hoff stated that the material had been on the site for not more than a month or two. *Id.* at 27.

Mr. Hoff stated that broken pallets and pipe associated with the pile were cleaned up following the March 14, 2012 inspection. Hoff Dep. at 12, 21. The materials in the pile were not intended to be disposed of at the site, but rather came from the back of a truck and were placed in a pile so that Northern "could dispose of them properly." *Id.* at 30-31.

### **Water Accumulation in Used or Waste Tires**

Northern is the source of the tires depicted in the photographs taken by the Agency's inspector during the inspection on March 14, 2012. Interr. Resp. at 6. The tire in photograph 1 was removed from a Northern vehicle. Interr. Resp. at 6. The tires in photographs 1 and 2 were from Northern's equipment. Munson Dep. at 37. The chained tires in photograph 3 are part of Northern's demolition equipment. Interr. Resp. at 3; Munson Dep. at 34. The tires that were not

chained had accumulated water. Tr. at 104-105; Munson Dep. at 26. Following the inspection, Mr. Munson instructed another employee to pick up these tires, shake them out, stack them up and cover them. Munson Dep. at 27. The tires depicted in photographs 1 and 2 are used as bases to be filled with concrete for temporary light poles or power poles, and are also kept as replacement tires in the event of a flat tire. Resp. Exh. A (Hoff Affidavit, attached to Response) at 2. The tires were subsequently disposed of at a tire disposal facility. Hoff Dep. at 13.

### **Administrative Citation**

On May 2, 2012, the Agency issued Northern an Administrative Citation based upon the March 14, 2012 inspection of the site conducted by the Agency inspector. AC at 2. Based on the inspector's observations and photographs, the Agency alleged that Northern violated Sections 21(p)(1) and 21(p)(7) of the Act by causing or allowing the open dumping of waste, in a manner resulting in litter, and in a manner resulting in deposition of general construction or demolition debris, or clean construction or demolition debris. *Id.*, citing 415 ILCS 5/21(p)(1) and 21 (p)(7) (2012). Further, the Agency alleged that Northern caused or allowed water to accumulate in used or waste tires, in violation of Section 55(k)(1) of the Act. *Id.*, citing 415 ILCS 55(k)(1) (2012). The Agency stated that Northern was subject to a civil penalty of \$1,500 for each of the alleged violations, for a total of \$4,500. *Id.* at 2.

### **HEARING SUMMARY**

#### **Exhibits**

At hearing, the parties offered ten exhibits into evidence. The Agency admitted the inspector's open dump investigation checklist, dated March 14, 2012, as Agency Exhibit A. The Agency also admitted multiple photographs from the inspector's March 14, 2012 inspection, including two photographs showing tires with water accumulation (photographs 1 and 2), a photograph showing additional used tires on the property attached to equipment (photograph 3), and a photograph of piled materials at the site (photograph 4).

Northern admitted the inspector's Tire Storage Inspection Checklist from her January 2010 inspection of the site (Northern Exhibit 1), two aerial photographs of the site (Northern Exhibits 2 and 3), invoices and tickets from Veolia Environmental Services Landfill (Northern Exhibit 4), and tickets from a recycling facility (Northern Exhibit 5).

#### **Donna Shehane's Testimony**

At hearing, the Agency's inspector, Donna Shehane, testified that she is currently employed as an environmental protection specialist at the Agency, and has been employed by the Agency for approximately six years. Tr. at 10. Ms. Shehane testified that she conducted an inspection of the site on March 14, 2012. *Id.* at 17-18. Ms. Shehane conducted the March 14, 2012 inspection as a follow up to an administrative citation warning notice she had previously issued to Northern. *Id.* at 18. During the March 14, 2012 inspection, Mr. Munson provided Ms. Shehane with receipts from landfills and tire disposal companies showing that Northern had cleaned up items from Ms. Shehane's previous inspection. *Id.* at 68-69. Ms. Shehane testified

that the site was not registered as a tire storage site on the date of her inspection. *Id.* at 20. Ms. Shehane described the layout of the site and testified that she was familiar with it because she had walked the premises four times. *Id.* at 21.

Ms. Shehane testified that she observed a large yard area with various piles of concrete and stone and asphalt at the site. Tr. at 22. Ms. Shehane stated that she also observed tires at the site that were off their rims and worn, and that the tires contained water. *Id.* at 23. Ms. Shehane stated that nothing indicated to her that the tires were to be used for temporary light poles or electrical poles. *Id.* at 37. Further, the tires were not covered and not protected from the weather. *Id.* at 36.

Ms. Shehane further testified that she observed in the yard at the site a pile of materials that contained soil, lumber, plastic, fabric, cardboard, metal, and what appeared to be concrete or stone brick. Tr. at 24-25. Ms. Shehane stated that these materials were all resting directly on the ground and were not inside any container. *Id.* at 24-25, 42. Ms. Shehane did not believe that the materials in the pile were intended for a future use or that the materials were preserved in any way for a future use. *Id.* at 25. Ms. Shehane also observed that the materials had been “[p]iled on top of each other.” *Id.* at 43. Nothing indicated to Ms. Shehane that the material was to be disposed of imminently. *Id.* at 46.

During the course of her inspection, Ms. Shehane took photographs showing the following:

- Four large tires “in the corner” of the site with water accumulation in two of the tires (Tr. at 23) (photographs 1 and 2);
- Additional used tires attached “to some type of metal vault and some equipment in the background” (Tr. at 34) (photograph 3);
- Pile of “debris”(Tr. at 41) (photograph 4);
- Landscape waste (Tr. at 28); and
- Buckets containing mastic (Tr. at 27).

The attached tires, landscape waste, and buckets of mastic are not part of this administrative citation. Tr. at 27, 28, 35.

Ms. Shehane testified that she spoke with Mr. Munson directly after her inspection. Tr. at 26. Ms. Shehane stated that she informed Mr. Munson that there was water in tires and a pile of debris outside. *Id.* at 27. According to Ms. Shehane, Mr. Munson replied that “he trie[d] to tell the demo guys not to dump the materials, but they don’t always listen.” *Id.* Ms. Shehane also spoke with Mr. Munson about items on-site that are not a part of the administrative citation. *Id.* at 27-28. Ms. Shehane stated that after she finished speaking with Mr. Munson, she left the site and returned to her office where she wrote her inspection report about her observations at the site. *Id.* at 29.

### **Paul Munson's Testimony**

Respondent's employee Paul Munson testified that he has been the office manager at Northern's office for sixteen years. Tr. at 95-96. Mr. Munson testified that the materials which Ms. Shehane had identified as "demolition debris" were actually "pallets and leftover materials from project sites and from [Northern's] materials that [it has] in the yard." *Id.* at 110-111. Mr. Munson stated that, following Ms. Shehane's inspection, he went out into the yard and saw tires containing water. *Id.* at 104-105. Mr. Munson does not supervise any employees in the field or any work that goes on in the yard at the site. *Id.* at 107.

Mr. Munson testified that he commented to Ms. Shehane about employees dumping debris on the yard without actually seeing the pile on-site that Ms. Shehane was referring to. Tr. at 109-110. Mr. Munson further testified that the pile consisted of "pallets and leftover materials from project sites and from [Northern's] materials that [it] has in the yard." *Id.* at 111.

### **William Hoff's Testimony**

William Hoff testified to working as Northern's superintendent for approximately nine years. Tr. at 115-116. Mr. Hoff stated that, on the date of the inspection, the site contained packaging materials and pipe brought back from job sites. *Id.* at 119-120. These materials were subsequently hauled to a landfill. *Id.* at 120. Tires were also disposed of since the inspection date. *Id.* Mr. Hoff identified items in the material pile at issue that included "a pile of pallets, lumber, silt fence, pipe, Visqueen, a traffic cone, [and] form boards." *Id.* at 123. The origin of these items "is primarily the shop and the yard and job sites." *Id.* at 124. Mr. Hoff specifically noted a piece of pipe that he was "sure came from a worksite." *Id.* at 125.

Mr. Hoff also testified that Northern has a recycling operation on the site where Northern recycles predominantly concrete, but also "asphalt, brick, block and masonry materials." Tr. at 130. Mr. Hoff stated materials to be recycled are typically stored "[i]mmediately adjacent to the crusher." *Id.* Repair parts for the recycling operation are usually delivered on pallets. *Id.* at 131.

Mr. Hoff further testified that Northern stores on-site materials such as concrete storm sewer pipe, PVC pipe for water main sanitary sewers, concrete storm sewers, ductile iron water main fittings, valves, aggregate material for road base, brick and block that is used in the construction of storm and sanitary sewers, lumber used for concrete form boards, rebar reinforcement wire mesh, and equipment for Northern's trailers and attachments. Tr. at 132.

Mr. Hoff testified that the used tires identified by Ms. Shehane's site inspection are used by Northern either as replacement tires for its vehicles or as light pole or electrical power pole bases. Tr. at 134. The tires are also used for demolition activities. *Id.* at 135.

Mr. Hoff testified that the materials in the pile in question were not demolition debris. Tr. at 140. Mr. Hoff stated that many of the materials in the pile were from work done on the site. *Id.* at 143-144. The pieces of pipe in the pile were from a job site. *Id.* at 145-146. Furthermore, Mr. Hoff testified that in March 2012, the area where Northern's discarded

construction material was stored was zoned as “general industrial zoning.” *Id.* at 147. Further, Northern had a special use permit to recycle concrete and for the outdoor storage of Northern’s materials. *Id.* at 147.

Mr. Hoff testified that Northern’s practice for off-site jobs is that

for instance, on a demolition project, the – all of the wood and commingling of demolition debris goes to either a landfill or recycling facility and all of the masonry materials, the brick, the concrete, 95 percent of it, we bring to our facility for recycling. . . . On an earth work project, there are multiple different things that happen to dirt, asphalt, concrete. By and large, the concrete and asphalt are recycled. Dirt can be hauled to another site, to a [clean construction and demolition debris] site. It can be used back on the site sometimes. It varies greatly. Tr. at 157.

Mr. Hoff stated that materials such as those depicted in the pile in question are regularly taken to a landfill. Tr. at 165. Mr. Hoff further stated that, on days when Northern works past a landfill’s closing time, packaging materials from job sites are collected in a pile at the site until the pile is large enough to justify a load to remove to a landfill. *Id.* at 167-168. Mr. Hoff testified that the material specifically depicted in photograph 4 was taken to a landfill. *Id.* at 166.

### **BOARD DISCUSSION**

The Agency alleges that Northern violated Sections 21(p)(1) and 21(p)(7) of the Act by causing or allowing open dumping of waste in a manner resulting in litter (415 ILCS 5/21(p)(1) (2012) and in a manner resulting in deposition of construction or demolition debris (415 ILCS 5/21(p)(7) (2012)). The Agency further alleges that Northern violated Section 55(k)(1) of the Act by causing or allowing water to accumulate in used or waste tires. 415 ILCS 5/55(k)(1) (2012).

#### **Open Dumping**

To prove a violation of Section 21(p) of the Act, the Agency must first prove that Northern violated Section 21(a) of the Act by causing or allowing open dumping of waste. *See IEPA v. Ray Newingham*, AC 11-13, slip op. at 4 (Feb. 16, 2012). Section 3.305 of the Act defines “open dumping” as “the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.” 415 ILCS 5/3.305 (2012). “Refuse” means “waste” (415 ILCS 5/3.385 (2012)) and “waste” includes “garbage . . . or other discarded material.” 415 ILCS 5/3.535 (2012).

The Agency asserts that Northern violated Sections 21(p)(1) and (p)(7) of the Act by open dumping of litter and construction or demolition debris. AC at 2; Agency Br. at 5. Specifically, the Agency notes that the March 14, 2012 inspection revealed that there was a pile of debris on the property that included “plastic, fabric, cardboard, metal, soil commingled with lumber, and concrete or stone brick.” Agency Br. at 7, citing Tr. at 24-25. The pile also included wood, pallets, and tarps. *Id.*, citing Tr. at 61-62.

The Agency referred to Ms. Shehane's testimony that "nothing separated the materials in the pile . . . from resting directly upon the ground." Agency Br. at 7, citing Tr. at 42-43. Based on this evidence, the Agency argues that Northern caused or allowed the open dumping of waste, and thereby violated Sections 21(p)(1) and 21(p)(7) of the Act.

Northern claims that the Agency failed to prove that open dumping occurred because there was no disposal of waste at the site within the meaning of the Act. Resp. Br. at 13. Northern claims that the materials Ms. Shehane observed were being temporarily stored at the site as part of a plan to take them to a landfill for disposal. *Id.* Northern refers to Northern Exhibit 5, which is a summary of receipts for materials from Northern's yard to Veolia Environmental Services Landfill from January 6, 2009 to November 7, 2012. *Id.*, Resp. Ex. 5. According to Northern, its Exhibit 5 makes it clear that "Northern regularly removes such material to a landfill." Resp. Br. at 13. Moreover, Northern argues that the definition of "disposal" does not include "materials confined to prevent entry into the environment or where there is a certain plan for their disposal elsewhere." *Id.* at 14. Northern claims that "a cursory view" of the materials depicted in photograph 4 shows that the materials were "confined" by "the way they were piled and by the solidity of the materials so deposited." Northern contends that Mr. Hoff's testimony shows a plan and practice of Northern removing such materials to a landfill. *Id.* Northern further contends that the materials had likely accumulated over less than 30 days. *Id.* at 15. Northern argues that, based on these factors and Northern's receipts to Veolia Environmental Services Landfill, there were no wastes "disposed" of on the site, and thus the Agency has failed to prove a violation. *Id.* at 15.

The Agency responds by stating that, to prove a Section 21(p) violation, a party does not have to prove the likelihood that the waste will enter the environment, be emitted into the air, or be discharged into waters. Reply Br. at 2, citing County of Jackson v. Kamarasy, AC 04-63, slip op. at 10-11 (June 16, 2005). The Agency further argues that a respondent's intention for the materials is not determinative in a Section 21(p) open dumping case. Reply Br. at 3, citing County of Sangamon v. Daily, AC 01-16 (Jan. 10, 2002). The Agency also states that the site was not a waste transfer station and that it possessed no authority to store the waste until a time when it would take the waste to a landfill. Reply Br. at 3-4.

The Board finds that open dumping occurred at the site. It is undisputed that the site was not a sanitary landfill at the time of the March 14, 2012 inspection. Interr. Resp. at 7. Northern stated that it is the "source" of materials in the pile depicted in photograph 4. Interr. Resp. at 5.

At hearing, both Mr. Munson and Mr. Hoff testified that there were multiple origins of the material in the pile shown in photograph 4. Tr. at 106, 119. While some of the material depicted at the site is generated on-site by Northern, other material is generated off-site and brought to the site. Hoff Dep. at 12, 22-23. Mr. Hoff identified packaging material and scrap pipe from off-site jobs that had been brought back, silt fence from excavation sites, packaging and wood materials from excavation sites, and plastic pipe from an excavation job. *Id.* at 12, 23, 25-26. Mr. Hoff stated at hearing that the origin of the materials in the pile "is primarily the shop and the yard and job sites." Tr. at 124. Mr. Hoff specifically noted a piece of pipe that he was "sure came from a worksite." *Id.* at 125. Based on the testimonies and the record, the material pile in question contained items that were brought from off-site onto the Northern



property. Northern subsequently disposed of the materials in the pile depicted in photograph 4 at a landfill. *Id.* at 166. Northern did not have a permit to operate a waste transfer station at the time of the March 14, 2012 inspection. *Id.* at 47-48.

The material pile in question contained plastic, fabric, cardboard, metal, soil commingled with lumber, concrete or stone brick, white pipe and other miscellaneous debris. Tr. at 23-24; *see also* photograph 4. These materials were placed directly upon the ground without any covering or containment. Tr. at 25, 42-43; *see also* photograph 4. In similar factual scenarios, the Board has found that such visual evidence is proof of a lack of intent to use the materials in the future. IEPA v. Stutsman, AC 05-70, slip op. at 7 (Sept. 21, 2006); *see also* IPEA v. Carrico, AC 04-27, slip op. at 7 (Sept. 2, 2004). As noted above, Northern subsequently disposed of the items in photograph 4 at a landfill. Tr. at 166.

The Board acknowledges Northern's argument that items in the pile were "not intended to be disposed of on [the] site. It was . . . things that were set out in the back of a truck and into a pile so that [Northern] could dispose of them properly." Hoff Dep. at 30-31. "Disposal" is defined in part as "the . . . deposit, . . . dumping, . . . or placing of any waste . . . into or on any land . . . so that such waste . . . or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters." 415 ILCS 5/3.185 (2012). Mr. Hoff stated that certain materials were brought from off-site and placed on the site. Hoff Dep. at 22, Tr. at 124. These materials were placed on the ground, uncovered, and exposed to the environment. The materials were disposed as defined by the Act.

Mr. Hoff stated that "nobody would know better than I do" how long the materials had been in the pile, and that the materials had likely been present in the pile for not more than a month or two. Hoff Dep. at 27. The Board also acknowledges that some items in the pile were destined for Northern's recycling plant on site. Tr. at 130. However, the Board repeatedly has stated that if at least some of the items consolidated at a site are waste, open dumping has occurred. Stutsman, at 7.

The Board finds that, due to the types of the debris depicted in photograph 4, at least some materials in the pile constitute "any garbage . . . or other discarded material" and are therefore waste. 415 ILCS 5/3.535 (2010). The materials came "from one or more sources," including off-site sources, and were consolidated at the site which is not a sanitary landfill. 415 ILCS 5/21(a). *See City of Chicago v. Speedy Gonzalez Landscaping, Inc.*, AC 06-39, slip op. at 24 (March 19, 2009) (Board found that open dumping of waste had occurred where debris from an off-site project, which had been destined for disposal at a landfill, was deposited on the ground at a site). These materials were subsequently transported to a landfill for disposal. Tr. at 166. The Board therefore finds that open dumping occurred at the site.

### **Cause or Allow**

To establish that respondents caused or allowed open dumping, complainant may merely establish the "[p]resent inaction on the part of the landowner to remedy the disposal of waste that was previously placed on the site . . ." IEPA v. Rawe, AC 92-05, slip op. at 6 (Oct. 16, 1992). Northern does not dispute that it is the owner of the property and the operator of the site. Tr. at

129. Also, Northern does not dispute that it is responsible for bringing the used tires and other materials to the site. Tr. at 133-134. Accordingly, the Board finds that Northern caused or allowed the open dumping of waste as discussed above.

### Litter

The Act does not define “litter.” However, previous Board decisions defined litter using the statutory definition in the Illinois Litter Control Act:

‘Litter’ means any discarded, used, or unconsumed substance or waste. ‘Litter’ may include, but is not limited to, any garbage, trash, refuse, debris, rubbish . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned, or otherwise disposed of improperly.

415 ILCS 105/3(a) (2012); *see St. Clair County v. Louis I. Mund*, PCB 90-64, slip op. at 4, 6 (Aug. 22, 1991).

The Agency contends that the materials in the photographed pile were litter. Agency Br. at 12. The Agency notes that litter “includes discarded or used waste such as packaging construction material as well as discarded metal, pallets, plastics, and lumber.” *Id.* The Agency inspector observed “plastic, cardboard, metal, lumber and wood, and pallets.” *Id.*, citing Tr. at 24-25, 43, 61-52. Mr. Munson “identified wood pallets, boards, and plastic sheathing” in the pile. *Id.*, citing Tr. at 113. Mr. Hoff identified “packaging materials, lumber, wood, form boards, plastic sheeting, and pallets, with the pallet on top of the pile specifically coming from a worksite.” *Id.*, citing Tr. at 122-124, 125-126, 166. The Agency inspector further testified that the materials in the pile

were not covered or otherwise protected in any way from the weather, no present or future use of the materials was apparent, the materials were not preserved in any way for future use, and nothing separated the materials from resting directly upon the ground. Agency Br. at 14, citing Tr. at 25-26, 42-43.

The material in the pile appeared discarded to the Agency inspector because the pile was “all jumbled and haphazard like it came off the back of a truck . . . . It’s not organized in any way. Some of it is dirty.” Tr. at 45.

Northern argues that it “did not discard, abandon, or dispose . . . the materials depicted in [photograph 4] at the time of [the Agency inspector’s] inspection.” Resp. Br. at 15. Northern claims that the Litter Control Act (415 ILCS 105/4) provides an exception from prosecution for the depositing of litter “if the person is the owner . . . and does not create a public health or safety hazard, a public nuisance, or a fire hazard . . . .” *Id.* at 16. Northern also notes an exception where the alleged “litter” cannot be “blown or otherwise carried by the natural elements onto the real property of another person.” *Id.* at 17.

The Board found above that items in the pile depicted in photograph 4 constitute waste. This included plastic and packaging material from work sites. Hoff Dep. at 23, 25. The Board

also found above that the waste had been discarded improperly at the site. These items constitute “litter” as defined in the Litter Control Act. The Board therefore finds that Northern violated Section 21(p)(1) of the Act by allowing open dumping of waste in a manner resulting in litter.

### **Deposition of Construction or Demolition Debris**

The Act defines “general construction or demolition debris” in part as:

non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingle and other roof coverings; reclaimed or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and corrugated cardboard, piping or metals incidental to any of those materials. 415 ILCS 5/3.160(a) (2012).

Section 21(p) of the Act provides in relevant part that no person shall

cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

(7) deposition of:

- i. general construction or demolition debris as defined in Section 3.160(a) of this Act; or
- ii. clean construction or demolition debris as defined in Section 3.160(a) of this Act. 415 ILCS 5/21(p)(7) (2012).

Northern contends that the materials depicted in photograph 4 “did not ‘result’ from nor were they ‘generated’ from activities but rather were supplies and equipment of Northern that existed totally apart from the use to which they were put.” Resp. Br. at 17. Northern also argues that the “common sense” definition of “general” or “clean” construction or demolition debris demonstrates “that what is meant is the refuse from building and roads that were once a part of the building or roads and now no longer are.” *Id.*

The pile shown in photograph 4 includes silt fencing and wood materials from excavation sites, and plastic piping from an excavation job. Hoff Dep. at 23, 25. The pile also included a large piece of lumber (Hoff Dep. at 24) and concrete or stone brick (Tr. at 24-25). These items constitute general construction or demolition debris. The Board found above that these items constitute waste, and that the items had been open dumped at the site. While Northern expressed intent to reuse particular items in the debris pile, the items were not stored in a way to protect their future use. *See County of Sangamon v. Daily*, AC 01-16, slip op. at 12 (Jan. 10, 2002).

Further, items in photograph 4 were not reused but were instead disposed of at a landfill. Tr. at 166. The Board therefore finds that Northern violated Section 21(p)(7) of the Act by allowing the open dumping of waste in a manner resulting in the deposition of general construction or demolition debris.

### **Open Dumping of Used or Waste Tires**

The Agency contends that Northern violated Section 55(k)(1) of the Act by allowing water to accumulate in used tires on its property. AC at 2; Agency Br. at 15. Section 55(k)(1) of the Act states in part that no person shall “cause or allow water to accumulate in used or waste tires.” 415 ILCS 5/55(k)(1)(2012). This prohibition “shall not apply to used or waste tires located at a residential household, so long as not more than 12 used or waste tires are located at the site.” *Id.* Section 54.13 of the Act defines “used tire” as meaning “a worn, damaged, or defective tire that is not mounted on a vehicle.” Section 54.16 defines a “waste tire” as a “used tire that has been disposed of.” 415 ILCS 5/54.13 & 54.16.

The Agency inspector testified that she observed a stack of four off-rim tires, with two of the tires containing water. Tr. at 23. The Agency inspector described the tires as “worn, the tread was worn, they were dirty and they contained water.” *Id.* at 36. The tires were not covered or otherwise protected in any way from the weather. *Id.*

Northern argues that the photographs do not depict any water in the tires. Resp. Br. at 18. Further, Northern contends that the tires were not “used” or “waste” tires, but were rather “reused” tires “as much as they were used as tools and supplies in Northern’s business.” *Id.* Northern contends that the use to which the tires are put by the owner is relevant. *Id.*, citing IEPA v. James Bennett and Kerry J. Henson, AC 94-5, 1995 WL 250467 (IPCB 1995) \*2 (finding that twenty tires did not constitute litter or open dumping where “[m]ost of the 20 outside tires were clearly used in landscaping or had been processed for use in landscaping as items such as planters and tree rings.”). Northern also argues that the Agency has not proven how long the tires were on the property and that the “historical fourteen day rule” for water in tires has not been proven. Resp. Br. at 18-19. Northern noted Mr. Munson’s explanation that “Northern’s application as a tire storage site was on the way.” *Id.* at 19. Northern further stated that “March is not mosquito season.” *Id.*

The Agency responds that the Bennett case is irrelevant because Section 55(k)(1) of the Act was not at issue in that case. Reply Br. at 6. The Agency further argues that it is irrelevant if a tire is to be reused in order to violate Section 55(k)(1). *Id.* at 7.

Mr. Hoff stated that none of the tires outside were new. Hoff Dep. at 14. Rather, the tires at the site were either chained to a demolition ball as shock absorbers, kept for future use as shock absorbers, or accumulated from demolition sites. *Id.* Some of the tires were in condition to be used again, and others were not. *Id.* at 14-15. None of these tires were mounted on a vehicle. *Id.* at 15.

The Board finds that the tires depicted in photographs 1 and 2 constitute used tires as defined under the Act. “Used tire” is defined as “a worn, damaged, or defective tire that is not

mounted on a vehicle.” 415 ILCS 5/54.13 (2012). The tires depicted in photographs 1 and 2 were not mounted on a vehicle. In its interrogatory responses, Northern stated that the tire in photograph 1 was removed from a Northern vehicle. Interr. Resp. at 6. At hearing, Mr. Hoff testified that tires on the site had been brought to the site and later disposed of. Tr. at 121.

The Board acknowledges Northern’s argument that it uses tires as part of its equipment. However, the tires depicted in photographs 1 and 2 were not attached to any equipment or being used in any way, for example, as concrete bases for light poles. Rather, the tires were loose and subsequently disposed of following the inspection. Hoff Dep. at 12, 13, 14.

The tires had also been left uncovered in a manner that allowed the accumulation of water inside the tires, in violation of Section 55(k)(1) of the Act. 415 ILCS 55(k)(1) (2012). Mr. Munson stated that, following the Agency inspection, he went to look at the tires and that the tires had water in them. Munson Dep. at 26. Mr. Munson then “instructed one of the guys in the yard to pick them up and shake them out and then stack them back up and put a cover on them.” *Id.* at 27.

Regarding the number of tires, the Act only makes an exception for residential households. *See* 415 ILCS 5/55(k)(1). Northern does not argue, and the Board does not find, that the site is a residential household, and therefore the residential exception does not apply. The Act similarly does not require a certain amount of accumulated water or degree of concern for mosquitos for there to be a violation. The Board previously found that where a party “may be correct about the *de minimis* nature of the violation, it is a violation nonetheless.” People of the State of Illinois v. G.M. Demolition Corp., PCB 96-261, slip op. at 10 (Oct. 1, 1998).

Regarding Northern’s fourteen-day argument, it is true that under Section 848.202(b)(5) of the Board’s regulations, a tire storage site has fourteen days upon receipt to properly prevent water accumulation. 35 Ill. Adm. Code 848.202(b)(5). However, the site was not a “tire storage site” at the time of the March 14, 2012 inspection. Tr. at 20. A tire storage site is defined in part as “a site where used tires are stored or processed, *other than the site at which the tires were separated from the vehicle wheel rim.*” 35 Ill. Adm. Code 848.104. (emphasis added). Northern stated that the tire depicted in photograph 1 came from one of its vehicles. Interr. Resp. at 6.

Further, Section 848.202(b)(5) only applies to sites where more than 50 used or waste tires are located. 35 Ill. Adm. Code 848.202(b). According to a form signed by Mr. Munson in 2010, the site is exempt from used tire storage regulations because it stores fewer than 50 tires. *See* IEPA Used and/or Waste Tire Activity Notification & Registration Form attached to Response; *see also* 35 Ill. Adm. Code 848.201(c). Therefore, the fourteen-day rule under 35 Ill. Adm. Code 848.202(b)(5) did not apply to the site at the time of the March 14, 2012 inspection.

The Board further notes that Section 55(k)(1) of the Act does not provide a minimum timeframe for what constitutes a violation of Section 55(k)(1) prior to a citation being issued. The Board finds that the tires were present at the time of the inspection, that the tires were used, and that the tires had accumulated water. The Board therefore finds that Northern caused or allowed water to accumulate in used tires, in violation of Section 55(k)(1) of the Act.

### **Board Conclusion**

The Board finds that Northern caused or allowed the open dumping of waste resulting in litter and the deposition of general construction or demolition debris. The Board also finds that Northern caused or allowed water to accumulate in used or waste tires. Therefore, the Board finds that Northern violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Act. 415 ILCS 5/21(p)(1), 21(p)(7), 55(k)(1)(2012).

### **Civil Penalty and Hearing Costs**

The Board finds above that, based on the March 14, 2012 inspection, Northern violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Act, and those violations were not the result of uncontrollable circumstances. In an administrative citation action under Section 31.1 of the Act, any person found to have violated any subsection of Section 21(p) of the Act shall pay a civil penalty of \$1,500 for each subsection violated, except that the civil penalty amount shall be \$3,000 for each violation of any subsection of Section 21(p) that is the person's second or subsequent adjudicated violation of that provision. 415 ILCS 5/42(b)(4-5) (2012).

The Board previously found Northern in violation of Sections 21(p)(1) and 21(p)(7) of the Act. *See IEPA v. Northern Illinois Service Co.*, AC 05-40 (Jan. 26, 2007). Because these are Northern's second violations of Sections 21(p)(1) and 21(p)(7) of the Act, Northern is subject to a civil penalty amount of \$3,000 for each adjudicated violation of those provisions. Because this is Northern's first violation of Section 55(k)(1) of the Act, the statutory penalty for the adjudicated violation of that section is \$1,500. Northern is therefore subject to a total civil penalty of \$7,500.

The Board directs the Agency and the Clerk of the Board to file hearing cost documentation, to which Northern may respond within 21 days after service of the claimed costs. 35 Ill. Adm. Code 108.506(a). After the time periods for the filings on hearing costs have run, the Board will issue a final opinion and order imposing civil penalties and assessing appropriate hearing costs.

### **CONCLUSION**

After reviewing the record in this case and the relevant portions of the Act, the Board finds that Northern caused or allowed the open dumping of waste resulting in litter and deposition of construction or demolition debris. The Board therefore finds that Northern violated Sections 21(p)(1) and 21(p)(7) of the Act. 415 ILCS 5/21(p)(1), 21(p)(7) (2012). Further, the Board finds that Northern caused or allowed the accumulation of water in used or waste tires, in violation of Section 55(k)(1) of the Act. 415 ILCS 5/55(k)(1) (2012).

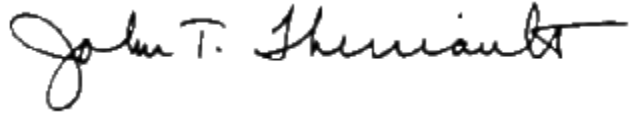
### **ORDER**

1. The Board finds that Northern Illinois Service Company (Northern) violated Sections 21(p)(1), 21(p)(7), and 55(k)(1) of the Act. 415 ILCS 5/21(p)(1), 21(p)(7), 55(k)(1) (2012).

2. The Illinois Environmental Protection Agency must file a statement of hearing costs by Monday, December 22, 2014, which is the first business day after the 30th day of this order. 35 Ill. Adm. Code 108.502. Within the same 30-day period, the Clerk of the Illinois Pollution Control Board must also file and serve upon Northern a statement of the Board's hearing costs supported by affidavit. *See* Ill. Adm. Code 108.504, 108.506(a).
3. Northern may file any objections to these statements within 21 days of service of those statements. 35 Ill. Adm. Code 108.506(a).
4. The Board will then issue a final order assessing a statutory penalty of \$7,500 for the violations and awarding appropriate hearing costs. 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 20, 2014, by a vote of 4-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board