ILLINOIS POLLUTION CONTROL BOARD
January 6, 2000

LIONEL TREPANIER, WES WAGER, MAUREEN MINNICK, LORENZ JOSEPH, and AVI PANDYA,	)	
Complainants,	)	
v.	)	PCB 97-50
	)	(Enforcement - Air, Land, Citizens)
SPEEDWAY WRECKING COMPANY and the BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS,	)	
Respondents.	)	

COMPLAINANTS LIONEL TREPANIER, LORENZ JOSEPH, MAUREEN MINNICK, AND WES WAGER APPEARED *PRO SE*;

MARSHALL L. BLANKENSHIP, OF ADDUCCI, DORF, LEHNER, MITCHELL & BLANKENSHIP, P.C., APPEARED ON BEHALF OF RESPONDENT SPEEDWAY WRECKING COMPANY; and

NORMAN P. JEDDELOH, OF ARNSTEIN & LEHR, APPEARED ON BEHALF OF RESPONDENT THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS.

OPINION AND ORDER OF THE BOARD (by M. McFawn):

This case is before the Board for a final determination of the complaint filed by Lionel Trepanier, Wes Wager, Maureen Minnick, Lorenz Joseph, Avi Pandya, and Maxworks Garden Cooperative on September 9, 1996. The complaint alleged a number of violations of the air pollution and waste disposal provisions of the Illinois Environmental Protection Act (Act), 415 ILCS 5 (1998), arising out of the demolition of buildings in the area of Maxwell and Halsted Streets in Chicago in 1996. In an order adopted on October 15, 1998, the Board granted partial summary judgment to respondents Speedway Wrecking Company (Speedway) and the Board of Trustees of the University of Illinois (University), leaving only two alleged violations for adjudication today: alleged violations of Sections 9(a) and 21(b) of the Act (415 ILCS 5/9(a), 21(b) (1998)) in connection with the demolition of a building located at 1261 South Halsted Street (the Halsted building).

A hearing was held on March 23, 24, and 25, and May 11 and 12, 1999. Respondents filed a joint brief on July 19, 1999, and complainant Lionel Trepanier filed a reply brief on September 3, 1999. Several parties also filed post-hearing motions, which are resolved at the outset of this opinion. After considering the evidence and the arguments of the parties, the Board finds that neither of the respondents committed either of the alleged violations.

MOTIONS AND PROCEDURAL MATTERS

Lorenz Joseph's "Motion to Overturn Credibility Determination"

In a hearing officer order dated May 27, 1999, Hearing Officer John Knittle found the credibility of complainant Lorenz Joseph's testimony to be at issue based on Joseph's refusal to swear to or affirm the truth of his testimony. On June 22, 1999, Joseph filed a "Motion to Overturn Credibility Determination." In the motion, Joseph cites religious reasons for his failure to take an oath, and argues that because at the hearing he acknowledged his moral duty to tell the truth, there is no credibility issue. The Board concludes that Joseph's motion is moot. Because Joseph refused to take an oath or make an affirmation, the Board cannot consider his testimony. The credibility of that testimony is therefore irrelevant.

The Board's procedural rules require that all witnesses be sworn. 35 Ill. Adm. Code 103.203(b). The Illinois Oaths and Affirmations Act, 5 ILCS 255 (1998), allows an affirmation in lieu of an oath where the person required to take the oath "shall have conscientious scruples against taking an oath," 5 ILCS 255/4 (1998), but in either case the statute sets forth specific language which must be used. See 5 ILCS 255/3, 4 (1998). Beyond refusing to be sworn, Joseph refused to make an affirmation as provided for by the statute. Tr. at 248-49, 343-45. Joseph therefore was not a proper witness, and the Board cannot consider his testimony.

Dismissal of Avi Pandya and Maxworks Garden Cooperative

In their brief filed on July 19, 1999, respondents note that complainant Avi Pandya did not appear for the hearing, and that complainant Maxworks Garden Cooperative did not appear through an attorney. Respondents assert that the claims of these complainants should be dismissed. Resp. Br. at 3 n.4. Because different factors apply to each complainant, we address each individually.

Avi Pandya

Complainant Pandya never appeared during the course of the hearing in this case. This failure to appear constitutes a default on Pandya's part. Defaults are governed by 35 Ill. Adm. Code 103.220, which provides:

> Failure of a party to appear on the date set for hearing or failure to proceed as ordered by the Board shall constitute a default. The Board shall thereafter enter such order as is appropriate, as limited by the pleadings and based upon the evidence introduced at the hearing.

So, Pandya's failure to appear is not a basis for dismissal of his case. Because of his default, Pandya's claim is determined based on the record developed in his absence. Pandya, however, remains a party of record. The effect of his default is not as significant here as it might be in another case because here the other complainants appeared and prosecuted the complaint.

Maxworks Garden Cooperative

The Board has determined that representation of parties in adjudicatory proceedings before the Board constitutes the practice of law for the purposes of the Attorney Act, 705 ILCS 205 (1998). *In re* Petition of Recycle Technologies, Inc. (July 10, 1997), AS 97-9 (RTI). In an order dated November 26, 1997, the hearing officer indicated to complainant Maxworks Garden Cooperative (Maxworks) that it may have been required to obtain an attorney in accordance with the Attorney Act.

The Illinois Appellate Court has held that, absent special circumstances, a case initiated by a non-attorney purporting to represent another party should be dismissed, and that an order entered in such a case is void. Janiczek v. Dover Mgmt. Co., 134 Ill. App. 3d 543, 481 N.E.2d 25 (1st Dist. 1985). In RTI, the Board found that special circumstances existed based on a provision of the Board's procedural rules apparently allowing non-attorneys to represent others in Board proceedings.[1] The Board ruled that dismissal was not required as long as an attorney promptly entered an appearance on behalf of the unrepresented party. See RTI at 5-7. In this case, however, despite a period of well over a year elapsing between the hearing officer's order and the close of the record, no attorney ever appeared on behalf of Maxworks. The Board accordingly concludes that Maxworks cannot be a complainant in this case, and dismisses Maxworks.

Testimony of Mike Meesig and Merlin McFarland

On the last day of the hearing, Mike Meesig and Merlin McFarland appeared and sought to make statements on the record. Such statements are allowed under 35 Ill. Adm. Code 103.203(a), which provides in part, "The Hearing Officer shall permit any person to offer reasonable oral testimony whether or not a party to the proceedings." This regulation implements Section 32 of the Act, which provides, *inter alia*, that the Board may permit any person to offer oral testimony at an enforcement hearing. 415 ILCS 5/32 (1998). Under 35 Ill. Adm. Code 103.201, "[s]tatements from interested citizens, as authorized by the Hearing Officer" are taken after the close of the parties' cases and prior to the parties' closing arguments. The hearing officer allowed Meesig and McFarland to testify, subject to cross-examination by the parties. Tr. at 1206-07.

Meesig and McFarland testified over the objection of the respondents, who renewed their objection in their brief. Resp. Br. at 6-7 n.7. Respondents assert that the testimony of Meesig and McFarland constituted "an improper attempt by Petitioners to introduce testimony of additional witnesses after they had rested their case," *id.*, and consequently their testimony

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[1] 35 Ill. Adm. Code 101.107(a)(3) provides that a person other than a natural person or a corporation may appear "through any officer, employee, or representative, or by an attorney licensed and registered to practice in the State of Illinois, or both." In RTI, the Board concluded that an analogous provision applicable to corporations conflicted with the Attorney Act and the Corporate Practice of Law Prohibition Act, 705 ILCS 220 (1998).

should be stricken. Respondents also argue that statements from interested parties should be restricted to argument based on the record, and should not include substantive testimony. *Id.*

The hearing transcript indicates that the complainants intended to call Meesig and McFarland as witnesses, but they did not arrive before complainants were required to rest their case. Tr. at 949-54. Meesig attempted to appear as a representative of Maxworks Garden Cooperative, but because he was not an attorney the hearing officer did not allow him to participate in that capacity. Tr. at 1138-39.

The Board concludes that the hearing officer was correct to allow the testimony of Meesig and McFarland. Section 103.203 in fact directs the hearing officer to permit it. Furthermore, both Section 103.203 and Section 32 of the Act refer to "testimony," *i.e.*, evidence, as opposed to mere argument.

Respondents also argue that they have been denied due process, because they were not allowed to submit rebuttal evidence. Resp. Br. at 6-7 n.7. Any error in this regard, however, was harmless, in light of the Board's ruling in favor of respondents with respect to both of the alleged violations.

"Lorenz Joseph's Motion for Extension of Time to File a Response"

Complainants' reply briefs were due on August 9, 1999.[2] On September 3, 1999, Lorenz Joseph filed a motion seeking an extension of time to file his reply brief. In his motion, Joseph lists a number of events which he claims impeded his ability to prepare a response to respondents' brief, including loss of access to his papers, unexpectedly having to move his papers and effects, theft of one vehicle, and impoundment of another. Respondents filed a response in opposition to Joseph's motion on September 7, 1999.

Respondents filed their brief on July 19, 1999. Under the hearing officer's order of May 27, 1999, complainants' replies were due, as noted, on August 9, 1999. Most of the events listed in Joseph's motion took place after that date, and consequently do not justify extending the deadline for Joseph to file a reply.

One item listed in Joseph's motion may have impacted his ability to prepare a reply by the deadline. Joseph states, "I was denied access to my storage warehouse . . . where I keep my papers and effects beginning July 20, 1999, including those for this case." Mot. at ¶ 1. The effect of this circumstance on Joseph's ability to prepare a reply is not clear. Respondents'

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[2] It appears from his motion that Joseph believed that he was entitled to file a reply brief later under the Board's order of August 19, 1999. In that order, the Board allowed complainants Lionel Trepanier and Wes Wager to file reply briefs within 14 days of the order, *i.e.*, by September 2, 1999. The August 19 order, however, was based on Trepanier and Wager's appeal of the hearing officer's ruling on their motion for extension of time to file their briefs, and applied only to them. The due date for Joseph's reply brief was unchanged.

brief and the hearing record, the documents necessary for preparation of a reply, were available at the Board's Chicago office. Even if there is some merit to Joseph's assertion, however, we conclude that his motion is untimely. Joseph did not file his motion until over three weeks after his reply was due, and over six weeks after the event he claims prevented him from preparing it. Joseph's motion is denied.

"Respondents' Motion to Strike"

On September 13, 1999, respondents filed a motion to strike complainant Lionel Trepanier's reply brief. Respondents argue that Trepanier has raised matters outside those discussed in respondents' brief, contrary to the Board's order of August 19, 1999, and that Trepanier misstates the record. On September 28, 1999, Trepanier filed a response to the motion, defending his brief.

Scope of Trepanier's Brief

In its order of August 19, 1999, the Board allowed complainants Trepanier and Wager additional time to file reply briefs, but limited the scope of those briefs:

> Within 14 days after the date of this order, Trepanier and Wager may file briefs in reply to respondents' joint posthearing brief, filed on July 19, 1999. In these reply briefs, Trepanier and Wager may respond to respondents' brief, but may not address any issues other than those discussed in respondents' brief. Trepanier v. Speedway Wrecking Co. (August 19, 1999), PCB 97-50, slip op. at 2.

Trepanier spends a sizable portion of his brief discussing dust control methods and whether Speedway workers were trained or directed regarding dust control. Respondents assert that this is beyond the scope of their brief, and consequently should be stricken. Trepanier in his response argues that respondents on several occasions state demolition of the Halsted building was conducted according to standard demolition practices, and that the discussion in his reply brief refutes respondents' statements.

Respondents do in fact assert that the demolition was conducted "according to" or "in accordance with" standard demolition practices, Resp. Br. at 2, 5, and that Speedway followed "traditional and customary methods in performing the demolition" and "standard practice in the industry." *Id*. at 13, 14. Trepanier's arguments concern what constitutes standard practices and whether Speedway in fact followed those practices. The Board concludes that Trepanier's arguments are not beyond the scope of the reply permitted under the Board's August 19 order. By this ruling the Board makes no finding regarding the relevance or merit of Trepanier's arguments.

Characterization of Record

Respondents also assert that Trepanier mischaracterizes the record in his reply brief. The record speaks for itself. If the record is mischaracterized in Trepanier's brief, that

mischaracterization will affect the weight given to his conclusions. Any such mischaracterization is not, however, a basis for striking Trepanier's brief. Respondents' motion is denied.

ALLEGED VIOLATIONS OF THE ACT

Statutes at Issue

Section 9(a) of the Act (415 ILCS 5/9(a) (1998)) provides:

> No person shall:
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> a. Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act[.]

"Air pollution" is defined in Section 3.02 of the Act (415 ILCS 5/3.02 (1998)):

> "AIR POLLUTION" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

Section 21(b) of the Act (415 ILCS 5/21(b) (1998)) provides:

> No person shall:
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> ***
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> b. Abandon, dump or deposit any waste upon the public highways or other public property, except in a sanitary landfill approved by the Agency pursuant to regulations adopted by the Board.

Facts

Speedway was hired (through a third party, Dakona, Inc.) to demolish a building owned by the University at 1261 South Halsted Street in Chicago. Tr. at 37-38, 40. The Halsted building was a four story brick structure. Tr. at 149-50; Comp. Exh 2. Demolition began on or about September 8, 1996, and continued for approximately five weeks. Tr. at 194.

For approximately the first three weeks of demolition, work on the building consisted of hand wrecking. Tr. at 202. Hand wrecking involves use of sledgehammers, bars, picks, shovels, saws, and wheelbarrows. Tr. at 202. Wheelbarrows were used to dump debris off the building. Debris was dumped off the east side of the building, where it landed in an alley. Tr. at 202, 792. When workers dumped debris from the wheelbarrow at the top of the

building, dust and material went off in the wind. Tr. at 583; Comp. Exh. 2. The dust emissions were intermittent, occurring only when a wheelbarrow was dumped from the top of the building. Tr. at 856; Comp. Exh. 2.

On September 9, 1996, complainant Lionel Trepanier was near the Halsted building and saw Speedway Wrecking dumping demolition debris from the top of the building. Tr. at 791. A videotape, entered into evidence as Complainants' Exhibit 2, shows activity at the Halsted building on September 9. Tr. at 327. Wind blew the dust westward on 13th Street and out onto and across Halsted Street. Tr. at 792. Rain on September 9 carried most of the dust away. Tr. at 794.

On or about September 23, 1996, Trepanier and Merlin McFarland walked by the demolition site. Tr. at 802-03. Trepanier observed dust from the demolition site blowing onto and south along Halsted Street, across Halsted, onto 13th Street, into an alley and beyond. Tr. at 803-04, 857-58. The dust was produced when the debris dropped from the roof hit a dumpster on the ground, with some going directly into the air from the material dumped off the roof. Tr. at 1287, 1298. Trepanier chose to move into the dust. Tr. at 862-63. As he walked north on Halsted Street the dust irritated his eyes and caused him some difficulty breathing, making him cough. Tr. at 802-03, 813-14. McFarland had to cover his mouth to avoid breathing the dust. Tr. at 1273. He felt he couldn't breathe, because he was unwilling to breathe in "excessive amounts of dust." Tr. at 1297. The dust caused him to sneeze. Tr. at 1273.

Discussion

Section 9(a)

Complainants' Section 9(a) claims are based on the escape of dust from the demolition site. Complainants have not claimed that dust from the demolition site violated any Board regulation or standard. Consequently, to establish a violation of Section 9(a), complainants must show that the dust either: (1) rendered the air injurious to human, plant or animal life, to health, or to property; or (2) unreasonably interfered with enjoyment of life or property.

There is no evidence of injury to life, health or property from the dust. The sole category under the first prong of the definition of "air pollution" that could arguably be implicated in this case is rendering the air injurious to health. Trepanier testified that dust irritated his eyes and made him cough. Tr. at 813-14. McFarland testified that the dust caused him to sneeze. Tr. at 1273. Complainants presented no medical evidence of any adverse health effects. The ill effects described by Trepanier and McFarland do not rise above the level of temporary discomfort and irritation. We conclude that this testimony does not describe "injury to health" for the purposes of Section 9(a).

Thus, the only way in which the dust from the demolition of the Halsted building could be found to violate Section 9(a) is by unreasonably interfering with enjoyment of life or property, *i.e.*, the second prong. Complainants have the burden of proving, by a preponderance of the evidence, a "substantial interference" with the enjoyment of life or

property, excluding "trifling inconvenience, petty annoyance and minor discomfort." Processing and Books, Inc. v. Pollution Control Board, 64 Ill. 2d 68, 77, 351 N.E.2d 865, 869 (1976). First, we will examine the evidence about unreasonable interference with the enjoyment of life. Second we will examine the evidence about unreasonable interference with the enjoyment of property.

Interference with Enjoyment of Life. The only evidence of interference with enjoyment of life was the testimony of Trepanier and McFarland. Trepanier testified that dust irritated his eyes and made him cough. Tr. at 813-14. McFarland testified that the dust caused him to sneeze. Tr. at 1273. We conclude, however, that any discomfort suffered by Trepanier or McFarland could have been easily avoided by the simple common-sense precaution of not walking into a cloud of dust.

Trepanier's testimony and the videotape introduced into evidence by complainants establish that the dust was intermittent. (Notably, the videotape showed only debris being dumped into the alley behind the Halsted building and dust blowing towards 13th Street; no dust is visible blowing onto Halsted Street itself. Comp. Exh. 2.) The only inference to be drawn from this evidence is that if dust hampered pedestrian traffic on Halsted Street at any given moment, a brief pause would allow the dust to clear, at which time the sidewalk could be traversed unimpeded.

Thus, we conclude that any interference experienced by Trepanier and McFarland was essentially self-inflicted. (Trepanier admitted that he purposely walked into the cloud of dust on Halsted Street. Tr. at 862-63.) We find the testimony and evidence provided by complainants insufficient to support a finding of interference which could be the basis of a violation of Section 9(a).

In further support of this conclusion, we note the Supreme Court's interpretation of "unreasonable interference" in Processing and Books, Inc. v. Pollution Control Board, 64 Ill. 2d 68, 351 N.E.2d 865 (1976). Therein the word "unreasonably," as used in Section 9(a) the Act, was interpreted to impose an element of objectivity on the analysis of interference:

> There is little that any person can do which does not in some degree "interfere with the enjoyment of life or property" of other persons. The very act of breathing consumes oxygen. In our opinion the word "unreasonably" . . . was intended to introduce into the statute something of the objective quality of the common law, and thereby exclude trifling inconvenience, petty annoyance or minor discomfort. The word is used in a similar sense in the disorderly conduct statute. As used in this statute it removes the possibility that a defendant's conduct may be measured by its effect upon those who are inordinately timorous or belligerent. 351 N.E.2d at 869 (citations and internal quotes omitted).

Based on their testimony, the effects of the dust suffered by Trepanier and McFarland were minor and of brief duration. In our opinion, the irritation suffered by Trepanier and McFarland falls within the category of "trifling inconvenience, petty annoyance or minor discomfort." So, we find no violation of the air pollution prohibition in Section 9(a).

Interference with Enjoyment of Property. The only evidence of interference with enjoyment of property was the testimony of Mike Meesig. Meesig testified that dust from the demolition hindered access to the area of the yard of the Creative Reuse Warehouse, which is located across an alley from the Halsted building. Tr. at 1215, 1220-21. He stated that he and customers were denied free access to the yard while the demolition was ongoing. Tr. at 1215. On cross-examination, however, Meesig testified that the area of the lot near the demolition was "off the beaten path." Tr. at 1237. He had no recollection as to how many people may have entered that area of the yard while the demolition was going on. Tr. at 1239. He did not advise customers to stay away from the area of the lot near the demolition. Tr. at 1221-22. The Board finds Meesig's testimony insufficient to establish interference with use and enjoyment of property. We are not persuaded by his testimony that anyone was denied access to parts of the yard due to the demolition.

Conclusion. Based on the foregoing analysis, the Board finds no interference with the enjoyment of life or property, and consequently no violation of Section 9(a).

Section 33(c) Factors.

In Incinerator, Inc. v. Pollution Control Board, 59 Ill. 2d 290, 296, 319 N.E.2d 794, 797 (1974), the Supreme Court ruled that "the unreasonableness of an alleged air-pollution interference must be determined by the Board with reference to [the Act's] section 33(c) criteria." Having found the evidence insufficient to establish interference, there is no need to determine whether interference was unreasonable. See Scarpino v. Henry Pratt Co. (April 3, 1997), PCB 96-110, slip op. at 13, 15. Evaluation of the factors listed in Section 33(c), however, would not affect our determination that no violation of Section 9(a) has occurred.

Section 33(c) now provides:

> In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions . . . involved including, but not limited to:
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> i. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
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> ii. the social and economic value of the pollution source;
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> iii. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
>
> iv. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
>
> v. any subsequent compliance.

We will evaluate these factors in the context of this case.

Character and Degree of Injury or Interference. Again, we find that the interference suffered by Trepanier and McFarland falls within the category of trifling inconvenience, petty annoyance or minor discomfort, as discussed in Processing & Books, *supra*. See our analysis above.

Social and Economic Value of Source. The source in this case is the demolition of a building. Complainants have argued that the Halsted building should not have been torn down; however, whether a particular building should be demolished is not relevant in the context of Section 9(a) of the Act. Accordingly, the Board finds that this factor does not impact its determination.

Suitability of Source to Location. As a general rule, a building can only be demolished where it stands. Anywhere a building is constructed is therefore a suitable location for demolition. A particular method of demolition may be more or less suitable given the character of the area surrounding the demolition site. The record in this case contains much argument about the methods used by Speedway, but very little evidence of negative impacts due to Speedway's choice of methods. We therefore find that the source of the emissions was suitable to its location.

Technical Practicability and Economic Reasonableness of Reducing Emissions. Without evidence of injury from emissions, we cannot find that any reduction in those emissions is economically reasonable, even is such reduction is technically practicable. We therefore find that reducing emissions in this case would not be economically reasonable.

Subsequent Compliance. Even if the emissions had constituted a violation, such a violation would have ceased when demolition was completed.

Conclusion. Even if our determination were based on an evaluation of these factors, we would not reach a different conclusion regarding respondents' violation of Section 9(a). These factors, to the extent they would impact our determination, weigh against finding unreasonable interference.

Section 21(b)

Section 21(b) prohibits any person from "abandoning, dumping or depositing any waste upon the public highways or other public property[.]" In denying respondents' motion for summary judgment, we concluded that dust is a waste under the Act. Trepanier v. Speedway Wrecking Co. (October 15, 1998), PCB 97-50, slip op. at 15. We therefore allowed complainants an opportunity to prove this claim.

That dust from the demolition of 1261 S. Halsted landed on Halsted Street and 13th Street is undisputed. Thus, under a literal reading of Section 21(b), it appears that Speedway has violated that section of the Act. However, a literal reading of Section 21(b) is not appropriate in this instance.

If any dust produced as a by-product of some man-made process that winds up on a public thoroughfare results in a violation of the Act, then potentially any outdoor activity could result in a violation of Section 21(b). In addition to most demolition projects, almost every jackhammer used on any street anywhere could cause a violation of Section 21(b). The number of other mundane activities which could fall within Section 21(b)'s ambit would be almost infinite. We believe that this result is clearly absurd.

The Illinois Supreme Court has stated on many occasions that "[s]tatutes are to be construed in a manner that avoids absurd or unjust results." Croissant v. Joliet Park District, 141 Ill. 2d 449, 455, 566 N.E.2d 248, 251 (1990). In an earlier case the Court described the analysis to be applied in more detail:

> In the construction of a statute the law requires that it be given a reasonable interpretation. Under this rule, statutes are to be construed according to their intent and meaning, and a situation that is within the object, spirit, and meaning of the statute is regarded as within the statute, although not within the letter. And, conversely, a situation within the letter is not regarded as within the statute unless also within its object, spirit and meaning, and "Where the spirit and intention of the legislature in adopting the acts are clearly expressed and their objects and purposes are clearly set forth, the courts are not confined to the literal meaning of the words used, when to do so will defeat the obvious intention of the legislature and result in absurd consequences not contemplated by it." People *ex rel*. Barrett v. Thillens, 400 Ill. 224, 231, 79 N.E.2d 609, 612-13 (1948) (quoting Harding v. Albert, 373 Ill. 94, 96-97, 25 N.E.2d 32, 34 (1939)).

The legislature's purpose in adopting the Act was "to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them." 415 ILCS 5/2(b) (1998). With respect to Section 21(b), we conclude that this purpose may be effectuated, and the absurd result of a literal reading of Section 21(b) avoided, by requiring a threshold level of significance below which a violation of Section 21(b) will not be found.

We conclude that the necessary level of significance has not been reached here. The small amount of dust shown to have been blown onto Halsted Street does not, we find, constitute an abandonment, dumping or deposit of waste on a public highway of a type that should be subject to enforcement or injunction under Section 21(b). We therefore find no violation of Section 21(b).

CONCLUSION

For the foregoing reasons, the Board finds no violations of the Act by the University or Speedway. This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. Lorenz Joseph's "Motion to Overturn Credibility Determination" is denied as moot.

2. "Lorenz Joseph's Motion for Extension of Time to File a Response" is denied.

3. "Respondents' Motion to Strike" is denied.

4. Maxworks Garden Cooperative is dismissed as a complainant. The caption is hereby amended to reflect this dismissal.

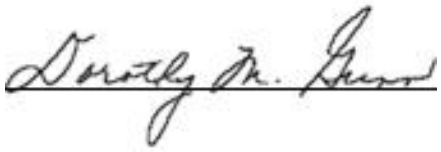
5. The Board finds no violation of the Act by the Board of Trustees of the University of Illinois.

6. The Board finds no violation of the Act by Speedway Wrecking Company.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 6th day of January 2000 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board