

ILLINOIS POLLUTION CONTROL BOARD

February 17, 2005

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

ORDER OF THE BOARD (by N.J. Melas):

Today's order accepts the respondent's amended petition to contest this administrative citation.

In the administrative citation, the Illinois Environmental Protection Agency (Agency) alleges that on October 4, 2004, Northern Illinois Service Company (NISC) violated Section 21(p)(1) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) and (p)(7) (2002)). The Agency further alleges that Northern Illinois Service Company violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in: (1) litter; and (2) deposition of general construction or demolition debris or clean construction or demolition debris at 4960 Rockton Road, Roscoe, Winnebago County.

On January 6, 2005, the Board accepted this petition for hearing, yet directed NISC to amend its petition for review to include its grounds for appeal within 30 days, or the Board would dismiss this matter. Mr. Wayne Klinger filed the petition on behalf of Northern Illinois Service Company. The petition did not identify Mr. Klinger as an attorney, but as President of Northern Illinois Service Company. The Board also directed NISC to retain an attorney prior to filing an amended petition for review in this matter.

On February 7, 2005, an attorney filed an appearance and an amended petition for review on behalf of NISC. In the amended petition, NISC states it did not cause or allow the open dumping of waste in a manner resulting in litter because the material referred to in the inspection report was trees and trees do not constitute litter. NISC does not address the alleged violation of Section 21(p)(7) of the Act, waiving any argument contesting a violation of that provision. The Board accepts NISC's amended petition for hearing.

The Board directs the hearing officer to proceed expeditiously to hearing. The hearing officer will give the parties at least 21 days written notice of the hearing. 35 Ill. Adm. Code 108.300; *see also* 415 ILCS 5/31.1(d)(2) (2002). By contesting the administrative citation, NISC may have to pay the hearing costs of the Board and NISC. *See* 415 ILCS 5/42(b)(4) (2002); 35

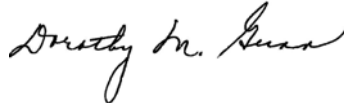
Ill. Adm. Code 108.500. A schedule of the Board's hearing costs is available at the Board's offices and on the Board's Web site at www.ipcb.state.il.us. 35 Ill. Adm. Code 504.

NISC may withdraw its petition to contest the administrative citation at any time before the Board enters its final decision. If NISC chooses to withdraw its petition, it must do so in writing, unless it does so orally at hearing. *See* 35 Ill. Adm. Code 108.208. If NISC withdraws its petition after the hearing starts, the Board will require NISC to pay the hearing costs of the Board and NISC. *See id.* at 108.500(c).

NISC has the burden of proof at hearing. *See* 415 ILCS 5/31.1(d)(2) (2002); 35 Ill. Adm. Code 108.400. If the Board finds that NISC violated Section 21(p)(1) and (7), the Board will impose civil penalties on NISC. The civil penalty for violating Section 21(p) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense. 415 ILCS 5/42(b)(4) (2002); 35 Ill. Adm. Code 108.500. However, if the Board finds that NISC "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) (2002); *see also* 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 17, 2005, by a vote of 4-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board