

ILLINOIS POLLUTION CONTROL BOARD
September 21, 2006

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

MICHELLE M. RYAN, SPECIAL ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT; and

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

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

On November 22, 2004, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against the Northern Illinois Service Company (respondent, Northern). The citation alleges that respondent violated Sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), and (7) (2004)) at 4960 Rockton Road, Roscoe, Winnebago County (Roscoe Quarry).

For the reasons below, the Board finds that Northern violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and (7) (2004)) by causing or allowing the open dumping of waste resulting in litter and the deposition of general construction or demolition debris or clean construction or demolition debris, as alleged in the citation.

In this interim opinion and order, the Board first describes the administrative citation process, the procedural history of this case, and the facts of this case. The Board then sets forth the pertinent provisions of the Act. Next, the Board analyzes the issues and reaches its conclusions of law regarding the alleged violations. Finally, the Board addresses penalties and sets a schedule for the filing of hearing costs and any objections to those claimed costs.

ADMINISTRATIVE CITATION PROCESS

Under the Act, an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted

open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2004); 35 Ill. Adm. Code 108.

The Act provides that the civil penalty is \$1,500 for each violation of each provision of Section 21(p). *See* 415 ILCS 5/42(b)(4-5) (2004) (the penalty amount increases to \$3,000 per violation for a respondent's second or subsequent adjudicated violation of that provision); 35 Ill. Adm. Code 108.500. As 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 in these cases. *See* 415 ILCS 5/42(4-5) (2004).

A respondent issued an administrative citation may pay the civil penalty or challenge the administrative citation by petitioning the Board. *See* 415 ILCS 5/31.1(d) (2004). If the respondent does not succeed at hearing, the Board must impose on the respondent the civil penalty, as well as the hearing costs of the Board and the complainant. *See* 415 ILCS 5/42(b)(4), (4-5) (2004); 35 Ill. Adm. Code 108.500(b).

PROCEDURAL HISTORY

On November 22, 2004, the Agency filed the administrative citation (AC) with the Board. On December 27, 2004, Northern filed a petition for administrative review. The Board accepted the petition for hearing in an order dated January 6, 2005, but directed Northern to amend its petition for review to include its grounds for appeal. On February 7, 2005, Northern filed an amended petition for administrative review (Pet.). The Board accepted the amended petition for hearing in an order dated February 17, 2005.

On April 20, 2006, Board Hearing Officer Bradley Halloran conducted a hearing (Tr.) at the State of Illinois Rockford Regional Office. At the hearing, Special Assistant Attorney General Michelle M. Ryan appeared and participated on behalf of the complainant, and Lewis B. Kaplan and Peter DeBruyne appeared and participated on behalf of the respondent. Three witnesses testified during the hearing: Mr. Kaare Jacobsen, the Agency inspector that inspected the Roscoe Quarry site, on behalf of the complainant and Mr. Ronald Foss and Mr. Wayne Klinger on behalf of the respondent.¹ Based on his legal judgment, experience, and observations at hearing, Hearing Officer Halloran found that all witnesses testified credibly. Tr. at 52. On May 23, 2006, Complainant filed its post hearing brief (Pet. Brief). Respondent filed its post-hearing brief on June 13, 2006 (Resp. Brief).

FACTS

Northern specializes in excavation and demolition contracting at its site known as the Roscoe Quarry, located at 4960 Rockton Road in Roscoe, Winnebago County. Tr. at 38-39, Compl. Exh. 1 at 3. Mr. Wayne Klinger is the president of Northern and owns the Roscoe Quarry site. Tr. at 38. In the course of business, Northern uses sand from the Roscoe Quarry to

¹ Mr. Jacobsen documented his October 4, 2004 inspection in an investigation report (Compl. Exh. 1).

complete its projects. Workers also haul dirt and other material back from other excavations to the Roscoe Quarry site. Tr. at 39-40.

Agency field inspector Mr. Kaare Jacobsen conducted two inspections at Northern's Roscoe Quarry site west of Roscoe near Highway 251 on Rockton Road. Tr. at 10. Field Inspector Jacobsen conducted his first inspection in July of 2004 and his second inspection on October 4, 2004. Tr. at 10-11, 19. At the time of the October 4, 2006 inspection, over 150 cubic yards of concrete debris with protruding rebar filled low-lying areas of the quarry. Tr. at 11, Compl. Exh. 1 at 3,8 (photograph 8). A debris pile contained steel conduit. Tr. at 13 and Comp. Exh. 1 at 8 (photograph 7). Approximately 9,700 cubic yards of landscape debris were piled northwest of the concrete debris. Tr. at 11. The landscape debris resembled "an island with a moat" and stood 10 to 13 feet high. Tr. at 11.

The landscape material consisted of uprooted trees and cut trees, some of which have been on the property for more than ten years. Tr. at 12, 39-40, Comp. Exh. 1 at 5, 6, 7 (photographs 1, 2, 3,4, 5, and 6). An access road surrounded a large pile of trees, which was in turn surrounded by more landscape debris. Tr. at 13. Trees at the site were not processed in any way. Tr. at 23. In fact, trees at the base of the mounds of landscape debris showed signs of decay. Tr. at 24. Furthermore, the position of the trees did not change between the July and October inspections. Tr. at 24.

Northern traces the origin of trees at the site to three sources. Tr. at 42. Some trees were stacked at the Roscoe Quarry site when Northern's operator acquired the property. Tr. at 40. In the course of excavating for fill, Northern uprooted other trees on the property and places them in the piles as well. Tr. at 41. Finally, Northern hauled straggler trees onto the property from other excavation sites. Tr. at 42. Stragglers are single trees that are hauled to the site when Northern excavates and workers don't have time to call a contractor to remove the trees. Tr. at 42. While removal companies haul away most of the trees from excavation sites, Northern must haul stragglers to the Roscoe Quarry site since disposal companies will not dispose of individual trees. Tr. at 44-45.

Northern applied to the Agency for an open burning permit in September of 2004. Tr. at 47. Agency's Division of Air Pollution Control received the application on December 13, 2004. Northern's permit allowed open burning to begin on December 22, 2004, but only allowed Northern to burn landscape waste from the Roscoe Quarry site. Resp. Exh. 4 at 1.

Mr. Ron Foss operates a local landscaping business and garden center. Tr. at 27. Mr. Foss worked for Northern "in the late '80s, early '90s for two or three years." Tr. at 28. On occasion, he hires Rockford Blacktop to grind trees on his property into mulch, which his company then uses or sells. Tr. at 31. For cost comparison purposes, Mr. Foss stated the trees ground for him by Rockford Blacktop and the trees present on Northern's land are in the same condition. Tr. at 31-32.

STATUTORY BACKGROUND

Section 3.160 of the Act defines "general construction or demolition debris" as:

non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: brick, 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 shingles and other roof coverings; reclaimed asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and piping or metals incidental to any of those materials.

General construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any general construction or demolition debris or other waste.

* * *

415 ILCS 5/3.160(a) (2004).

Section 3.270 of the Act defines “landscape waste” as “all accumulations of grass or shrubbery cuttings, leaves, tree limbs and other materials accumulated as the result of the care of lawns, shrubbery, vines and trees.” 415 ILCS 5/3.270 (2004).

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 landfill.” 415 ILCS 5/3.305 (2004).

Section 3.385 of the Act defines “refuse” as “waste.” 415 ILCS 5/3.385 (2004).

Section 3.535 of the Act defines “waste” as:

[A]ny garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto. 415 ILCS 5/3.535 (2004).

Section 21(a) of the Act provides that “no person shall cause or allow open dumping of any waste.” 415 ILCS 5/21(a) (2004).

Section 21(p) of the Act provides that no person shall, “in violation of subsection (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

(1) litter...

* * *

(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(b) of this Act.” 415 ILCS 5/21(p)(1) and (7) (2004).

Section 31.1(d)(2) of the Act Provides that: “[I]f the Board finds that the person appealing the [administrative] citation 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) (2004).

Section 42(b)(4-5) of the Act provides that:

In an administrative citation under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) of Section 21 of this Act 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 415 ILCS 5/42(b)(4-5) (2004).

Section 3(a) of the Litter Control Act defines “litter” as:

any discarded, used or unconsumed substance or waste. ‘Litter’ may include, but is not limited to, any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned vehicle (as defined in the Illinois Vehicle Code), motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, potentially infectious medical waste as defined in Section 3.360 of the Environmental Protection Act, or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly. 415 ILCS 105/3(a) (2004).

THE AGENCY’S POST-HEARING BRIEF

The Agency claims it demonstrated that Northern caused or allowed open dumping at the Roscoe Quarry site by showing Northern consolidated “refuse from one or more sources at a

disposal site that does not fulfill the requirements of a sanitary landfill.” Pet. Brief at 2; citing 415 ILCS 5/3.305 (2004). The Agency notes that “refuse” means “waste,” (Pet. Brief at 2; 415 ILCS 5/3.385 (2004)), and “waste” includes “any garbage . . . or other discarded material” (Pet. Brief at 2; citing 415 ILCS 5/3.535 (2004)). Therefore, the Agency argues that the dead trees, concrete with protruding rebar, and metal conduit present at the site qualify as “discarded material” within the meaning of the term “waste.” Pet. Brief at 2-3.

The Agency claims that the Northern caused or allowed open dumping because some of the waste trees had been on the site since Northern acquired the property in 1996 (Pet. Brief at 3; citing Tr. at 40, 48), and the Northern added “stragglers” and trees cut from the site to the pile (Pet. Brief at 3; citing Tr. at 42, 48).

The Agency further argues that this open dumping resulted in “litter.” Pet. Brief at 3. Using the definition of “litter” found in the Litter Control Act (415 ILCS 105/3(a) (2004)), the Agency concludes that dead trees, concrete with protruding rebar, and metal conduit constitute “litter” under Section 21(p)(1) of the Act; therefore Northern violated that section. Pet. Brief at 3; citing County of St. Clair v. Mund, AC 90-64, slip op. at 4, 6 (Aug. 22, 1991).

The Agency argues that the deposition of concrete with protruding rebar and conduit also violates Section 21(p)(7) of the Act as deposition of general construction or demolition debris. Pet. Brief at 3; citing 415 ILCS 5/21(p)(7) (2004). The Agency notes that since Northern does not contest the 21(p)(7) count (Petition for Rev. at 1), the evidence of concrete with protruding rebar and metal conduit shows that Northern violated Section 21(p)(7) of the Act. Pet. Brief at 4.

The Agency claims that while some of the waste at the site was present when Northern bought the property (Pet. Brief at 4; citing Tr. at 40, 48), the Agency notes that the Board has held that present inaction of a current landowner to remedy past illegal disposal of waste previously placed on a site constitutes allowing open dumping. Pet. Brief at 4; citing IEPA v. Shrum, AC 05-18, slip op. at 8 (Mar. 16, 2006), Sangamon County v. Hsueh, AC 92-79, slip op. at 4-5 (July 1, 1993).

Finally, the Agency points out that even though the wood could have been processed into mulch, it was not usable as mulch in its condition on the date of the inspection. Pet. Brief at 4; citing Tr. at 23, 31-23. The Agency argues that the trees were “laid there to rot” without any evidence of processing. Pet. Brief at 4; citing Tr. at 23. The Agency points to Northern’s open burning permit as proof of Northern’s lack of intent to process the trees since burning wood precludes its use as mulch. Pet. Brief at 4-5. Furthermore, the Agency maintains that Northern’s intention to use the wood waste as mulch is irrelevant since Northern made no attempt to process the trees for more than ten years while the trees were present at the site. Pet. Brief at 4. Additionally, the Agency points out that a plan to use material in the indefinite future is not determinative when classifying a material as waste or litter. Pet. Brief at 5; citing IEPA v. Yocum et. al, AC 1-29 slip op. at 8 (June 6, 2002).

NORTHERN’S POST-HEARING BRIEF

Northern argues that the uprooted and dead trees at the site are not waste. Resp. Brief at 2. Northern claims that the Board should apply the doctrine of *ejusdem generis* when classifying the material. Under this doctrine, when a statutory clause describes several things and includes other things, the word “other” should be interpreted to mean “other such like.” Resp. Brief at 2; citing City of Lake Forest v. PCB, 146 Ill. App. 3d 848, 497 N.E.2d 181 (2d Dist. 1986). Accordingly, Northern argues that uprooted trees do not fall within the waste subset of landscape waste, which is defined as “all accumulations of grass shrubbery cuttings, leaves, tree limbs and other materials accumulated as the result of the care of lawns, shrubbery, vines and trees.” Resp. Brief at 2-3; citing 415 ILCS 5/3.270. Northern argues that the dead trees are not waste since dead trees are unlike the items specifically mentioned in 415 ILCS 5/3.535 such as “garbage, sludge from a waste treatment plant . . .” Resp. Brief at 3.

Moreover, Northern claims that the material was not “discarded,” a term found in both the definition of “waste” and “litter.” Resp. Brief at 3. Northern maintains that the Agency presented no evidence at hearing to show that Northern discarded the dead and uprooted trees. Resp. Brief at 3. Furthermore, Northern points out that the economic value of the trees demonstrates that Northern did not discard the material. Resp. Brief at 3. Northern notes that Ronald Foss, who has operated a landscaping business for twelve years, testified that the trees could be ground up into mulch and sold. Resp. Brief at 5; citing Tr. at 30-31. In fact, argues Northern, Foss has cleared trees from his own property, ground them with a tub grinder, and sold the resulting mulch to the public for a profit. Resp. Brief at 5; citing Tr. at 31.

Finally, Northern points out that it applied for an open burning permit from the Agency in September 2004. Resp. Brief at 7. Northern argues that the Agency “thought so little of the alleged violations that it permitted Northern to burn the material” while simultaneously issuing a citation. Resp. Brief at 7. For these reasons, Northern states that the dead and uprooted trees on respondent’s premises do not meet the definitions of landscape waste, waste, or litter, and the Board should find in favor of Northern.

ISSUES AND ANALYSIS

In its amended petition filed February 7, 2005, Northern does not contest the alleged violation of Section 21(p)(7) of the Act, which prohibits the open dumping of waste resulting in the deposition of general or clean construction or demolition debris. Subsequently, neither at hearing nor in its post-hearing brief does Northern contest or address the Section 21(p)(7) count of the Act. Accordingly, by failing to contest the alleged violation of Section 21(p)(7), Northern has waived any objection to the Board’s finding of that violation. The Board analyzes the issues below in light of Northern’s failure to contest Section 21(p)(7).

In its post-hearing brief, Northern argues that the Board should review this proceeding pursuant to Section 33(c) of the Act. Resp. Br. at 1. Northern states that the Board “is to take into account in its orders and determinations the ‘character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people . . .’ and ‘the social and economic value of the pollution source; . . .’” *Id.*; citing 415 ILCS 5/33(c)(i), (ii) (2004).

In an administrative citation proceeding, the Section 33(c) factors do not apply. When the Board finds a violation in a formal enforcement action brought under Section 31 of the Act, the Board has the discretion to determine whether to impose a penalty, and in what amount. If the Board decides to impose one, the Board considers factors that aggravate or mitigate the amount of penalty. *See* 415 ILCS 5/31, 33(c), 42(h) (2004). In an administrative citation action brought under Section 31.1 of the Act, however, the Board has no discretion to determine whether to impose a penalty once a violation is found, or the amount of any penalty. *See Miller v. PCB, et al.*, 267 Ill. App. 3d 160, 167, 642 N.E.2d 475, 482 (4th Dist. 1994). If a violation is found, the Board must impose a civil penalty on Northern, and the amount of that penalty is fixed by the Act. *Jackson v. Kamarasy*, AC 04-63, 64, slip op. at 26 (June 16, 2005); 415 ILCS 5/42(h)(4-5) (2004). For these reasons, the Board discusses each of Northern's arguments below, but does not review the issues pursuant to the Section 33(c) factors as Northern suggests.

Open Dumping of Waste

To prove violations of Section 21(p) of the Act, the Agency must first prove that Northern caused or allowed open dumping of waste. 415 ILCS 5/21(p) (2004). "Open dumping" is "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 (2004). "Refuse" is "waste." 415 ILCS 5/3.385 (2004). "Waste" includes "any garbage...or other discarded material" 415 ILCS 5/3.535 (2004).

Mr. Klinger does not deny that Northern owns and operates the site. Tr. at 38. The record shows that the site is not permitted for waste disposal. Compl. Exh. 1 at 1. Northern neither denies the existence of concrete material at the Roscoe Quarry site nor claims the Board should not consider the material waste.

Likewise, Northern does not deny the presence of uprooted and dead trees at the site. Tr. at 48. In fact, Northern acknowledges that employees hauled trees to the site from different excavation projects. Tr. at 48. Based on these admissions, as well as the rest of the evidence in the record, the Board finds that Northern caused or allowed the presence of these materials at the site. Northern argues, however, that the trees are not waste because they are not landscape waste or any type of other discarded material. Resp. Brief at 3.

The Board finds that trees at the Roscoe Quarry site fall within the subcategory of "landscape waste." "Landscape waste" is a subset of "waste." *American Tree Service, Inc. v. IEPA*, PCB 94-43, slip op. at 14 (Dec. 14, 1994). Landscape waste includes "all accumulation of grass or shrubbery cuttings, leaves, tree limbs and other materials accumulated as the result of the care of lawns, shrubbery, vines and trees." 415 ILCS 5/3.270 (2004). In the process of excavating, Northern removes trees from different work sites and piles those trees at the Roscoe Quarry site. Tr. at 42. Northern argues that the dead or uprooted trees are "totally unlike" the items mentioned in the definition of landscape waste. Resp. Brief at 2. However, the Board finds that since the definition includes tree limbs, it should also be read as to generally include entire trees when they are uprooted and accumulated in the manner Northern has maintained them at the Roscoe Quarry. The Board finds the definition does not exclude branches from the definition of "landscape waste" simply because they are attached to the trunks of trees.

Additionally, the Board finds that the trees present at the Roscoe Quarry site qualify as “other discarded materials” within the Act’s definition of waste. Northern argues that the uprooted and dead trees are totally unlike the items specifically mentioned in the Act’s definition of waste. Resp. Brief at 2. As an example, Northern cites reasoning in case law where the court overturned the Board’s classification of leaves as waste because they grow and fall from trees naturally, finding they are not “of the same nature as garbage or sludge which is generated and discarded by people.” Resp. Brief at 2; citing City of Lake Forest v. PCB, 146 Ill. App. 3d 848, 497 N.E.2d 181, 185 (2d Dist. 1986). Here, Northern hauls uprooted trees to the site in the course of excavating. Tr. at 42. Unlike Lake Forest, where leaves fall to the ground during a natural process, Northern uproots trees and piles them at its site where at least some portion of the trees have been sitting for over ten years.

Accordingly, the Board finds that the 150 cubic yards of concrete debris with protruding rebar and 9,700 cubic yards of trees at Northern’s Roscoe Quarry site qualify as waste. Since Northern consolidated waste at a site that does not qualify as a sanitary landfill, the Board finds that Northern caused open dumping at the Roscoe Quarry.

Litter

Although the Act itself does not define “litter,” in the past the Board has consistently applied the definition found in the Litter Control Act. County of St. Clair, supra, AC 90-64. The Litter Control Act defines litter as “any discarded, used or unconsumed substance or waste.” 415 ILCS 105/3(a) (2004). The definition specifically includes debris, rubbish, grass clippings or other lawn or garden waste. 415 ILCS 105/3(a) (2004). Litter also includes “anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.” 415 ILCS 105/3(a) (2004).

Northern argues that the Agency provided no evidence that the trees present at the site were discarded. Resp. Brief at 3. However, evidence at hearing showed otherwise. Field Inspector Jacobsen testified that mounds of landscape debris showed evidence of decay. Tr. at 24. The debris did not change position between the July and October inspections. Tr. at 24. Furthermore, Northern admits that trees were present at the site when its operator acquired the property, and it has been placing trees on the site ever since. Tr. at 42. 39.

Northern further argues that the trees have economic value; thus they are not discarded and should not be considered litter. Resp. Brief at 3-6. As proof of their value, a local business operator, Mr. Foss, testified that he produces mulch from trees similar to those at Northern’s Roscoe Quarry site. Resp. Brief at 5; citing Tr. at 31-32. Even after renting equipment and paying laborers, he sells the mulch from trees for profit. Resp. Brief at 5; citing Tr. at 36. In fact, he can produce the mulch for half the cost he would pay to acquire the same type of mulch from wholesale sellers. Tr. at 36.

The Board has classified tree branches as waste and litter in the past. IEPA v. Harvey, AC 03-27 at 5 (Apr. 1, 2004). Northern’s claim of future use is not dispositive when classifying material as waste or litter. County of Sangamon v. Daily, AC 01-16, slip op. at 10 (Jan. 10,

2002). Trees have been present at the site since Northern acquired the site and some show signs of rotting. Tr. at 24, 42. Northern offered no proof that it ever has or ever plans to process the trees to create mulch. Thus, the Board finds the trees that Northern discarded into piles at the Roscoe Quarry site qualify as “litter” under the Act.

Construction or Demolition Debris

Material at Northern’s Roscoe Quarry site qualifies as construction or demolition debris. General construction and demolition debris includes “uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: brick, concrete, and other masonry materials . . . and piping or metals incidental to any of those materials.” 415 ILCS 5/3.160(a) (2004).

The Agency Field Inspector observed piles of concrete with protruding rebar and metal conduit. Tr. at 13, 14 (referring to Compl. Exh. 1 at 8 (photographs 7,8)). Northern did not dispute the presence of the concrete debris and conduit or the Agency’s classification of the material as waste. Therefore, the Board finds that Northern’s open dumping resulted in the deposition of over 150 cubic yards of general construction or demolition debris.

Open Burning Permit

Northern argues that the Agency “thought so little of the alleged violation that it permitted Northern to burn the material while at the same time it was citing it for an environmental violation.” Resp. Brief at 7. The Agency issued a permit on December 21, 2004, which allowed Northern to burn landscape waste from the Roscoe Quarry site. Resp. Exh. 4 at 1. However, the Agency filed the administrative citation on November 22, 2004, based on an October 4, 2004 inspection. Post-citation actions by the citation recipient are not material to whether the recipient violated the Act. *IEPA v. Harvey*, AC 03-27, slip op. at 4 (Apr. 1, 2004). Therefore, any actions taken by Northern after the citation to mitigate the violation are not material when determining whether Northern violated the Act.

CONCLUSION

The Board finds that Northern violated Section 21(p)(1) of the Act by causing or allowing the open dumping of waste resulting in litter. 415 ILCS 5/21(p)(1) (2004). Additionally, the Board finds that Northern violated Section 21(p)(7) of the Act by causing or allowing the open dumping of waste resulting in the deposition of general construction or demolition debris. 415 ILCS 5/21(p)(7) (2004). The Board further finds Northern’s claim of value for processed trees inconsequential since the trees at the site qualify as discarded landscape waste. Northern’s intent to burn the waste is also inconsequential since any burning would take place after the issuance of the citation.

As stated below, the Board directs the Clerk and the Agency to document hearing costs and serve them upon the Northern, after which the Board will issue a final order.

PENALTY

In administrative citation proceedings, any person found to have violated subsection (p) of Section 21 of the Act must pay a penalty of \$1,500 for a first violation and \$3,000 for a second or subsequent violation of each provision of the Section. 415 ILCS 5/42(b)(4-5) (2004). Because Northern violated two subsections of Section 21(p), and both are first offenses, the statutory civil penalty is \$3,000. By unsuccessfully contesting the administrative citation at hearing, Northern must also pay the hearing costs of the Agency and the Board. 415 ILCS 42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500(b)(2). The Board will order payment of this penalty plus costs in its final order.

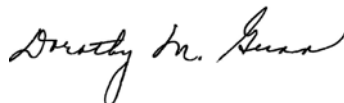
This interim opinion and order constitutes the Board's findings of fact and conclusions of law. A final order will be issued pursuant to the interim order that follows.

ORDER

1. The Board finds that Northern Illinois Service Company (Northern) violated Sections 21(p)(1) and 21(p)(7) of the Act. 415 ILCS 5/21(p)(1) and (7) (2004).
2. The Illinois Environmental Protection Agency must file a statement of hearing costs by October 11, 2006. The statement must be supported by affidavit and served upon Northern. Also by October 11, 2006, 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.
3. Respondent may file any objections to those statements by November 1, 2006. 35 Ill. Adm. Code 108.506(a). Northern must serve any such response on the Agency. The Agency may then file a reply to the respondent's response within 14 days of service of that response. 35 Ill. Adm. Code 108.506(b).
4. Because the Board has found that the respondent has violated two subsections of Section 21(p), the Board will issue a final order assessing a statutory penalty of \$3,000 for the violations and award appropriate hearing costs. 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 interim opinion and order on September 21, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board