

ILLINOIS POLLUTION CONTROL BOARD

January 26, 2007

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

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

On September 21, 2006, the Board issued an interim opinion and order, finding that respondent Northern Illinois Service Company (NISC) violated two open dumping provisions of the Environmental Protection Act (Act) (415 ILCS 5 (2004)) at a site in Roscoe, Winnebago County. Having received documentation of hearing costs in this administrative citation enforcement action, the Board today issues its final opinion and order.

**BACKGROUND**

In the interim opinion and order of September 21, 2006, the Board found that NISC violated Sections 21(p)(1) and (7) of the Act by causing the open dumping of waste resulting in litter and the deposition of general construction or demolition debris at 4690 Rockton Road, Roscoe, Winnebago County (Roscoe Quarry). 415 ILCS 5/21(p)(1), (7) (2004). The Illinois Environmental Protection Agency (Agency) filed this administrative citation with the Board on November 22, 2004, based on an October 4, 2004 inspection by the Agency of the Roscoe Quarry.

Because there were two violations of Section 21(p) and the violations are first offenses, the Board found that under Section 42(b)(4-5) of the Act, the total civil penalty is \$3,000. 415 ILCS 5/42(b)(4-5) (2004). The Board also found that because Northern did not succeed at hearing, it must pay the hearing costs of both the Agency and the Board. 35 Ill. Adm. Code 108.502, 108.504. The Board ordered the Agency and the Clerk of the Board to submit hearing costs by October 11, 2006 and gave NISC time to respond to costs. On September 25, 2006, the Clerk of the Board submitted an affidavit of the Board's hearing costs totaling \$406.50. NISC did not file a response.

On November 16, 2006, the Board issued a final opinion and order finding that NISC had violated Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(7) (2004)), imposing the corresponding statutory civil penalty of \$3,000, and assessing the Board's hearing costs.

On December 1, 2006, the Board received the Agency's statement of hearing costs in the amount of \$265.75. The proof of service showed that the Agency timely mailed the statement by U.S. mail on October 11, 2006. Because of the seven-week delay between the time it was mailed and the statement's arrival in the Board's office, the Board on its own motion reconsidered the final decision of November 16, 2006, and vacated that order on December 7, 2006. The Board allowed NISC time to respond to the Agency's claimed costs. *See* 35 Ill. Adm. Code 108.506(a). NISC did not file a response.

On December 8, 2006, NISC filed a petition for review of the November 16, 2006 order with the Second District Appellate Court, docketed as case No. 02-06-1237. On December 18, 2006, NISC moved the Board to stay enforcement of the Board's November 16, 2006 order. NISC requested that the Board stay the assessed civil penalty and costs pending review by the appellate court.

On January 19, 2007, the Second District Appellate Court granted the Board's motion to dismiss NISC's appeal for lack of jurisdiction. The appellate court granted the motion because there was no final appealable Board order.

### **DISCUSSION**

Within its motion for stay, NISC seeks to stay a Board order that has been vacated and asks that the stay be in effect during an appeal that has been dismissed. The Board denies NISC's motion to stay as moot.

The Board finds the hearing costs of the Board and the Agency reasonable and orders Northern to pay those costs under Section 42(b)(4-5) of the Act. 415 ILCS 5/42(b)(4-5) (2004). The Board incorporates by reference the findings of fact and conclusions of law from its September 21, 2006 interim opinion and order. Under Section 31.1(d)(2) of the Act, the Board attaches the administrative citation and makes it part of the Board's final order.

This opinion and order constitutes the Board's findings of fact and conclusions of law.

### **ORDER**

1. The Board finds that respondent Northern Illinois Service Company (Northern) violated Section 21(p)(1) and (7) of the Environmental Protection Act at its property in Roscoe, Winnebago County. 415 ILCS 5/21(p)(1), (7) (2004).
2. The Board assesses the civil penalty of \$3,000 for the violations, as well as hearing costs totaling \$672.25, for a total amount due of \$3,672.25. Northern must pay \$3,672.25 no later than March 12, 2007, which is the first business day

following the 45th day after the date of this order. Northern must pay this amount by certified check, money order or electronic funds transfer, made payable to the Environmental Protection Trust Fund. The case numbers, case name, and Northern's federal employer identification number must be included on the certified check, money order or electronic funds transfer.

3. Northern must send the certified check, money order or electronic funds transfer to:

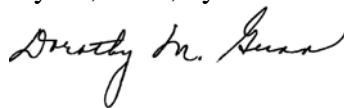
Illinois Environmental Protection Agency  
Fiscal Services  
1020 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
5. Payment of this penalty does not prevent future prosecution if the violations continue.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2004); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 26, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board