

ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

COUNTY OF VERMILION,)
ILLINOIS,)
)
Complainant,)
) AC No. 04-22
-vs-)
) County File No. 03-03
VILLAGE OF TILTON,)
)
Respondent.)

RESPONDENT VILLAGE OF TILTON BRIEF

Now comes the Respondent, VILLAGE OF TILTON, by John F. Martin of Meachum & Martin, and in support of its position relative to the Complaint filed in this case submits the following Memorandum:

I. THE VILLAGE DID NOT CONDUCT OPEN DUMPING
AND OPEN BURNING IN VIOLATION OF THE ACT.

The charge in this case is that the Village of Tilton violated Section 21(P)(3) of the Illinois Environmental Protection Act. 415 5/21(P)(3). The village submits that the evidence presented at the hearing on the Complaint shows that the village did not violate the Act.

At the hearing two witnesses testified, Doug Toole, a health inspector with the Vermilion County Health Department, and Mayor David Jones, the Mayor of the Village of Tilton.

Doug Toole testified that the property in question is owned by Mildred Butler and is located at the corner of 15th and 1st Street in Tilton, Illinois. (p. 7) In June of 2003 he had contacted Mildred Butler about tires, truck trailers, derelict building and other refuse on the property and had given her a compliance date. (p. 7)

Toole's next visit to the site was on August 25, 2003. (p. 7) He testified he saw a pile of branches, brush, scrap metal, demolition debris, and rims and steel belts from tires which were smoldering. (p. 8)

Toole had previously talked to Mayor Phillips in July, 2003 and the mayor told him that the village did not own the property, but had an option to purchase the property. (p. 11)

On the following day, August 26, he talked with Mayor Phillips on the telephone. The mayor told him that village workers had burned some brush and other items. (pgs. 12-13)

On cross examination Toole said that the property had been owned by the Butlers for many years and there had previously been a drive-in theater on that site operated by them. (p. 13) Photographs which Toole took and identified at the hearing showed the site with a trailer and a bunch of tires, a

dilapidated house, and a second trailer and other debris.
(Exhibits 4 & 5; p. 16)

Toole also testified that the building had been used as a "haunted house" on Halloween on a couple of occasions. (p. 16)

Toole had received an anonymous complaint on June 4, 2003, about the premises. His notes show that he went to the site and saw tires, a deteriorating house, a semi truck trailer, a camper, scrap metal, and other refuse. (p. 17) He sent a letter to Mildred Butler who was the owner and still is to his knowledge. (p. 17)

Toole spoke with Mayor Phillips on July 7, 2003, by phone and the mayor said that he was trying to get Thomas Excavating to help in cleaning the place up. (p. 18) Toole does not know if the village took anything to the property to dump there nor does he know who may have piled up items besides the brush on the site. (p. 18) His testimony on this was as follows:

Q: You have no--no evidence, no information that the village put anything on that property, correct?

A: I don't have any evidence to that, no.

Q: As far as who may have piled up items besides brush, you don't know who piled that up, do you?

A: No.

(p. 18)
(emphasis added)

Toole did not talk with the owner, Mildred Butler, until October 1, at which time she said the village had been doing some clean up. (p. 19) Toole went to the site on October 17, 2003, and the site had been cleaned and the tires were gone, some of the trailers were gone, a pile that had been there was gone, and other material had also been removed. (p. 19)

Toole testified that on his visit of June 25 there was not a pile of material on the property, but admitted in one of his photos taken in June of 2003 it shows a pile of debris in the background. (Exhibit 6; pgs. 20-21)

Mayor David Phillips testified that he has been the mayor of the Village of Tilton for 3 1/2 years and has lived in the village all of his life. (pgs. 22-23) The Butler property has been used in the past as an entrance to a drive-in theater and for a haunted house. The property has been in the conditions shown in the photographic exhibits with the haunted house and trailers and other items as long as Butler has owned the property. (p. 23)

The village does have an option to purchase the property and is trying to get a development on that property if they could find a developer. (p. 24)

The village did not put any of the materials on the site, nor did the village ever dump anything on the site. (p. 24)

The village proceeded to plow up fencerows so that the area could be mowed and cut up several semi tractor trailers which was taken to a scrap yard in Hegeler, Illinois. (p. 25) The village also arranged for Coultas Recycling to cut the tires off of the rims and remove them from the property. (p. 25) There were 53 tires that were removed. The village has spent about \$7,000 on that site trying to clean it up. (p. 26)

The property is adjacent to a former Daniels school site and the village has spent a total of \$225,000 cleaning up the school site and the Butler site including asbestos removal. (p. 26)

As far as burning items the village took down trees and brush and a wooden fence and that was burned by the village fire department. (p. 27) The village did not stack up any pile of debris. (p. 27)

Three semi loads of materials from the site was removed to the local landfill and Thomas Excavating assisted with that. (pgs. 27-28)

In addition, by the October 17, 2003, date the village had removed a waste pile that had been on the property. (p. 28)

There was load after load of materials including barrels from inside a trailer that was hauled off by the village. (pgs. 28-29) The village is currently trying to make arrangements to

remove the house and trailer that remains on the premises and is shown in Exhibits 1 and 2. (p. 29)

When West Nile virus became an issue the village started receiving complaints about the tires laying around the property. (p. 30)

The Tilton Fire Department burned a brush pile and not other debris. (p. 32)

At the conclusion of the hearing the hearing officer found both witnesses to be "credible." (p. 37)

Discussion. The evidence at the hearing does not show that the village violated the Act. The evidence showed that a great deal of junk, trailers, tires and debris were on the site for a long period of time. The village's actions were to clean up the site and it removed large quantities of waste material to the local landfill as well as a recycling center.

The village cut down trees and brush and burned that on Wednesday, August 19, 2003.

The visit by Doug Toole was six days later on August 25, 2003, at which time he saw materials besides brush on a smoldering pile. Both from the testimony and the photographs it is obvious that the area is open and easily accessible to anyone. There is no evidence from Toole or from any other source that indicates that it was the Village of Tilton that piled up and burned debris other than brush. The village denies

it burned anything other than brush and there is no evidence contradicting that testimony.

If in fact there was other debris on a pile on the property, this could easily have been placed by Mildred Butler, someone acting in her behalf, or anyone else for that matter.

The case cited by the county, Environmental Protection Agency v. the Pollution Control Board, 219 Ill.App.3d 975, 579 N.E.2d 1215 (5th Dist. 1991) is not on point. In Environmental Protection Agency, the facts of the case were "not in dispute" that the respondent in that case demolished two buildings, stacked the debris on the site, and set it on fire. 579 N.E.2d at 1216. As the Appellate Court noted:

At the hearing, Vander did not deny setting fire to the debris, nor did he deny knowing that open burning was unlawful.

579 N.E.2d at 1216.

In the instant case the facts established are that the village burned brush and hauled off other materials to the local landfill or a recycling center.

Consequently the evidence shows that the village did not violate Section 21(P)(3) and that it was not causing or allowing open dumping and open burning of waste. 415 ILCS 5/21(P)(3).

CONCLUSION

Respondent Village of Tilton requests that the Complaint be denied and the village be found to not have been in violation of the Act.

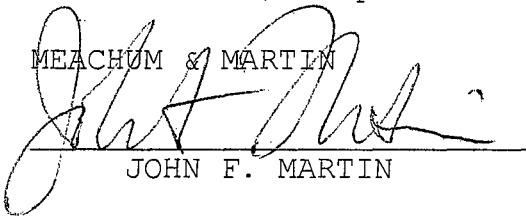
In the alternative, the village submits that the Board should find that any claimed violation resulted from uncontrollable circumstances and find no violation and no penalty. 415 ILCS 5/31.1(D)(2).

Respectfully submitted,

VILLAGE OF TILTON, Respondent

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CERTIFICATE OF MAILING

The undersigned hereby certifies that he served the foregoing on:

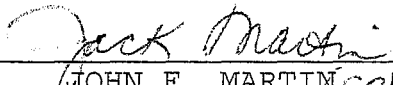
Jennifer Riggs
Assistant State's Attorney
Vermilion County Courthouse
7 N. Vermilion
Danville, IL 61832

by depositing said copy in the United States mail in Danville, Illinois on this 13th day of October, 2004, enclosed in an envelope, plainly addressed to the respective addressee shown above with postage duly affixed and prepaid.

DATE: October 13, 2004.

MEACHUM & MARTIN

BY:



(JOHN F. MARTIN) (CS)

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