

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 15-26
)	(IEPA No. 434-14-AC)
JOSEPH DEROSA, GWEN A GRIFFITS,)	(Administrative Citation)
and DEROSA AUTOBODY,)	
)	
Respondents.)	

NOTICE

The Hon. John T. Therriault
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

The Hon. Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

Joseph DeRosa, Gwen A. Griffiths,
and DeRosa Autobody
3980 Irwin Bridge Road
Cantrall, IL 62626

PLEASE TAKE NOTICE that I have today caused to be filed COMPLAINANT'S POST-HEARING BRIEF with the Illinois Pollution Control Board, a copy of which is served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Dated: October 14, 2015

Scott B. Sievers
Attorney Registration No. 6275924
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P.O. Box 19276
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Complainant,

BY: 

Scott B. Sievers
Special Assistant Attorney General

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COMPLAINANT'S POST-HEARING BRIEF

NOW COMES the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through its counsel, Special Assistant Attorney General Scott B. Sievers, and for its post-hearing brief states the following:

I. INTRODUCTION

In this administrative citation action, Illinois EPA cited the Respondents for violations of two sections of the Illinois Environmental Protection Act observed during the course of a field inspection on December 2, 2014: Section 21(p)(1) for causing or allowing the open dumping of waste in a manner resulting in litter, and Section 55(k)(1) for causing or allowing water to accumulate in used or waste tires. *See* 415 ILCS 5/21(p)(1), 55(k)(1). The Respondents filed a Petition for Review on February 4, 2015, and hearing was held on September 9, 2015. For the reasons set forth below, this Board should find these violations have been proven by a preponderance of the evidence.

II. SUMMARY OF THE EVIDENCE

A. Testimony of Illinois EPA Inspector Charlie King

Charlie King, an inspector for Illinois EPA's Bureau of Land, testified. (Tr. 6.) Inspector King's duties include conducting hazardous waste investigations as well as open dump, landfill, potentially infectious medical waste, and other inspections. (Tr. 7.) He has a bachelor's and a master's degree from Illinois State University, and Inspector King has training from various universities as well as on-the-job training that includes both solid waste and used or waste tires. (Tr. 7-8.) He previously served as Illinois EPA's used tire specialist for its Bureau of Land. (Tr. 8.)

Inspector King took photographs and notes during his December 2, 2014 inspection of the Respondent's site at 2235 East Ash in Springfield, Illinois ("Site"). (Tr. 9.) He subsequently wrote a report, and Inspector King identified Exhibit A as his inspection report from the December 2, 2014 Site inspection. (Tr. 8-9.) He also identified Exhibits B through P as photographs that he took during the course of his December 2, 2014 inspection of the Site, and testified that they fairly and accurately depicted the conditions of the Site on that date. (Tr. 25-26.) Exhibits A through P were admitted into evidence. (Tr. 27.)

Inspector King identified Exhibit B as a photograph showing a garage housing DeRosa Auto Body, with numerous vehicles parked in front. (Tr. 11.) The Site is a property on the south side of Springfield across the street from the Southeast High School running track and behind a house. (Tr. 11.)

Inspector King identified Exhibit C as a photograph of a sign on a door on the west side of the garage that says "JOE DE ROSA" and "SPRINGFIELD ILL," and Exhibit D as a photograph of a sign on the front, south side of the garage. (Tr. 11-12.) Inspector King testified

that he conducted his December 2, 2014 inspection during the hours set forth on the sign shown in Exhibit D. (Tr. 12-13.)

Inspector King identified Exhibit E as a photograph of an area of about 20 feet by 10 feet by 3 feet high of open-dumped waste on the west side of a building up against a fence. (Tr. 13-14.) The waste depicted in the photograph includes a tarp, cardboard, plastic bottles, used tires, automobile parts, and some other plastics and metals. (See Tr. 14.) Inspector King testified that the tires were off-rim, used and worn, with the treads down on them. (Tr. 14.) The tires were fully exposed to the weather and elements, there was water in them, and nothing indicated they were being protected for future use. (Tr. 14-15.)

Inspector King identified Exhibit F as a photograph of a used tire containing standing water, and Exhibit G as a photograph of another used tire with frozen water or ice in it. (Tr. 15.) Both tires were off-rim, used, and worn, with worn-down treads, and both contained water. (Tr. 16.) Both tires were on the ground, not preserved in any way for future use, and not protected from the weather, including from accumulating water. (Tr. 16-17.)

Inspector King identified Exhibit H as a photograph of open-dumped waste in a waste pile on the west side of the Site. (Tr. 17.) The pile comprised car parts including a manifold cover, fenders, and a car door as well as a television set, plastics and cardboard. (Tr. 17.) The materials were outside and either resting upon the ground or resting upon other materials. (Tr. 17-18.) The materials were fully exposed to the weather, with no indication that they were being preserved for any future use. (Tr. 18.)

Inspector King identified Exhibit I as a photograph of open-dumped waste on the ground. (Tr. 18.) Exhibit I shows an aerosol can, plastic cups, an oil filter, plastics, a windshield or side window, and a couple of plastic trash cans. (Tr. 19.)

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Inspector King identified Exhibit J as a photograph of wastes located on the east side of the front of the garage. (Tr. 19.) Exhibit J shows materials including an old wicker chair, paper, cardboard, clothing, two off-rim tires that contained water, plastics, fenders, and a paint tree. (Tr. 20.) Inspector King did not consider the paint tree as waste because that is something normally used at auto body repair shops to hang different car parts as they are being painted. (Tr. 20.)

Inspector King identified Exhibit K as a photograph showing the east side of the garage and depicting some of the same materials as in Exhibit J, including the same paint stand and wicker chair. (Tr. 20-21.) He said Exhibit K showed a car hood, but he did not consider that waste due to the nature of the business. (Tr. 21.)

Inspector King testified that his December 2, 2014 inspection was prompted by a complaint of open dumping and open burning, and outdoor painting occurring where the spray was going over onto neighbors' properties. (Tr. 21.) He was accompanied on his inspection by John Blazis of the Bureau of Air. (Tr. 21.)

Inspector King identified Exhibit L as a photograph taken in front of the garage door showing paint overspray and/or paint sweepings, possibly from inside the facility, as well as dirt and paper litter that have been painted. (See Tr. 22.) He identified Exhibit M as a photograph also taken in front of the garage door showing paint overspray sweepings and possibly a used oil stain. (Tr. 22-23.)

Inspector King identified Exhibit N as a photograph of a burn barrel elevated on top of a couple blocks that was located north or behind the garage, and Exhibit O as a photograph inside the burn barrel showing ashes. (Tr. 23-24.) He identified Exhibit P as a photograph of ashes on the ground. (Tr. 24.) Inspector King testified he was unaware of any use for the ashes or the burn barrel other than as waste. (Tr. 25.)

Inspector King testified that the materials depicted in Exhibits B through P were not protected from the weather in any way. (Tr. 26.) He said that, other than the car hood leaning against the garage, the painting tree, and the automobiles, the materials shown in those exhibits appeared to simply have been discarded on the Site and waste. (See Tr. 26.)

B. Testimony of Respondent Gwen Griffiths-DeRosa

Respondent Gwen Griffiths-DeRosa (hereafter “Griffiths-DeRosa”) owns the real property at the Site at 2235 East Ash Street in Springfield, Illinois with her husband, Respondent Joseph T. DeRosa. (Tr. 31.) Both attended the hearing in this action. (Tr. 31.)

Griffiths-DeRosa testified that DeRosa Auto Body is an auto body repair shop operated by her husband, DeRosa. (Tr. 31-32.) The business, which is not a corporation, limited liability company, or limited liability partnership, has operated at the Site for approximately 30 years. (Tr. 32.)

Griffiths-DeRosa recognized her signature and her husband’s signature on Respondents’ Petition for Review. (Tr. 33.) Photographs attached to that petition were taken after Inspector King’s December 2, 2014 inspection, as an effort was undertaken to clean up the site afterward. (Tr. 34-35.) The petition also included photographs of parts loaded in a truck as well as receipts from Waste Management and Firestone. (Tr. 33-34.) In her signed Petition for Review, Griffiths-DeRosa stated that “I do not live at the property and was unaware of the situation,” that “[t]he property has been cleaned up properly,” “[r]eceipts for proper disposal are enclosed,” “[p]ictures of [the] cleaned up property and areas are enclosed,” and that “I will frequently visit property in the future to be sure this never happens again.” Pet. for Review.

Griffits-DeRosa also testified in pertinent part as follows:

The situation at the garage, you know, from time to time things would get piled up and I would see it and I would say, you know, you need to get this cleaned up, and he would clean it up.

So never has there been a time when – it was pretty bad in December but, you know, it also would have been cleaned up. It wasn't left to just be dumped that someone else would have ever had to come and clean it up. **It was just waste from the auto body shop office visits.**

Since the cleanup, it has been kept clean for the most part. They don't seem to understand they could sweep things into a pile and pick them inside the garage and dispose them easier. They sweep them outside and then break them up. It's sometimes there a couple days before that gets done.

(Tr. 36-38 (emphasis added).)

C. Testimony of Respondent Joseph T. DeRosa

Respondent Joseph T. DeRosa testified that DeRosa Auto body is an auto body repair shop and rebuilder shop located at the Site, 2235 East Ash Street, Springfield, Illinois. (Tr. 41-42.) DeRosa owns the property with his wife, Griffits-DeRosa. (Tr. 42.) Neither of them lived at the Site as of December 2, 2014. (Tr. 47.)

“We do insurance work, and I also rebuild automobiles, buy used cars, wrecked cars, and rebuild them and sell them,” DeRosa testified. (Tr. 42.) When a wrecked car comes in, the used or wrecked parts are taken off, fixed or replaced, and then painted. (Tr. 42-43.) Repairs sometimes involve sanding, welding, and the use of chemicals such as paint, paint thinner, and Bondo. (Tr. 43.) The business uses a urethane-based paint, PPG. (Tr. 43.) Body filler that is sanded is swept up in the garage and sometimes dust is swept out. (Tr. 44.)

DeRosa said that Exhibit H showed a “pile of stuff that was accumulated over the winter.” (Tr. 48-49.) “I know that shouldn't have been there, but, like I say, it was in the middle of winter, and it was a bad winter this year, and since then it's been cleaned up, and that's about what I got to say,” DeRosa said. (Tr. 48-49.) DeRosa testified that bumper covers were taken to

Keystone, an aftermarket parts business, while tires went to Firestone. (Tr. 44-45.) DeRosa testified that the Waste Management landfill receipt attached to the Petition for Review was for disposal of a big pile of used parts, plastic, and cardboard shown in Exhibits H, I, and K. (See Tr. 46.) DeRosa said he cleaned it up, put it on a trailer, and dumped it. (Tr. 46.)

III. ARGUMENT

A. THE RESPONDENTS CAUSED OR ALLOWED THE OPEN DUMPING OF WASTE UPON THE AUTO BODY SITE THAT RESULTED IN LITTER, THEREBY VIOLATING SECTION 21(p)(1) OF THE ACT.

Section 21(p)(1) of the Act provides as follows:

§ 21. Prohibited acts. No person shall:

(a) Cause or allow the open dumping of any waste.

...

(p) In violation of subdivision (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.

415 ILCS 5/21(p)(1). 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 sanitary landfill,” while Section 3.385 defines “refuse” as meaning “waste.” 415 ILCS 5/3.305, 3.385 (West 2012).

This Board has relied upon the definition in the Illinois Litter Control Act, 415 ILCS 105/1 *et seq.*, in defining “litter.” *Illinois EPA v. Northern Ill. Serv. Co.*, PCB No. AC 05-40 at 5 & 9 (Sept. 21, 2006). That act defines litter as follows:

(a) “Litter” means 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 (West 2012) (emphasis added). This Board has found that “litter” further comprises discarded materials such as cardboard, metal, glass, paper, plastics, and other miscellaneous waste. *Illinois EPA v. Porter et al.*, PCB No. AC 2012-053 (Sept. 5, 2013).

Inspector King’s duties include conducting inspection, and he has training regarding solid waste. (Tr. 7-8.) During his December 2, 2014 inspection, he observed, noted, photographed, and reported numerous instances of the open dumping of waste upon the Site resulting in litter.

Inspector King observed a discarded tarp, cardboard, plastic bottles, plastics, metals, and automobile parts on the Site. (Tr. 13-14; Ex. E.) He also photographed a discarded wicker chair, paper, cardboard, clothing, plastics, and fenders. (Tr. 19-21; Exs. J & K.) Inspector King viewed a discarded aerosol can, plastic cups, an oil filter, plastics, and a windshield or side window. (Tr. 18-19; Ex. I.)

Inspector King reported seeing a pile of waste comprising a television set, plastics, cardboard, and car parts, including a manifold cover, fenders, and a car door, as photographed in Exhibit H. (Tr. 17.) DeRosa testified Exhibit H showed a “pile of stuff that was accumulated over the winter.” (Tr. 48-49.) DeRosa further testified that the Waste Management landfill receipt attached to the Petition for Review was for disposal of a big pile of used parts, plastic, and cardboard shown in Exhibit H, I, and K. (*See* Tr. 46.)

Inspector King further documented paint overspray and/or paint sweepings adjacent to the auto body’s garage door that included paper. (*See* Tr. 22-23; Exs. L & M.) He also observed ashes upon the ground near a burn barrel that also contained ashes. (Tr. 23-25; Exs. O & P.)

Inspector King testified that none of the materials shown in Exhibits B through P were protected from the weather, and all but the painting tree, automobiles, and the car hood leaning against the garage appeared to have been discarded on the Site and waste. (Tr. 26.) Griffiths-DeRosa herself testified that “it was pretty bad in December but, you know, it also would have been cleaned up. It wasn’t left to just be dumped that someone else would have ever had to come and clean it up. **It was just waste from the auto body shop office visits.**” (Tr. 37 (emphasis added).)

Thus, the unchallenged evidence in this case shows that cardboard, metal, glass, paper, plastics, plastic containers, motor vehicle parts, furniture, trash, refuse, debris and other wastes constituting litter were used, discarded, and consolidated at the Site. Some of the wastes subsequently were removed for proper disposal at a landfill, but as of the December 2, 2014 inspection, the materials remained upon the Site.

Consequently, a preponderance of the evidence admitted in this action shows the Respondents caused or allowed the open dumping of wastes resulting in litter at the Site, in violation of Section 21(p)(1) of the Act.

B. THE RESPONDENTS CAUSED OR ALLOWED WATER TO ACCUMULATE IN USED OR WASTE TIRES ON THE AUTO BODY SITE, THEREBY VIOLATING SECTION 55(k)(1) OF THE ACT.

Section 55(k)(1) of the Act provides in pertinent part that “No person shall: (1) Cause or allow water to accumulate in used or waste tires.” 415 ILCS 5/55(k)(1) (West 2012). Section 54.13 of the Act defines “used tire” as meaning “a worn, damaged, or defective tire that is not mounted on a vehicle,” while Section 54.16 defines a “waste tire” as “a used tire that has been disposed of.” 415 ILCS 5/54.13 & 54.16 (West 2012).

Inspector King has training that includes used or waste tires, and he previously served as Illinois EPA's used tire specialist for its Bureau of Land. (Tr. 7-8.) During his December 2, 2014 inspection, Inspector King observed, noted, photographed, and reported several instances in which the Respondents caused or allowed water to accumulate in used or waste tires.

He identified Exhibit E as a photograph of waste that included used tires. (Tr. 13-14.) Inspector King testified that the tires were off-rim, used and worn, with the treads down on them. (Tr. 14.) The tires were fully exposed to the weather and elements, there was water in them, and nothing indicated they were being protected for future use. (Tr. 14-15.)

Inspector King identified Exhibit F as a photograph of a used tire containing standing water, and Exhibit G as a photograph of another used tire with frozen water or ice in it. (Tr. 15.) Both tires were off-rim, used, and worn, with worn-down treads, and both contained water. (Tr. 16.) Both tires were on the ground, not preserved in any way for future use, and not protected from the weather, including from accumulating water. (Tr. 16-17.)

Inspector King also identified Exhibit J as a photograph showing, among other materials, two off-rim tires that contained water. (Tr. 20.)

DeRosa testified that tires from the Site were taken to Firestone, (Tr. 44-45), but the receipt attached to the Petition for Review shows that was not done until January 28, 2015.

The uncontroverted evidence in this action, including Inspector King's testimony, his inspection report, and the exhibits, shows that multiple worn, off-rim and thus used tires were located at the Site, which is the site of DeRosa Auto Body, a commercial business. The tires were not preserved for future use or protected from the weather but apparently were disposed upon the Site, thereby constituting waste tires. Whether used or waste tires, the tires on the Site were not protected from the weather and were instead allowed to accumulate—and in some cases did

accumulate—water. Consequently, a preponderance of the evidence admitted in this action shows the Respondents violated Section 55(k)(1) of the Act by causing or allowing water to accumulate in used or waste tires.

IV. CONCLUSION

WHEREFORE, the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, prays that this honorable Board FIND it has proven by a preponderance of the evidence that the Respondents violated Sections 21(p)(1) and 55(k)(1) of the Illinois Environmental Protection Act on December 2, 2014.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

Dated: October 14, 2015

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BY:



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Special Assistant Attorney General

Illinois Environmental Protection Agency v. DeRosa et al.
Pollution Control Board No. AC 15-26

CERTIFICATE OF SERVICE

Scott B. Sievers, Special Assistant Attorney General, herein certifies that he has served a copy of the foregoing **COMPLAINANT'S POST-HEARING BRIEF** upon:

The Hon. John T. Therriault
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

The Hon. Carol Webb
Hearing Officer
Illinois Pollution Control Board
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Joseph DeRosa, Gwen A. Griffiths,
and DeRosa Autobody
3980 Irwin Bridge Road
Cantrall, IL 62626

by mailing true copies thereof to the addresses referred to above in envelopes duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois, on October 14, 2015.

Respectfully submitted,

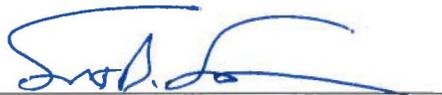
ILLINOIS ENVIRONMENTAL
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