

ILLINOIS POLLUTION CONTROL BOARD  
May 5, 1994

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Petitioner, )  
 )  
v. ) AC 92-86  
 ) (IEPA No. 658-92-AC)  
 ) (Administrative Citation)  
AL SEAMAN, )  
 )  
Respondent. )

MR. JAMES G. RICHARDSON APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

MR. AL SEAMAN APPEARED PRO SE.

Dissenting Opinion (By C. A. Manning):

I respectfully dissent from the majority's opinion and order which found that Mr. Seaman's improper "storage" of roughly 8,000 used tires in a dilapidated barn is not a violation of Section 21(p)(1) of the Environmental Protection Act (Act). (415 ILCS 5/21(p)(1)(1992).) I find a violation.

Section 21(p)(1) prohibits anyone from "open dumping" in a manner that causes the occurrence of "litter." This Board has on various occasions considered used tires as litter. (See generally, Sangamon County v. Ruth Ann Sheppard (November 4, 1994) AC93-6, \_\_\_ PCB \_\_\_; IEPA v. Sickles, (September 17, 1992) AC 92-47, 136 PCB 83; IEPA v. Sickles, (July 30, 1992) AC 92-47, 135 PCB 223; IEPA v. Hillebrenner, (May 21, 1992), AC 92-16, 133 PCB 559; and IEPA v. Springman, (May 9, 1991) AC 90-79, 122 PCB 147.)

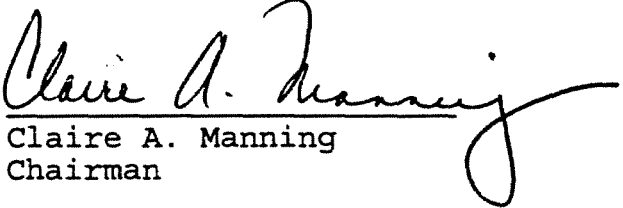
Additionally, Section 3.24 of the Act defines "open dumping" as the "consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirement of a sanitary landfill." (415 ILCS 5/3.24 (1992).) Section 3.08 of the Act defines disposal as:

...the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste \*\*\* into or on any land or water \*\*\* so that such waste \*\*\* may enter the environment or be emitted into the air or discharged into any waters, including ground waters. (Emphasis added) (415 ILCS 5/3.08 (1992).)

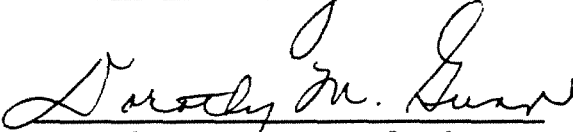
A leaky barn which contains thousands of improperly stored tires

resting on top of "mounds of hay" where there has been no proper disposal plan developed in accordance with the Used Tire Management Act (415 ILCS 5/55 et. seq. (1992)) makes that barn a "disposal site" which does not meet the definition of a sanitary landfill.

Moreover, the definitional requirement that the refuse "may enter the environment" does not require the Agency to prove that the objects of "disposal" are in fact entering the environment, but rather that they have the dangerous propensity to do so. These tires are exposed to the elements by virtue of being placed in an open barn that has holes in the roof, doors and windows missing, and sections of the walls missing. Those facts alone demonstrate that the used tires have the propensity to enter the environment. More importantly, the propensity for these 8,000 used tires to dangerously enter the environment in the event of a tire fire provides further rationale to conclude that the illegal storage of these 8,000 used tires constitutes "open dumping" in violation of Section 21(p) (1) of the Act.

  
Claire A. Manning  
Chairman

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was entered on the 15<sup>th</sup> day of May, 1994.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board