

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 7 2003

STATE OF ILLINOIS
Pollution Control Board

CITY OF CHICAGO)	
DEPARTMENT OF ENVIRONMENT,)	
)	
Petitioner,)	
)	
v.)	AC 03-11
)	
CITY WIDE DISPOSAL, INC.,)	
)	
Respondent.)	

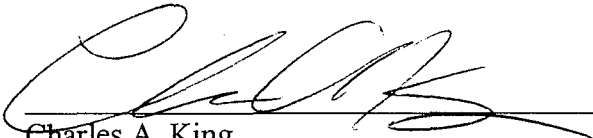
NOTICE OF FILING

To: Edward W. Pirok
Frank & Associates, Ltd.
734 N. Wells St.
Chicago, IL 60610
(via first class U.S. Mail)

Bradley P. Halloran
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601
(via hand delivery)

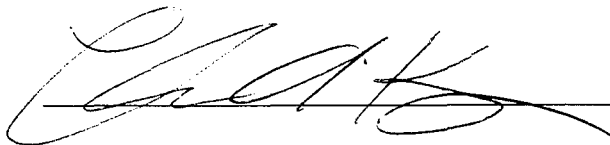
Please take notice that on July 7, 2003, I filed the attached **Petitioner's Post-Hearing Brief** with the Clerk of the Illinois Pollution Control Board.

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Charles A. King

CERTIFICATE OF SERVICE

I, Charles A. King, an attorney, certify that I caused copies of this notice and the document referenced herein to be served on the parties to whom the notice is directed by in the manner indicated above on July 7, 2003



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PETITIONER'S POST-HEARING BRIEF

The City of Chicago Department of Environment ("CDOE"), by and through its attorney, Mara S. Georges, Corporation Counsel for the City of Chicago, submits this brief in support of a finding of liability on both charged violations in the above-captioned administrative citation. As is discussed below, the evidence presented at the hearing establishes that the respondent, City Wide Disposal, Inc. ("City Wide"), is liable for violations of both sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act, 415 ILCS 5 ("Act").

Background and Chronology

This is the second administrative citation issued to City Wide for violations of sections 21(p)(1) and 21(p)(7) of the Act. On May 23, 2002, CDOE issued an administrative citation to City Wide for violations of those sections, based on an inspection of City Wide's facility at 3910 South Loomis Street in Chicago, Illinois, on April 16, 2002. See City of Chicago Department of Environment v. City Wide Disposal, Inc., AC 02-57 (citation filed with the Board on May 29, 2002). City Wide did not request a hearing to protest that citation, and on August 8, 2002, the Board adopted an order finding that City Wide committed the charged violations and imposing the statutory penalty of \$1,500.00 per violation, in accordance with Section 42(b)(4-5) of the Act

(415 ILCS 5/42(b)(4-5)). See City of Chicago Department of Environment v. City Wide Disposal, Inc., AC 02-57 (August 8, 2002).

On August 28, 2002, CDOE again inspected City Wide's South Loomis Street facility. Based on conditions observed on that date by CDOE's inspector, on October 25, 2002, CDOE issued this administrative citation to City Wide. On November 27, 2002 City Wide filed its request for a hearing. The hearing was held on June 3, 2003.

Relevant Law

The administrative citation charges City Wide with violations of sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (7)). The relevant parts of section 21 provide:

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;

* * *

- (7) deposition of:
 - (i) general construction or demolition debris as defined in Section 3.160(a) of this Act[.]

Several important terms in section 21 are defined elsewhere in the Act. "Open dumping" is defined in section 3.305 of the Act (415 ILCS 5/303.5), which provides:

“Open dumping” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

“Refuse is defined in section 3.385 of the Act (415 ILCS 5/3.385), which provides:

“Refuse” means waste.

“Waste” is defined in section 3.535 of the Act (415 ILCS 5/3.535), which provides:

“Waste” means any 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.

“Disposal” is defined in section 3.185 of the Act (415 ILCS 5/3.185), which provides:

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

“General construction or demolition debris” is defined in section 3.160(a) of the Act (415 ILCS

5/3.160(a)), which provides:

- (a) “General construction or demolition debris” means non-hazardous, uncontaminated materials resulting from the

construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, 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.

“Litter” is not defined in the Act, but the appellate court has noted:

A person of common intelligence can understand the term “litter.”
* * * Given its ordinary meaning, “litter” refers to material of little or no value which has not been properly disposed of. The examples of litter set forth in the Litter Control Act [415 ILCS 105] provide additional guidance. Miller v. Pollution Control Board, 642 N.E.2d 475, 483 (Ill. App. Ct. 4th Dist. 1994).

Section 3(a) of the Litter Control Act, 415 ILCS 105/3(a) (2000), provides:

As used in this Act, unless the context otherwise requires:

- (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.

Thus, litter, for the purposes of the Act, “may include, but is not limited to, any . . . refuse, debris . . . or any thing else of an unsightly . . . nature[.]”

Facts

The facts regarding the events underlying this administrative citation are, for the most part, not in dispute. The South Loomis Street site is leased by City Wide. Hearing Transcript (hereinafter “Tr.”) at 14, 38. On the afternoon of August 28, 2002, CDOE inspector Lafayette Robertson visited the site, where he observed piles of construction debris, concrete blocks, dirt, wooden pallets, brick, and scrap metal. Tr. at 8-9, 18-19; Complainant’s Exhibit A (photographs)¹. The material was dumped by a truck driver working for City Wide. Tr. at 41, 50. City Wide did not have a permit to operate a waste disposal facility at the South Loomis Street site. Tr. at 13-14. CDOE’s and City Wide’s witnesses disagreed regarding the volume of material dumped at the site (see Tr. at 19, 40-41, 55), but a minimum volume of material is not an element of either of the charged violations. In any event, even according to City Wide’s witness, Mr. Barbara, approximately twenty cubic yards of material was dumped at the site. Tr. at 40-41.

¹ Complainant’s Exhibit A, admitted into evidence (Tr. at 36), is the inspection report prepared by Mr. Robertson after his visit to City Wide’s site. It includes copies of photographs taken by Mr. Robertson. The original color photographs taken by Mr. Robertson were attached to the original administrative citation filed by the City, and are in the Board’s files.

Analysis

Dumping of the material at the South Loomis Street site constituted “open dumping”.

As the photographs included in Complainant’s Exhibit A make clear, the dumping of material at the South Loomis Street site was consolidation of waste from one or more sources: the piles of waste photographed by Mr. Robertson include a variety of types of construction and demolition debris (bricks, scrap metal, wood, concrete) combined into a series of piles. The dumping furthermore clearly constitutes “disposal” inasmuch as the waste was placed out in the open where it could enter the environment. Under Section 3.185 (quoted above) this is sufficient; there is no requirement that the material be left permanently where dumped. Thus, City Wide’s subsequent removal of the material does not obviate the violation. Finally, as noted above, City Wide did not have a permit to operate a waste disposal facility at South Loomis Street. Thus, all elements of “open dumping,” as defined in Section 3.305 of the Act (quoted above), are met: consolidation of refuse (waste) from one or more sources at a disposal site that does not meet the requirements (including having a permit) for a sanitary landfill.

Open Dumping at the Site Resulted in Litter. “Litter,” as defined in the Litter control Act, includes “any . . . debris . . . or anything else of an unsightly . . . nature . . . disposed of improperly.” 415 ILCS 105/3(a). The material pictured in the photographs included in Complainant’s Exhibit A obviously falls into one, if not both, of these categories. Put another way, the pictured material constitutes material of little or no value (City Wide pays to get rid of such material; see Tr. at 47-48) disposed of improperly, meeting the definition in Miller v. Pollution Control Board, *supra*, 642 N.E.2d at 483. Because the open dumping at the site resulted in litter, City Wide violated Section 21(p)(1) of the Act.

Open Dumping Resulted in Deposition of General Construction or Demolition Debris.

The material dumped at the South Loomis Street site included “bricks, concrete, and other masonry materials; soil; rock; wood, . . . ; and . . . metals incidental to any of those materials.”

All these constituents of the waste dumped at South Loomis Street are listed in the illustrative list of materials constituting “general construction or demolition debris” in Section 3.160(a) of the Act (quoted above). As the photos in Complainant’s Exhibit A indicate, the material was deposited on the ground. Because the open dumping at the South Loomis Street site resulted in deposition of general construction or demolition debris, City Wide has violated Section 21(p)(7) of the Act.

City Wide’s Asserted Defenses are Insufficient

City Wide claims that the open dumping at the South Loomis Street site occurred as the result of an “uncontrollable circumstance”. The alleged uncontrollable circumstance was that a language barrier resulted in City Wide’s driver failing to understand what he was told by City Wide’s dispatcher. Tr. at 61. This circumstance is far from unavoidable; it could have been avoided if City Wide had made even the most rudimentary efforts to ensure that drivers and the dispatcher could communicate.

Contrary to City Wide’s argument, the length of time the debris remained on the ground is not an element of the violation. In his closing argument City Wide’s attorney cited to Rochelle Disposal Service, Inc. v. Illinois Pollution Control Board, 639 N.E.2d 988 (Ill. Ct. App. 2d Dist. 1994), for the proposition that refuse must remain overnight to constitute a violation. Tr. at 62-63. This argument misapplies Rochelle Disposal. In that case, a landfill operator received administrative citations for failing to apply daily cover to the landfill, in violation of Section