

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

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STATE OF ILLINOIS
Pollution Control Board

COUNTY OF JACKSON,)
)
 Complainant,)
)
 v.) AC 04-63
) (Site Code: 0778095036)
) AC 04-64
) (Site Code: 0778125013)
 EGON KAMARASY,) (AC's Consolidated)
)
 Respondent.)

COMPLAINANT'S POST HEARING REPLY BRIEF

The Complainant herein, pursuant to the Hearing Officer's November 23, 2004 report, files its post hearing reply brief as follows:

ARGUMENT

On or about February 1, 2005 the Respondent filed its post hearing reply briefs (one in each case). In response the Complainant wishes to discuss in this reply a few matters in order to clarify obvious points of disagreement and to address new issues that are raised in Respondent's post hearing briefs.

1. In both 04-63 and 04-64 administrative citation cases the Respondent asks this Board to accept the Respondent's statement of facts contained in its trial memos, Respondent's Exhibits 1-5 and Exhibit 1, respectively, arguing that the documents accurately portray the evidence and testimony presented in this matter. This is not true. Complainant disagrees with Respondent's assertion on the ground that the statement of facts were obviously written before the hearing and do not and could not accurately state what was said at the later hearings. Also, much of the so called statement of facts

referred to by the Respondent contains legal argument, speculation, and opinion. Please keep all of this in mind.

2. In both matters the Respondent attacks the credentials and credibility of the Complainant's witness, Don Terry. It should be noted, however, that Mr. Terry was found credible by the Hearing Officer in her November 23, 2004 hearing report; and more importantly it is not disputed Mr. Terry possessed all the required training and certification necessary to conduct these types of inspections.

3. In the 04-63 matter the Respondent continually insists he was under orders by the Illinois Department of Public Health to dispose of the abandoned mobile homes; and, therefore, he claims, was justified to dispose of the mobile homes at the site in question. But let us look at that Department of Public Health's order in more detail. The November 19, 2003, order can be found at Respondent's Exhibit 1 in AC-04-63. Paragraph 6 of the order states, in part, "[r]emove *and properly dispose* of the rubble from homes being dismantled at sites 12 and 31." (Emphasis added). Clearly the order did not give the Respondent a free ticket, or an excuse, or a mandate to disregard the environmental laws.

4. In AC-04-63 the Respondent again brings up the alleged agreement with the Complainant concerning the clean up of his site. Complainant, of course, has already argued against that proposition. Even if there were agreement, however, the Respondent did not keep it. His excuse is stated on page 13 of his reply brief in the AC 04-63 matter. He claims bad weather presented him with uncontrollable circumstances. We argue that bad weather is not an uncontrollable circumstance in this instance. This Board is requested to take manifest recognition of the fact that winter in these climes usually contains inclement weather which would hamper anyone doing any kind of work outdoors. Respondent simply cannot complain that he could not remove the debris he was responsible for in the first place when he knew, or should have known, that he would most likely encounter bad

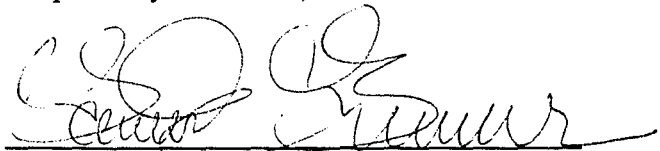
weather that might hamper his ability to remove it.

5. The Respondent again insists in both matters that Section 21 litter violations are also governed and limited by the language found in the litter control act. For the reasons already addressed in the Complainant's post trial brief and for the reasons that follow, the Respondent is incorrect. The litter control act is a criminal provision. The present proceedings are civil. This is the difference between the two. Respondent is essentially arguing that a civil violation under Section 21 of the environmental protection act is the same as a criminal violation under the litter control act, and vice-versa. This is absurd. The two acts are not interchangeable.

6. Lastly it should be noted by this Board that except for only two minor instances in both of Respondent's post hearing briefs does he cite any authority for his sweeping opinions and conclusions regarding the law in this area.

Therefore for all the reasons given, the Complainant reiterates its request to this Board that it find that the Respondent violated those provisions of Section 21 as alleged in the administrative citations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Daniel Brenner', written over a horizontal line.

Daniel Brenner
Assistant State's Attorney
Jackson County Courthouse, 3rd Floor
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For the Complainant

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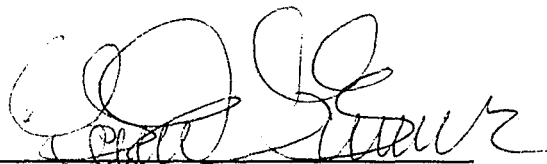
I hereby certify that I did on the 8th day of February 2005, send by U.S. Mail, with postage thereon fully prepaid, by depositing in U.S. Post Office Box a true and correct copy of the following instrument(s) entitled COMPLAINTANT'S POST HEARING REPLY BRIEF

To: Gregory A. Veach
3200 Fishback Road
P.O. Box 1206
Carbondale, IL 62903-1206

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

and the original and nine (9) true and correct copies of the same foregoing instruments on the same date by U.S. Mail with postage thereon fully prepaid.

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601



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