

ILLINOIS POLLUTION CONTROL BOARD  
March 1, 2007

COUNTY OF JACKSON, )  
 )  
 Complainant, )  
 )  
 v. ) AC 06-32  
 ) (Jackson County Site Code 0778005012)  
 DAVID SKIDMORE, ) (Administrative Citation)  
 )  
 Respondent. )

DANIEL W. BRENNER, ASSISTANT STATE'S ATTORNEY, JACKSON COUNTY,  
APPEARED ON BEHALF OF COMPLAINANT; and

DAVID SKIDMORE APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

The Board today decides whether respondent David Skidmore (Skidmore) violated the Environmental Protection Act (Act) by causing or allowing the open dumping of waste in a manner that resulted in litter, open burning, and the deposition of construction or demolition debris at a facility located in Jackson County at 37.89960 degrees latitude and -89.51298 degrees longitude (site).

For the reasons explained fully below, the Board finds that Skidmore violated Section 21(p)(1), (3) and (7) of the Act (415 ILCS 5/21(p)(1), (3) and (7) (2004)) as alleged by the County of Jackson (County) in the administrative citation. The Board assesses the statutory civil penalty of \$4,500 and finds Skidmore liable for hearing costs incurred by the Board and the County. After finding the violations in this interim opinion and order, the Board directs the County and the Clerk of the Board to provide hearing cost documentation, to which Skidmore may respond. After the deadlines for these hearing cost filings expire, the Board will issue a final opinion and order assessing the civil penalty and any appropriate hearing costs.

**ADMINISTRATIVE CITATION PROCESS**

Section 31.1 of the Act authorizes the Agency and units of local government to enforce specified provisions of the Act through an administrative citation. 415 ILCS 5/31.1 (2004). Part 108 of the Board's procedural rules provides the process of a citation before the Board. 35 Ill. Adm. Code 108 *et seq.* Unlike other environmental enforcement proceedings in which the Act prescribes a maximum penalty, *see, e.g.*, 415 ILCS 5/42(b)(1) (2004), the Act sets specific penalties for administrative citations. 415 ILCS 5/42(4, 4-5) (2004). In cases such as this, the Board has no authority to consider mitigating or aggravating factors when determining penalty amounts. *Id.* "[I]f the Board finds that the person appealing the [administrative] citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final

order which makes no finding of violation and which imposes no penalty.” 415 ILCS 5/31.1(d)(2) (2004).

### **PROCEDURAL HISTORY**

On March 31, 2006, the County timely filed an administrative citation against Skidmore alleging that Skidmore violated provisions of the Act by causing or allowing the open dumping of waste resulting in litter, open burning, and the deposition of construction or demolition debris at a facility located in Jackson County at 37.89960 degrees latitude and -89.51298 degrees longitude (site).

As required, the County served the administrative citation on Skidmore within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2004); *see also* 35 Ill. Adm. Code 108.202(b). On April 25, 2006, Skidmore timely filed a petition to contest the administrative citation. *See* 415 ILCS 5/31.1(d) (2004); 35 Ill. Adm. Code 108.204(b). Skidmore argues that he does not own the material in question, that he did not set the fires at the site, and that the site has been sold and is now clean. Petition at 2-6. The Board accepted the petition for hearing on May 4, 2006.

On July 5, 2006, Board Hearing Officer Carol Webb conducted a hearing at the Jackson County Health Department, Conference Room #1, 415 Health Department Road in Murphysboro. At the hearing, Daniel W. Brenner appeared and participated on behalf of the County, and David Skidmore appeared *pro se*. Don Terry (Terry), an Environmental Compliance Inspector with the County, testified at the hearing for the County. Skidmore, Sondra Skidmore (Skidmore’s mother), and Doris Harrison (Skidmore’s sister) testified at the hearing for Skidmore. Hearing Officer Webb found that credibility was not an issue in regards to either witness. Tr. at 32.

The County offered the February 28, 2006 inspection digital photo sheet and the February 28, 2006 open dump inspection checklist into evidence. Skidmore offered a January 20, 2005 digital inspection photo sheet and five photographs taken on April 6, 2006, into evidence. The hearing officer accepted all exhibits into the record at hearing.

The hearing officer set a briefing schedule requiring the County to file its brief by September 8, 2006; Skidmore to file his brief by October 23, 2006; and the County to file a reply, if any, by November 6, 2006. The Board received the transcript on July 21, 2006. The County timely filed its brief in this matter. The Board has not received a brief by Skidmore, or, as it follows, a reply brief from the County.

### **FACTS**

Terry is an environmental compliance inspector for Jackson County. Tr. at 7. He has been employed as such for three years. *Id.* His duties include the investigation of situations that pertain to illegal open dumping and open burning within the county. *Id.* He is a certified inspector for nonhazardous solid waste management sites. Tr. at 8.

On February 23, 2006, Terry inspected the site. Tr. at 8. The site is located approximately a mile north of Ava on Illinois State Route 4 in a rural, unincorporated part of Jackson County. *Id.* At the time of the inspection, the records of the Jackson County Assessor's Office noted Skidmore as the owner of the site. *Id.* Skidmore purchased the site in December 2004 at an auction for repossessed property in Murphysboro. Tr. at 16.

During the inspection, Terry observed waste piles on the north and south portions of the site. Tr. at 8. He also observed an abandoned mobile home that was missing a door and window, and had material spilling out. Tr. at 9. He observed ash and charred metal, and lumber in the waste piles. Tr. at 9. The waste piles and the mobile home were visible from State Route 4, the furthest pile being approximately 40-50 yards away. *Id.*

Terry took a number of photographs on that day. The photographs were attached to the inspection report and Terry testified that the photographs accurately and fairly depict the site's condition on February 23, 2007. Tr. at 10. Photograph 5 is of the northern waste pile, and contains the burnt remains of an attention note that Terry had clipped to a piece of metal in the waste pile and left at the site during an inspection that occurred in September 2005. Tr. at 10. The note indicates that the material in the pile could not be burned, and should be taken to the landfill. *Id.*

Prior to the inspection, Terry observed no trespassing signs at the site, but believed he had the authority to enter and investigate the site because the waste piles were visible from the road. Tr. at 13. The site has not been issued a permit by the Agency to store waste items. *Id.*

Terry told Skidmore he could burn trees, limbs, and yard waste. Tr. at 14. Terry acknowledged that he had conducted inspections prior to the time when Skidmore obtained the property, and that the burn piles were present at that time. Tr. at 15. Terry testified that an administrative citation was brought against the former owners of the site. *Id.*

In March of 2005, the former owner (Glasper) had moved out of state, and his son moved all the former owner's items from the house to the mobile home. Tr. at 17. Glasper's son boarded up the doors and the windows. *Id.*

Prior to the February 23, 2006 inspection, Terry inspected the site when owned by Skidmore. Tr. at 24-25. At that time, Skidmore was burning cardboard structures, ceiling tiles and lumber in one of the burn piles in existence when Glasper owned the site. *Id.* Terry informed him that he could not do any open burning other than trees or yard waste. *Id.*

### **HEARING**

At hearing, Skidmore testified that when he purchased the site he assumed that he had the right to do anything, including clean up, at the site. Tr. at 16. Skidmore testified that Glasper's son boarded up the doors and the windows so nobody could steal anything, and at that point, Skidmore went into the property and started cleaning up, taking out various debris. Tr. at 17. He testified that it was "just unimaginable everything that was in there." *Id.*

Skidmore testified that Glasper called the police who threatened him with a charge of theft for going onto the property and taking things out without his permission, even though it was Skidmore's property. Tr. at 17. He testified that this encounter should be memorialized in a police report. *Id.* He testified that this situation "halted everything," and that at this time the mobile home was always boarded up and there were problems with theft. *Id.*

Skidmore testified that photograph 8 shows a little cooler, and that he had called the police because somebody had dumped five or six bags of debris on the woodpile. Tr. at 19. He testified that he did not know where the bags came from, but that the material spilling out from the mobile home was either due to Glasper or looting. *Id.* Skidmore testified that he was forced to nail the doors shut at least six times, and that the last time the door was torn off its hinges. *Id.*

Skidmore testified that for several months he was unable to do anything legally with Glasper's burn pile, but that he was cleaning the site, and taking the metal found there to a salvage operation. Tr. at 20. He asserts that he was very limited in what he could do with the trailer, except nail the doors back shut, and calling the police out several times. *Id.*

Skidmore contends that he was not trying to create a dump, and actually tried to clean the site. Tr. at 21. He asserted that he had five dumpster loads of material hauled out of the site. *Id.*

Skidmore testified that he did burn wood, including trees that were cut down in the area, basic yard waste, and old firewood that was underneath the mobile home. Tr. at 21. However, he contends that when the mobile home was disassembled the aluminum, debris and steel were taken to a salvage operation; and the wood and insulation was put in dumpsters. *Id.*

Skidmore testified that he had difficulties with a contractor hired to install new windows, in that the contractor left the old windows lying on the site, and dropped his construction materials wherever. Tr. at 22. Skidmore contends that he had to restack the materials, and throw it in the dumpster when the dumpster arrived. *Id.* Skidmore testified that he did not burn any of the waste piles. Tr. at 23-24.

Skidmore testified that the first time he encountered Terry, he was burning cardboard structures, ceiling tiles and lumber in one of the burn piles in existence when Glasper owned the site, and that Terry informed him that he could not do any open burning other than trees or yard waste. Tr. at 24-25. Skidmore testified that this occurred in burn piles other than those depicted in the photographs taken by Terry. Tr. at 24-25.

Sondra Skidmore is Skidmore's mother. Tr. at 26. She testified that the family spent \$4,192.55 in labor and dumpsters, and that they had three different people there cleaning up the debris. *Id.* She testified that they asked the construction guys not to put the debris outside until a dumpster arrived, but that these instructions were not followed and they put the debris "out there." *Id.*

Mrs. Skidmore testified that Skidmore has a condition, is on disability, and cannot work on the site. Tr. at 27. She stated that she and her husband were doing what work they could on weekends. *Id.* She testified that one day, she and her husband were burning boxes of different

kinds of paper and some clothes, and that they “just put it on top of the burn pile that was already in existence” with all the metal that was already there. *Id.* Mrs. Skidmore testified that she wasn’t aware until Skidmore told her that this was not allowed, but that it had already been done. *Id.* She testified that after this incident, she informed Terry that they wouldn’t do this anymore and started getting the dumpsters. *Id.*

Mrs. Skidmore testified that it cost the family almost \$2,000 to get somebody to finish tearing the mobile home down and put it in the dumpster. Tr. at 28. She testified that they’ve worked hard and do not deserve the kind of a fine being imposed. *Id.* She testified that they’ve hired three different people that worked there who “really put the whammy to us,” stealing from them and bringing their own trash (including insulation and old paneling) from another site and leaving it at Skidmore’s site. Tr. at 29.

Doris Harrison is Skidmore’s sister. Tr. at 29. She testified that the family has been “doing nothing but cleaning this trashy place up.” Tr. at 30. She testified that they’ve never added to the site as far as bringing items in or making it a dump, but that they have been working hard on cleaning the site. *Id.*

### **COUNTY’S BRIEF**

The County argues that the evidence presented clearly shows that Skidmore caused or allowed the deposition of litter, waste, general construction demolition debris and burning at the site. Co. Br. at 3. The County asserts that Skidmore’s ownership and control of the site at all material times is not contested. *Id.* Thus, concludes the County, taking the inspection report, the photographs of the site, Terry’s testimony and Skidmore’s and his witness’ statements leaves little room for Skidmore to argue a defense to the charges. *Id.*

The County notes that while Skidmore argues that he cleaned up the site, the Board has repeatedly held that clean up efforts are not a mitigating factor under the administrative citation program. Co. Br. at 3, citing City of Chicago v. City Wide Disposal, Inc., AC 03-11 (Sept. 4, 2003). The County argues that Skidmore’s assertion that he should not be responsible for the debris on the site because he bought the site with the violations, and others came on to the site without permission to dump is invalid. Co. Br. at 3.

The County argues that the Board has rejected this argument in the past, and that the record shows that other than putting up a “No Trespassing” sign, little else was done by Skidmore to prevent others from dumping at the site. Co. Br. at 4. More importantly, declares the County, Skidmore admitted to causing some of the dumping and burning of debris on the site and he should be held responsible for that debris. *Id.*

### **STATUTORY BACKGROUND**

Section 3.305 of the Act defines “open dumping” as:

“[T]he consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a landfill.” 415 ILCS 5/3.305 (2004).

Section 3.385 of the Act defines “refuse” as “waste.” 415 ILCS 5/3.385 (2004).

Section 3.535 of the Act provides that:

“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. 415 ILCS 5/3.535 (2004).

The Litter Control Act defines “litter” as:

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. 414 ILCS 105/3 (a) (2004).

The Act defines “general construction or demolition debris” as:

non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: brick, 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. 415 ILCS 5/3.160(a) (2004).

Section 21(a) of the Act provides that no person shall “[c]ause or allow open dumping of any waste.” 415 ILCS 5/21(a) (2004).

Section 21(p) of the Act provides that no person shall:

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... \* \* \*
- (3) open burning . . \* \* \*
- (7) deposition of:
  - (i) general construction or demolition debris as defined in Section 3.160(a) of this Act; or
  - (ii) clean construction or demolition debris as defined in Section 3.160(b) of this Act.” 415 ILCS 5/21(p)(1), (7) (2004).

Section 31.1(d)(2) of the Act provides that:

“[I]f the Board finds that the person appealing the [administrative] citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.” 415 ILCS 5/31.1(d)(2) (2004).

Section 42(b)(4-5) of the Act provides that:

“In an administrative citation under Section 31.1. of this Act, any person found to have violated any provision of subsection (p) of Section 21 of this Act shall pay a civil penalty of \$1,500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency. . . .” 415 ILCS 5/42(b)(4-5).

## **DISCUSSION**

### **Open Dumping of Waste**

To prove a violation of Section 21(p) of the Act, the County must first prove that Skidmore caused or allowed the open dumping of waste. *See* 415 ILCS 5/21(a), (p) (2004). As noted, “open dumping” under the Act is defined as “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 “waste”; and “waste” includes “any garbage . . . or other discarded material . . . .” 415 ILCS 5/3.305, 3.385, 3.535 (2004).

Skidmore does not dispute that he owns the property. Further, Skidmore does not deny that the materials described in the inspection report were on his property, nor does Skidmore argue that his operation meets the requirements of a sanitary landfill. Skidmore argues that he was prevented from cleaning up the site because of a situation with the previous owner, and that people were dumping debris on the site without his consent. He also argued that the material spilling out from the mobile home was either due to do the previous owner or looting.

In reviewing the record in this case, the Board finds that Skidmore’s claims are not dispositive of whether the material is waste or litter. Both the photographs admitted into evidence in the inspection report and testimony at hearing show several different piles containing ash, charred metal, dimensional lumber, paper, and plastic were to be found at the site.

On this record, the Board finds that the material on the site constitutes discarded material within the meaning of the term waste. Additionally, the material was consolidated on the site. It is also undisputed that Skidmore’s site does not meet the requirements for a sanitary landfill. The facts in this case clearly show that Skidmore allowed the open dumping to occur at the site.

As stated, Skidmore argues that he was prevented from cleaning up the site because of a situation with the previous owner, and that people were dumping debris on the site without his consent. The Act does authorize the Board to dismiss an administrative citation when the Board determines that a violation resulted from uncontrollable circumstances. *See* 415 ILCS 5/31.1(d)(2) (2004). In this instance, the fact that Skidmore claims to have been unable legally to enter the trailer or cleanup the material spilling from the trailer could result in a finding of uncontrollable circumstances that would justify dismissing the citation. However, the site contained two additional piles of waste under Skidmore’s control that do support a finding of open dumping. Thus, even if the material around the trailer is not considered, open dumping occurred at this site.

Further, the Board is not convinced that the open dumping was executed solely by those not under Skidmore’s control. The record shows that members of Skidmore’s family consolidated waste at the site. The record also shows that a contractor hired by Skidmore to install new windows dumped construction materials on the site.

Finally, the Board is cognizant of the work performed by Skidmore and his family at the site. The record plainly shows that the condition of the site has improved since the inspection. However, while Skidmore has cleaned up the site, that fact is not relevant in the finding of open dumping. *See IEPA v. Wright*, AC 89-227, slip op. at 7 (Aug. 30, 1990).

The Board finds that Skidmore caused and allowed open dumping at the site.



### **Litter**

The Act does not define “litter,” but the Board has applied the definition provided in the Litter Control Act, which defines “litter” in part as “any discarded, used or unconsumed substance or waste.” 415 ILCS 105/3(a) (2004); St. Clair County v. Louis I. Mund, AC 90-64, slip op. at 4, 6 (Aug. 22, 1991). The definition specifically includes refuse, debris, metal, plastic or paper containers or other packaging construction material, abandoned vehicles, motor vehicle parts, oil, and anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly. *See* 414 ILCS 105/3 (a) (2004).

The lumber, paper, plastic, metal and other items found at Skidmore’s site constitute “litter” under the definition. The Board finds that materials open dumped on Skidmore’s site qualify as “litter” under the Act.

### **Open Burning**

Open burning is defined as “the combustion of any matter in the open or in an open dump.” 415 ILCS 5/3.300 (2004). The piles of materials contained ashes and charred metal. Further, at the hearing Skidmore’s mother testified that she and her husband conducted open burning at the site after the inspector’s first visit. The Board finds this constitutes persuasive evidence that open dumping resulting in open burning occurred at the site.

### **Construction or Demolition Debris**

The Act’s definition of “general construction or demolition debris” includes “uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads . . .” (415 ILCS 5/3.160(a) (2004)). The definition specifically includes wood, including non-hazardous painted, treated, and coated wood and wood products; roofing shingles and other roof coverings. *Id.*

Skidmore’s site contained piles of dimensional lumber. The Board finds that materials open dumped at Skidmore’s site qualify as “general construction or demolition debris” under the Act.

### **Finding of Violations**

Having found that Skidmore caused and allowed the open dumping of waste resulting in litter and the deposition of general construction or demolition debris, and that none of his purported defenses have merit; the Board finds that Skidmore violated Sections 21(p)(1), (3) and (7) of the Act.

### **Civil Penalty and Hearing Costs**

The Agency seeks the statutory \$1,500 civil penalty per violation, for a total of \$4,500, as well as hearing costs. AC at 2. Because Skidmore violated Sections 21(p)(1), (3) and (7), the

Board now discusses the issues of civil penalty and hearing costs. Both are addressed in Section 42(b)(4-5) of the Act:

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) of Section 21 of this Act shall pay a civil penalty of \$1,500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency, except that the civil penalty amount shall be a \$3,000 for each violation of any provision of subsection (p) of Section 21 that is the person's second or subsequent adjudicated violation of that provision. 415 ILCS 5/42(b)(4-5) (2004).

Skidmore states that he has cleaned up the site. When the Board finds a violation in a formal enforcement action brought under Section 31 of the Act, the Board has the discretion to impose a penalty and if the Board decides to impose one, the Board may consider factors that mitigate the amount of penalty. *See* 415 ILCS 5/33(c), 42(h) (2004). The Board has no such discretion after finding a violation in an administrative citation action. The Board must impose a civil penalty on Skidmore.

There is no indication that this is a second or subsequent adjudicated violation for Skidmore. Therefore, the civil penalty for these first violations of Sections 21(p)(1), (3) and (7) by Skidmore is statutorily set at \$1,500 per violation, totaling \$4,500, and the Board will assess the penalty in its final opinion and order. *See* 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500(b)(2).

In addition, by unsuccessfully contesting the administrative citation at hearing, Skidmore also must pay the hearing costs of the Agency and the Board. *See* 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500(b)(3). No information on those costs is in the record. The Agency and the Clerk of the Board are therefore each ordered to file a statement of costs, supported by affidavit, and to serve the filing on Skidmore. Skidmore will have an opportunity to respond to the requests for hearing costs, as provided in the order below.

### **CONCLUSION**

The Board finds that Skidmore caused or allowed the open dumping of waste resulting in litter, open burning, and the deposition of general construction or demolition debris. Having found the violations in this administrative citation action, Skidmore must pay a civil penalty of \$4,500 and the hearing costs of the Agency and the Board. As set forth in the order below, the Board directs the Agency and the Clerk of the Board to file hearing cost documentation, to which Skidmore may respond. After the time periods for the filings on hearing costs have run, the Board will issue a final opinion and order imposing the civil penalty on Skidmore and assessing against him any appropriate hearing costs.

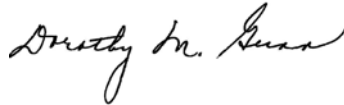
This interim opinion constitutes the Board's interim findings of fact and conclusions of law.

**ORDER**

1. The Board finds that David Skidmore (Skidmore) violated Sections 21(p)(1), (3) and (7) of the Act (415 ILCS 5/21(p)(1), (3) and (7) (2004)).
2. The Agency and the Clerk of the Board must each file a statement of hearing costs with the Board on or before March 22, 2007. The statements must be supported by affidavit and served upon Skidmore.
3. Skidmore may file with the Board a response to the statements of hearing costs required by paragraph 2 of this order. The response must be filed on or before April 12, 2007, and must be served on the Agency. The Agency may file a reply to the response within 14 days after being served.

IT IS SO ORDERED

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on March 1, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board