

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF CHICAGO DEPARTMENT)
OF ENVIRONMENT,)
)
Complainant,)
)
v.)
)
JOSE R. GONZALEZ,)
)
Respondent.)

AC 06-040
(Administrative Citation)

NOTICE OF FILING

TO: Jeffrey J. Levine
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Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
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PLEASE TAKE NOTICE that on May 13, 2008 Complainant filed with the Clerk of the Illinois Pollution Control Board the attached CITY OF CHICAGO'S REPLY TO JOSE R. GONZALEZ'S POST-HEARING BRIEF, a copy of which is served upon you.


Graham G. McCahan

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on May 13, 2008, he caused copies of this notice and the documents referenced therein to be served on the persons listed above by U.S. Mail, first class postage prepaid.


Graham G. McCahan

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF CHICAGO DEPARTMENT)	
OF ENVIRONMENT,)	
)	
Complainant,)	
)	
v.)	AC 06-40
)	(Administrative Citation)
)	
JOSE R. GONZALEZ,)	
)	
Respondent.)	

**CITY OF CHICAGO'S REPLY TO JOSE R. GONZALEZ'S
POST-HEARING BRIEF**

Complainant, the City of Chicago Department of Environment ("CDOE"), hereby submits the following as its Reply to Respondent Jose R. Gonzalez's Post-Hearing Brief. In support thereof, CDOE states as follows:

INTRODUCTION

The narrow issues before this Board are whether CDOE has demonstrated that there existed violations of Sections 21(p)(1), 21(p)(2), 21(p)(3), 21(p)(4), and 21(p)(7)(i) of the Illinois Environmental Protection Act¹ (the "Act") (415 ILCS 5/21) at 1601 E. 130th Street in Chicago, Illinois (the "Site") on March 22, 2006, and whether Respondent is liable for those violations. The evidence and testimony at hearing demonstrated that the above violations existed on the Site on March 22, 2006 and that Respondent controlled access to and operations on the Site to such an extent that he should be held liable for the violations under Illinois law. Not only has Respondent not contradicted this

¹ Despite Respondent's statement to the contrary in its Post-Hearing Brief (Resp. Post-Hearing Br. at ¶ 21), CDOE has not alleged, in its citation or at hearing, that Respondent was involved in salt unloading operations, asbestos-related violations, improper site security, waste next to residential homes, or oil flowing into the sewer.

evidence, but Respondent, in his Post-Hearing Brief, also admits to many of the facts required to establish those violations.

ARGUMENT

A. CDOE Has Established that There Were Violations of Sections 21(p)(1), 21(p)(2), 21(p)(3), 21(p)(4), and 21(p)(7)(i) on the Site on March 22, 2006.

As shown in CDOE's Post-Hearing Brief, the testimony and evidence at hearing demonstrated that there were violations of Sections 21(p)(1), 21(p)(2), 21(p)(3), 21(p)(4), and 21(p)(7) on the Site on March 22, 2006. Respondent, in his Post-Hearing Brief, has not contradicted CDOE's evidence and has admitted to some of the conditions on which those violations are based. With respect to the charge of open dumping resulting in litter under Section 21(p)(1), for instance, Respondent's counsel admits "[t]hat debris was on the property is uncontested." Resp. Post-Hearing Br. at ¶ 9. With respect to the charge of waste standing in water pursuant to Section 21(p)(4), Respondent's counsel admits that "[w]hen the snow melted, the site was full of mud and water." *Id.* at ¶ 12. With respect to the charge of deposition of general construction and demolition debris under Section 21(p)(7), Respondent's counsel admits that Respondent's renter, E. King, dumped what he described as "CTA construction debris" on the Site. *Id.* at ¶¶ 9-15.

B. Respondent Exercised Sufficient Control Over the Property to be Held Liable Under Illinois Law.

CDOE acknowledges that Respondent is not the owner of record for the Site, but Respondent's counsel admits that Respondent "has acquired an interest in property located at 1601-1759 East 130th Street." Resp. Post-Hearing Br. at ¶ 1. Even though Respondent is not the owner of record, the Board has held that ownership of property is not a prerequisite to violating Section 21(p) of the Act. *See IEPA v. Cadwallader*, AC

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03-13 (IPCB May 20, 2004); *IEPA v. Pekarsky*, AC 01-37 (IPCB Feb. 7, 2002). A complainant must show that the alleged open dumper had control over the source or site of pollution. *Id.* As set forth in CDOE's Post-Hearing Brief, Respondent had extensive control over the movement of trucks, people and materials onto and off of the Site. Compl. Post-Hearing Br. at 4-5. Despite Respondent's statement that "Mr. Gonzalez was not on site when the investigators appeared" (Resp. Post-Hearing Br. at ¶ 3), CDOE presented testimony and evidence that Respondent was on the Site on March 22, 2006 and attempted to exercise control over the Site by asking the CDOE inspector to leave the property. O'Donnell Tr. at 25; Compl. Ex. A at 6.

Respondent had control over the Site such that he should be found liable for the violations observed there on March 22, 2006. While attempting to argue that Respondent lacked sufficient control over the Site to be liable under the Act, Respondent's counsel admits that Respondent "repeatedly secured the property, put down a gravel road and was in the process of cleaning the property for purposes of future development" at the time of CDOE's March 22, 2006 inspection. Resp. Post-Hearing Br. at ¶ 34. Respondent's counsel also admits that "Mr. Gonzalez offered to rent the land to E. King" (Resp. Post-Hearing Br. at ¶ 12) – as established at hearing, E. King dumped large quantities of general construction and demolition debris on the Site. As these admissions and the other evidence cited in CDOE's Post-Hearing Brief demonstrate, Respondent clearly assumed the responsibility for securing, maintaining, developing, and renting the Site – all of which demonstrate that Respondent had control over the source or site of pollution and can be found liable for violating the Act.

C. Waste Remained On the Site For Fourteen Months While it was Under Respondent's Control.

In his Post-Hearing Brief, Respondent's counsel states that "Respondent secured the property and rather than causing or allowing open dumping, was cleaning refuse when ticketed. Mr. Gonzalez did not allow waste to remain on his property." Resp. Post-Hearing Br. at ¶ 30. Respondent's counsel also distinguishes between Respondent's alleged clean up activities and the respondent in *IEPA v. Cadwallader*, who "did not remove debris over a two year period" and was found liable for violations of the Act. *Id.* Respondent's counsel admits, however, that "[w]hen he [Respondent] acquired the property is [sic] was loaded with junk" and that there were "tires, signs and material...on the property when purchased." *Id.* at ¶¶ 1, 9. Respondent admitted at hearing that some of the waste observed on March 22, 2006 had been on the Site since he acquired his interest in it. Beddard Tr. at 111-12. In addition, Respondent's counsel admits that there was "trash that was constantly being fly-dumped" on the Site. Resp. Post-Hearing Br. at ¶ 9. As Respondent stated at hearing, he did not begin any clean up activities until the spring of 2006. Beddard Tr. at 103. As demonstrated at hearing, Respondent acquired his interest in the Site in January 2005 – a full fourteen months prior to CDOE's March 2006 inspection. Beddard Tr. at 134-35; Compl. Ex. B. Even if clean up activities were a defense to violations of the Act², Respondent has failed to show why leaving waste on a site for two years, as in *Cadwallader*, is legally distinguishable from allowing waste to remain on this Site for fourteen months. Respondent has admitted that there was waste both on the Site and added to the Site during the period that the Site was under his control

² As stated in CDOE's Post-Hearing Brief, the Board has repeatedly held that clean up efforts are not a defense to violations of the Act. See *City of Chicago v. City Wide Disposal, Inc.*, AC 03-11 (IPCB Sept. 4, 2003); *County of Jackson v. Easton*, AC 96-58 (IPCB Dec. 19, 1996).

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from January 2005 to March 2006. This is clearly sufficient to find Respondent liable for causing or allowing open dumping and the resulting violations of Sections 21(p)(1), 21(p)(2), 21(p)(3), 21(p)(4), and 21(p)(7)(i) of the Act.

CONCLUSION

Respondent is liable for violating Sections 21(p)(1), 21(p)(2), 21(p)(3), 21(p)(4), and 21(p)(7)(i) of the Act due to Respondent's control over the Site where these violations were observed on March 22, 2006. Therefore, CDOE respectfully requests that the Board enter a final order finding that Respondent violated these sections and imposing the statutory penalty of \$7500 (\$1500 for each violation).

Respectfully submitted,

CITY OF CHICAGO
DEPARTMENT OF ENVIRONMENT

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By: 
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Dated: May 13, 2008

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