

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

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STATE OF ILLINOIS
Pollution Control Board

COUNTY OF JACKSON,)
)
Complainant,)
)
v.) AC 09-8
) (Site Code: 0778035009)
)
DAN KIMMEL,)
)
Respondent.)

COMPLAINANT'S POST HEARING BRIEF

Complainant, the County of Jackson, files its post hearing brief in the matter.

INTRODUCTION AND PROCEDURAL MATTERS

On July 30, 2008, the Complainant filed an Administrative Citation against Dan Kimmel, the Respondent, under Section 31.1 of the Illinois Environmental Protection Act 415 ILCS 5/1 *et. seq.*(2008)(the Act). It is alleged the Respondent violated Section 21(p)(1) and (p)(7) of the Act. The Respondent timely filed his response to the Citation on August 27, 2008. Hearing Officer, Carol Webb, heard this matter on December 4, 2008, in Murphysboro, Illinois. On December 8, 2008, she filed her Hearing Report with the Board.

FACTS

On July 8, 2008, Environmental Compliance Inspector, Don Terry, inspected a site known herein after as the site (Site Code No. 0778035009) situated in a rural, unincorporated part of Jackson County, Illinois. Tr. 7, lines 2-11. See Also Complainant Ex. 2. The inspection was conducted pursuant to the Jackson County Health Department's delegation

agreement with the Illinois Environmental Protection Agency. Tr. 6, lines 14-20. The site, at the time of the inspection, was owned by the Respondent. Tr. 7, lines 12-3. See also Complainant's Ex. 2. At the site Mr Terry observed abandoned vehicles, scrap metal, a mobile home and a variety of other construction demolition type materials.. Tr. 7, lines 14-22 and Complainant's Ex. 2. See also Complainant's Ex. 1 (Inspection photos). Mr. Terry also testified that none of the vehicles depicted in the photos in Complainant's Exhibit 1 were operable and had been used for more than seven days prior to his inspection on July 8, 2008. Tr. 10, lines 19-24 and Tr. 11, lines 1-4. He stated he could see some of the debris with his naked eye from the public way adjoining the property. Tr. 11, lines 18-20 & Tr. 13, lines 15-20. The Respondent generally admitted to the waste. Tr. 16, lines 8-19 and Tr. 17, lines 5-7. It must be further noted that Respondent also generally admitted to the waste issue in his petition to contest the administrative citation that was filed with this Board on August 27, 2008. Mr Terry stated the site did not have the proper permits for storing waste items. Tr. 12, lines 1-4.

Mr. Terry further stated that there had been previous inspections at the site; and administrative citations had been filed against this Respondent at this site. Tr. 12, lines 12-21. He recalled that at least one resulted in a Board order in 2006. Id. Complainant requested the Board take judicial notice of its previous decision in AC 06-21 dated November 2, 2006. Tr. 15, lines 3-15. That decision pertained to the same Respondent for the same site. Id.

In its case in chief the Respondent provided testimony that was cleaning the site. Tr. 16, lines 6-19 and Tr. 17, lines 5-6. Respondent did not offer a defense to the allegations. His only explanation to the allegations was that he was cleaning the site and that he was being harassed. Tr. 16, line 24.

ARGUMENT

Open dumping 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." 415 ILCS 5/3.305 (2006). Refuse is defined as "waste" (415 ILCS 5/3.385 (2006)). Disposal is defined as "the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste . . . into or on any land . . ." 415 ILCS 5/3.185 (2006)). Litter is defined in the Litter Control Act as "any discarded, used or unconsumed substance or waste . . . abandoned vehicle (as defined in the Illinois Vehicle Code . . .) . . . or anything else of unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly." 415 ILCS 105/3 (2006). Section 3.535 defines waste as "any garbage . . . or other discarded material. . ." General construction or demolition debris is defined in Section 3.160 of the Act (2006) as 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 roof coverings . . ." Finally, an abandoned vehicle is defined as any vehicle in a state of disrepair rendering it incapable of being driven or any vehicle that has not been moved or used for seven consecutive days or more. 625 ILCS 5/1-101.05

(2008).

The evidence presented herein clearly shows Mr. Kimmel caused or allowed the deposition of litter, waste and general construction demolition debris at the site. It is not contested the Respondent owned and controlled the site at all material times. Further, if violations are determined herein, Mr. Kimmel is subject to double fines for the Section 21 (p)(1) issue because it would be a subsequent violation under 415 ILCS 5/42(b)(4-5)(2008). Taking the inspection report, the photos of the site, the inspector's testimony and the Respondent's statements leaves little room for the Respondent to argue a defense to this charges.

Nevertheless the Respondent explains he has been cleaning the site. However, even if this were true, it would not provide him with a defense to the administrative citation. This Board has repeatedly held that clean up efforts are not a mitigating factor under the administrative citation program. City of Chicago v. City Wide Disposal, Inc., AC 03-11 (September 4, 2003). More importantly, and despite his argument, the Respondent does not deny he is responsible for the waste and debris on his site.

CONCLUSION

Therefore, based on the record, the findings of the Hearing Officer and the arguments presented above, Complainant requests this Board to find that the Respondent violated Section 21(p)(1) and (p)(7) of the Act on July 8, 2008, and impose a fine of \$4,500.00 (\$1,500.00 for the (p)(7) violation and \$3,000.00 for the (p)(1) violation).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel Brenner". The signature is written in a cursive style with large, sweeping letters. It is positioned above a horizontal line.

Daniel Brenner
Assistant State's Attorney
Jackson County Courthouse, Third Floor
Murphysboro, Illinois 62966
618-687-7200

For the Complainant

PROOF OF SERVICE

I hereby certify that I did on the 6th day of January 2009 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 COMPLAINANT'S POST HEARING BRIEF.

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

Dan Kimmel
1065 Dumaroc Road
DeSoto, IL 62924

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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Assistant State's Attorney
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