

MAY 05 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

AC 04-27

V.

(IEPA No. 686-03-AC)

DOUGLAS S. CARRICO, d/b/a
CARRICO'S AUTO HEAP,


Respondent.

NOTICE OF FILING

To: Douglas S. Carrico
19291 Carrico Road
Kane, Illinois 62054

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled POST-HEARING BRIEF OF COMPLAINANT.

Respectfully submitted,


Michelle M. Ryan
Special Assistant Attorney General

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Dated: May 3, 2004

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

v.

DOUGLAS S. CARRICO, d/b/a
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POST-HEARING BRIEF OF COMPLAINANT

On October 6, 2003, the Illinois Environmental Protection Agency ("Illinois EPA") issued an administrative citation to Douglas S. Carrico ("Respondent"). The citation alleges a violation of Section 21(p)(1) of the Environmental Protection Act ("Act") (415 ILCS 5/21(p)(1) (2002)), in that Respondent caused or allowed open dumping of waste, resulting in litter and open burning on October 23, 2003. The violations occurred at 19291 Carrico Road, Kane, Greene County, Illinois. Transcript, pp. 6-7; Exhibit 1.

Illinois EPA has demonstrated that Respondent caused or allowed open dumping on the site. "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." 415 ILCS 5/3.305 (2002). "Refuse" means "waste," (415 ILCS 5/3.385 (2002)), and "waste" includes "any. . . discarded material" (415 ILCS 5/3.535 (2002)). The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that various materials including inoperable and damaged vehicles, vehicle parts, used tires, scrap metal, glass, plastic, lumber and cardboard were accumulated on the site. Tr. at 8-9, 22, 34-6; Exh. 1, pp. 7, 9-15. These materials constitute

“discarded material” within the meaning of the term “waste.” While some of the waste was in an open-bay shed, much of the material was on the ground with vegetation growing over it, indicating that it had been accumulated for a period of time. *Id.* The waste visible in the photographs in Exhibit 1 constitute the “consolidation of refuse from one or more sources” within the meaning of the term “open dumping.” Exh. 1 at 9-15.

Respondent owns the property at issue (Tr. at 7) and formerly conducted a salvage operation there (Tr. at 7, 15, 24, 33-34). Respondent admitted that the waste at the site was “left over from the conduct of the business” (Tr. at 24) and that the material was placed on the site while he was conducting business and maintaining control over the site (*See* Tr. at 33). As the owner and person with control over the property, Respondent caused or allowed the open dumping of waste observed on October 23, 2003.

Respondent’s causing or allowing the open dumping of these wastes resulted in “litter” under Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2002)). The Act does not define “litter,” but in similar cases, the Board has looked to the definition of “litter” in the Litter Control Act:

“Litter” means any discarded, used or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, refuse, debris, rubbish...or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

415 ILCS 105/3(a) (2002); see *St. Clair County v. Louis I. Mund* (Aug. 22, 1991), AC 90-64, slip op. at 4, 6. Using this definition, the vehicles, vehicle parts, used tires, scrap metal, glass, plastic, lumber and cardboard constitute “litter” under Section 21(p)(1) of the Act, and therefore Respondent violated that section.

Respondent argued at hearing that he was in the process of cleaning up the property (Tr. at 16, 25), but admitted that he “hadn’t started the cleanup after the first inspections.” Tr. at 16. In

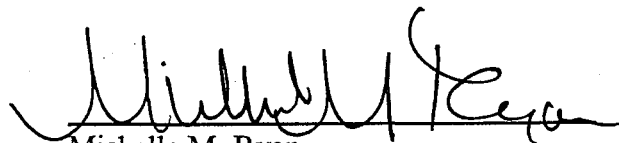
fact, Respondent had been in the "process" of cleaning up for over a year prior to the October 23, 2003 inspection, and had been given four separate extensions of the deadline for removing the waste from the property, from the original deadline of September 30, 2002 till September 30, 2003. Tr. at 37-41. In addition, the Illinois EPA removed 1000 of Respondent's tires at no cost to him under a Consensual Removal Action pursuant to Section 55.3(c) of the Act. Tr. at 41, 48. Respondent admitted that every letter Illinois EPA sent to him contained a warning of potential legal action. Tr. at 42-3. Nevertheless, Respondent on October 23, 2003 had still not achieved compliance at the site. It is clear from his testimony that he did not heed these warnings because he didn't believe they were valid, to his own detriment. Tr. at 43, 49.

Respondent analogized his circumstances to a child who is doing his best in school and still achieves B's rather than A's. Tr. at 27. Unfortunately for Respondent, the law regarding open dumping is a "pass/fail" situation, and on October 23, 2003, Respondent received a failing grade.

The Illinois EPA photographs and inspection report and the eyewitness testimony show that Respondent allowed open dumping of waste in a manner resulting in litter in violation of Section 21(p)(1) of the Act. Illinois EPA requests that the Board enter a final order finding that Respondent violated this section and imposing the statutory penalty.

Respectfully Submitted,

DATED: May 3, 2004



Michelle M. Ryan
Special Assistant Attorney General

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

PROOF OF SERVICE

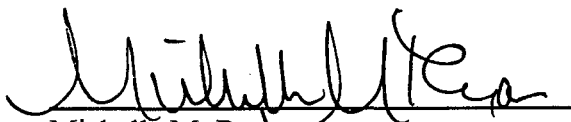
I hereby certify that I did on the 3rd day of May 2004, send by U.S. Mail with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled POST-HEARING BRIEF OF COMPLAINANT

To: Douglas S. Carrico
19291 Carrico Road
Kane, Illinois 62054

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 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
Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601



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