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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF CHICAGO)
DEPARTMENT OF ENVIRONMENT,)
)
Complainant,)
)
v.) AC 04-13
) (CDOE No. 03-02-AC)
EDDIE GREER,)
) (Administrative Citation)
Respondent.)

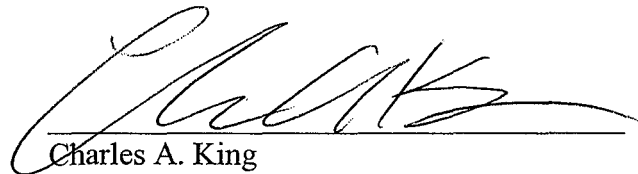
NOTICE OF FILING

To: Eddie Greer
9923 S. Peoria St.
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(via first class U.S. Mail)

Bradley P. Halloran
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
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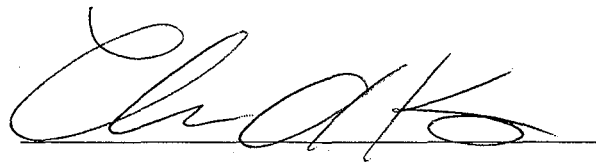
Please take notice that on May 14, 2004, I filed the attached **Complainant's Post-Hearing Brief** with the Clerk of the Illinois Pollution Control Board.

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CERTIFICATE OF SERVICE

I, Charles A. King, an attorney, certify that I caused copies of this notice and the document referenced herein to be served on the parties to whom the notice is directed by in the manner indicated above on May 14, 2003



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COMPLAINANT'S POST-HEARING BRIEF

The City of Chicago ("City") Department of Environment ("CDOE"), by and through its attorney, Mara S. Georges, Corporation Counsel for the City of Chicago, submits this brief in support of a finding of liability on both charged violations in the above-captioned administrative citation. As is discussed below, the evidence presented at the hearing establishes that the respondent, Eddie Greer, is liable for violations of both sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act, 415 ILCS 5 ("Act").

Background and Procedural History

On August 14, 2003, CDOE inspector Linda Kelly conducted an inspection of a facility located at 601-09 West 59th Street in Chicago (the "Site"). Based on the results of that inspection, on September 18, 2003, CDOE issued an administrative citation to Eddie Greer, the owner of the Site, charging him with violations of Sections 21(p)(1) and 21(p)(7) of the Act. The administrative citation was served on Mr. Greer personally on October 3, 2004. On October 17, 2003, Mr. Greer filed his request for a hearing with the Board. The hearing was held on April 5, 2004.

Relevant Law

The administrative citation charges Mr. Greer with violations of sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (7)). The relevant parts of section 21 provide:

No person shall:

- (a) Cause or allow the open dumping of any waste.

* * *

- (p) 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;

* * *

- (7) deposition of:

- (i) general construction or demolition debris as defined in Section 3.160(a) of this Act[.]

Several important terms in section 21 are defined elsewhere in the Act. "Open dumping" is defined in section 3.305 of the Act (415 ILCS 5/303.5), which provides:

"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.

"Refuse" is defined in section 3.385 of the Act (415 ILCS 5/3.385), which provides:

"Refuse" means waste.

"Waste" is defined in section 3.535 of the Act (415 ILCS 5/3.535), which provides:

"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.

“Disposal” is defined in section 3.185 of the Act (415 ILCS 5/3.185), which provides:

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

“General construction or demolition debris” is defined in section 3.160(a) of the Act (415 ILCS 5/3.160(a)), which provides:

- (a) “General construction or demolition debris” means 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 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.

“Litter” is not defined in the Act, but the appellate court has noted:

A person of common intelligence can understand the term “litter.”
* * * Given its ordinary meaning, “litter” refers to material of little or no value which has not been properly disposed of. The examples of litter set forth in the Litter Control Act [415 ILCS 105] provide additional guidance. Miller v. Pollution Control Board, 642 N.E.2d 475, 483 (Ill. App. Ct. 4th Dist. 1994).

Section 3(a) of the Litter Control Act, 415 ILCS 105/3(a) (2002), provides:

As used in this Act, unless the context otherwise requires:

- (a) “Litter” means 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.

Thus, litter, for the purposes of the Act, “may include, but is not limited to, any . . . refuse, debris, . . . metal, . . . abandoned vehicle[s,] . . . motor vehicle parts . . . or any thing else of an unsightly . . . nature[.]”

The Evidence

At the hearing, CDOE presented the testimony of Linda Kelly, and offered into evidence one exhibit, which included her reports and photographs she took at the Site. Ms. Kelly offered the following testimony:

Q: Now, what conditions at the site that you observed caused you to conclude that those violations had happened?

A: Because they had a lot of—to the west—you probably couldn't see it real good on these—from these photos. But they had a lot like waste soil, and they had construction material like wood and other debris mixed with bricks and stuff that was on the ground.

* * *

Q: Was it in a condition where it could have been used as construction material?

A: No, it was mounded with the rest of the, like waste—autos, auto parts, rubbish, waste scrap metal, all of it was mixed up and mounded to the west.

Q: All right.

A: And it was mixed with soil. * * * That's not clean soil.

Q: Thank you. And how about the litter?

A: The litter was scattered litter that was all over the site, paper, rubber tubing, and metal embedded in the ground, cans, garbage, some tires, paper, small—like small pieces of scrap metal, waste auto parts, maybe tools, small pieces of tools, and all that scattered all over the ground.

Transcript of April 5, 2004, hearing (“Tr.”) at 17-18.

The photographs taken by Ms. Kelly and included in Complainant's Exhibit 1 document the general condition of the Site on August 14, 2003. Both from Ms. Kelly's description of the

Site and the photographs included in Complainant's Exhibit 1, it is glaringly obvious that open dumping had occurred at the Site, resulting in both litter and general construction and demolition debris being deposited on the Site.

Ms. Kelly also testified that Mr. Greer admitted to her that a title search indicated that Mr. Greer was the owner of the Site, and that Mr. Greer said to her that he had acquired the Site. Tr. at 22-23.

Respondent's Defenses

In his case in chief, Mr. Greer never denied that the alleged conditions existed at the site, nor did he deny that he was the owner of the Site. It appears from his statements at the hearing that Mr. Greer is attempting to assert the following defenses: (a) the material on the site was brought there by someone else; (b) the site has been cleaned up; and (c) he had already been charged by the City in a different proceeding.

Regarding Mr. Greer's first two defenses, both were addressed by the Board in Sangamon County Dept. of Public Health v. Hsueh, AC 92-79 (July 1, 1993). Faced with another respondent who claimed that he did not dump material or allow anyone else to dump there, the Board stated:

Having found that open dumping resulting in litter occurred at the site, the Board must determine whether Mr. Hsueh "caused or allowed" the open dumping. Mr Hsueh contends that he did not dump the material or allow anyone else to dump material at the site. However, the Board has previously held that "allow" includes present inaction on the part of the landowner to remedy a previously caused violation. The Board has held that passive conduct amounts to acquiescence sufficient to find a violation of Section 21(a) of the Act. * * * Present inaction on the part of the landowner to remedy the disposal of waste that was previously placed on the site, constitutes "allowing" open dumping in that the

owner allows the illegal situation to continue. Hsueh, *supra*, slip op. at 4-5 (citations omitted).

The respondent in that case, like Mr. Greer, also argued that the property had been cleaned up.

On that subject, the Board said:

Mr. Hsueh argues that he has cleaned up the property subsequent to the issuance of the citation. However, the Board has previously held that post-citation activities of the citation recipient are not material to the Board's review pursuant to Section 31.1(d)(2) of the Act. The Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative or voluntarily cleans up the site. Clean up of the site is not a mitigating factor under the administrative citation program. The issue before the Board is whether the property on the date of the inspection shows a violation of the Act. *Id.* at 3 (citations omitted).

So, neither the fact that someone else may have been responsible for bringing the material on site, nor the fact that the site may have been cleaned up later, constitutes a defense to an administrative citation. Moreover, the Board should note that in this case while there was some fly-dumped material along the fence to the Site (see Tr. at 37; Photo 4 in Complainant's Exhibit 1), it appears that most of the material on the site was placed there by an associate of Mr. Greer's, "Columbus Don" King, with Mr. Greer's knowledge. See Tr. at 24, 25-27.

Mr. Greer's final apparent defense involves his claim that the City had already fined him in connection with this Site. As can be seen from the discussion at pp. 29-36 and 51-56 of the hearing transcript¹, Mr. Greer apparently did not understand the distinction between a citation from CDOE under the City's environmental ordinances, adjudicated in the City's Department of

¹ Several statements of Mr. Greer's are attributed to "Mr. King" in the transcript. This is due to typographical errors by the court reporter; it is generally clear from the context that the speaker is Mr. Greer. Specifically, statements on pp. 29 and 35 attributed to Mr. King are actually statements of Mr. Greer.

Administrative Hearings, and an administrative citation, adjudicated before the Board. At the hearing, the hearing officer properly excluded evidence regarding other proceedings as irrelevant. See Tr. at 56-57.

However, to allay any concern the Board may have that Mr. Greer was prosecuted twice for the same violations, CDOE refers the Board to Division 2.1 of Article I of the Illinois Municipal Code, specifically, Section 2 of that statute, 65 ILCS 5/1-2.1-2 (2002), which provides:

Any municipality may provide by ordinance for a system of administrative adjudication of municipal code violations to the extent permitted by the Illinois Constitution. A "system of administrative adjudication" means the adjudication of any violation of a municipal ordinance, except for (i) proceedings not within the statutory or the home rule authority of municipalities; and (ii) any offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles and except for any reportable offense under Section 6-204 of the Illinois Vehicle Code.

This section empowers municipalities to provide for administrative adjudication of violations of municipal ordinances. Within the City's Department of Administrative Hearings are several divisions, which are Code Hearing Units, set up under 65 ILCS 5/1-2.1-4(a) (2002), which provides:

An ordinance establishing a system of administrative adjudication, pursuant to this Division, shall provide for a code hearing unit within an existing agency or as a separate agency in the municipal government. The ordinance shall establish the jurisdiction of a code hearing unit that is consistent with this Division. The "jurisdiction" of a code hearing unit refers to the particular code violations that it may adjudicate.

Environmental violations are adjudicated by the Environmental Safety Hearings Division of the Department of Administrative Hearings. The ordinance establishing the jurisdiction of that unit is Section 2-14-160 of the Chicago Municipal Code, which provides in relevant part:

- (a) The department of administrative hearings shall operate a system of administrative adjudication of violations of sanitation code provisions.
- (b) The system shall be operated within an environmental safety hearings division created within the department of administrative hearings.
- (c) For purposes of this section, "sanitation code" shall mean the provisions of Chapters 2-100, 4-4, 4-260, 7-28, 10-8, 10-32, 11-4 and Section 13-32-235 of the Municipal Code of Chicago; and additionally, any other provisions of the Municipal Code of Chicago pertaining to or regulating: sanitation practices; forestry practices; the attachment of bills or notices to public property; the definition, identification and abatement of public nuisances; and the accumulation, disposal and transportation of garbage, refuse and other forms of solid waste in the city which are administered or enforced by the department of streets and sanitation with the exception of those provisions which by their terms are to be under the exclusive supervision of any department or officer of the city other than the department of streets and sanitation or the commissioner of streets and sanitation.

Thus, the jurisdiction of the Environmental Hearings Division of the Department of Administrative Hearings extends only to certain specific municipal code violations. The Department of Administrative Hearings could not have adjudicated the violations of the Act charged in the administrative citation issued to Mr. Greer, any more than the Board could adjudicate the violations of the Chicago Municipal Code charged in the tickets Mr. Greer received.

Furthermore, as the Board noted in People v. State Oil Co. et al., PCB 97-103 (August 19, 1999), slip op. at 5, the doctrine of *res judicata* does not apply to bar a subsequent action between two parties involving the same subject matter if the tribunal in the first action lacked subject matter jurisdiction over the claims asserted in the second. So, even if the particulars were the same, an action in the Department of Administrative Hearings would not bar this administrative citation proceeding, because the Department of Administrative Hearings lacked subject matter jurisdiction over violations of the Act. Thus, there is no *res judicata* issue presented by any ticket issued to Mr. Greer for City code violations.

Conclusion

The testimony of Ms. Kelly and the documents and photographs admitted into evidence establish that violations of Section 21(p)(1) and 21(p)(7) of the Act existed at the Site owned by Mr. Greer on August 14, 2003. As discussed above, the circumstances cited by Mr. Greer by way of defense do not in fact provide any defense to liability. Consequently, the Board should find that Mr. Greer is liable for the violations charged in the administrative citation.

Respectfully submitted,

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DEPARTMENT OF ENVIRONMENT

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