

JAN 06 2005

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION**

STATE OF ILLINOIS
Pollution Control Board

COUNTY OF JACKSON,)	
)	
Complainant,)	
)	
v.)	AC 04-39
)	(Site Code: 0778155007)
)	
EDWARD TOW,)	
)	
Respondent.)	

COMPLAINANT'S POST HEARING/CLOSING BRIEF

Complaint, the County of Jackson, files its post hearing - closing brief in the matter.

INTRODUCTION AND PROCEDURAL MATTERS

On January 26, 2004 the Complainant herein filed an Administrative Citation against Edward Tow, the Respondent, under Section 31.1 of the Illinois Environmental Protection Act 415 ILCS 5/1 *et. seq.* (the Act). It is alleged the Respondent violated Section 21(p)(1) of the Act. The Respondent timely filed his response to the Citation on January 30, 2004. The matter was heard in Murphysboro, Illinois on November 22, 2004 by Hearing Officer, Carol Webb. She filed her report with this Board on November 23, 2004.

FACTS

On December 17, 2003, certified solid waste inspector, Don Terry, inspected a site known herein after as the site (Site Code No. 0778155007) situated in a rural, unincorporated part of Jackson County, Illinois. Tr. 6. Also Complainant Ex. p.1. The inspection was conducted pursuant to the Jackson County Health Department's delegation agreement with the Illinois Environmental Protection Agency. Tr. 6-7. The site is owned by the Respondent, Edward Tow. Tr. 7. At the site Mr Terry

observed numerous abandoned vehicles, a boat, and tires and rims. Tr. 8 and Complainant's Ex. p.2. A dwelling unit does not exit on the site. Tr. 8. Mr. Terry testified that none of the vehicles he observed were capable of being driven and all appeared to be unused for a period in excess of at least seven consecutive days prior to his inspection. Tr. 10-11. Mr. Terry deemed all of the vehicles that day as abandoned. Tr. 11. Complainant Ex. pp 3-9 (the photos). Mr. Terry further testified that Mr. Tow told him he had placed most of the vehicles on the site. Tr. 12. Respondent even admitted to that fact. Tr. 15. Mr. Terry also testified that he never had problems gaining access to the Respondent's site from the public road. Tr. 12. The site did not have the proper permits for storing waste items. Tr. 12, Complainant's Ex. p.2.

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 (2002). Refuse is defined as "waste" (415 ILCS 5/3.585 (2002)). Disposal is defined as "the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste . . . into or onto land . . ." 415 ILCS 5/3.185 (2002)). 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 . . .), motor vehicle parts . . . or anything else of unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.' 415 ILCS 105/3 (2002). The Illinois Vehicle Code, 625 ILCS 5/1-101.5, defines abandoned vehicle as "any vehicle in a state of disrepair rendering the vehicle incapable of being driven in its condition or any vehicle that has not been moved or used for 7 consecutive days or more . . ."

The evidence presented herein clearly shows the Mr. Tow was responsible for depositing vehicles and litter onto his own land. At the time of the inspection, numerous vehicles were found incapable of being driven and clearly not used for a least seven consecutive days prior to the day of the inspection. Also at the site were other items such as discarded auto parts and tires and rims. All of these items are litter and were deposited onto Respondent's site by himself from off site locations.

At the hearing the Respondent offered the argument that he could not gain regular access to his site to remove the vehicles and debris. 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). The inspector testified that he never had problems accessing Respondent's site from the public road. It appears much of Respondent's alleged access problems were of his own making.

CONCLUSION

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) on December 17, 2003 and impose a fine of \$1,500.00.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Daniel Brenner', is written over 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

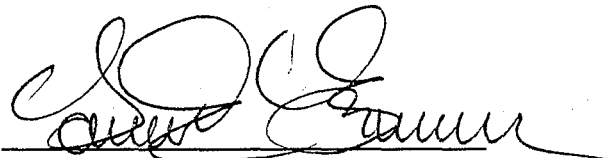
I hereby certify that I did on the 3rd day of January 2005, send by U.S. Mail, with postage thereon fully prepaid, by depositing in U.S. Post Office Box a true and correct copy of the following instrument(s) entitled COMPLAINTANT'S POST HEARING/CLOSING BRIEF

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

Edward Tow
215 N. Poplar
Elkville, IL 62932

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



Daniel Brenner
Assistant State's Attorney
Jackson County Courthouse, Third Fl.
Murphysboro, IL 62966
618-687-7200

FILING SUBMITTED ON RECYCLED PAPER