

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
ADMINISTRATIVE CITATION

JAN 07 2005

STATE OF ILLINOIS  
Pollution Control Board

COUNTY OF JACKSON,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 04-63
	)	(Site Code: 0778095036)
	)	AC 04-64
	)	(Site Code: 0778125013)
EGON KAMARASY,	)	(AC's Consolidated)
	)	
Respondent.	)	

**COMPLAINANT'S POST HEARING/CLOSING BRIEF**

The Complainant herein, the County of Jackson, Illinois, files its post hearing - closing brief in the matter.

**INTRODUCTION AND PROCEDURAL HISTORY**

In April 2004 the Complainant filed with the Illinois Pollution Control Board (Board) two separate administrative citations against the Respondent under Section 31.1 of the Illinois Environmental Protection Act, 415 ILCS 5/31/1 (2002)(the Act). The cases were docketed as AC 04-63 and AC 04-64. The Respondent filed timely responses to the citations. On August 30, 2004 the Complainant filed with the Board a motion to consolidate the two administrative citations which was granted by the Board on September 2, 2004. The case was heard by Hearing Officer Carol Webb in Murphysboro, Illinois on November 22, 2004. She filed her report with this Board on November 23, 2004.

On site number 0778095036 (hereinafter referred to as the Makanda site) the citation alleges violations of Section 21(p)(1) and(7) resulting from an inspection conducted March 25, 2004. On site number 0778125013 (hereinafter referred to as the Carbondale site) the citation alleges violations of Section 21(p)(1),(3), and (7) resulting from an inspection conducted March 25, 2004. In total it is alleged there have been five violations of Section 21(p) of the Act by the Respondent.

### **Site No. 0778095036 - MAKANDA SITE**

#### **FACTS**

Pursuant to the Jackson County Health Department's delegation agreement with IEPA, Don Terry, certified IEPA solid waste inspector (Tr. at 8, and Complainant's Exhibit 1, p.1), conducted an inspection of this site on March 25, 2004 (Complainant's Ex. 1, p.1). On that day he observed a pile of material containing general construction debris as evidenced by the photographs taken that day (Complainant's Ex. 1, p.7) and his inspection report from that day (Complainant's Ex. 1, pp.2 and 3). At the hearing of this matter he further elaborated that on the day of the inspection he observed a debris pile about 100 yards east of a gate consisting of dimensional lumber and siding and approximately 100 cubic yards in size. Tr. 10. The record notes the site had not been issued a permit to conduct a waste storage, waste treatment, or waste disposal operation. Complainant's Ex. 1, p. 3 and Tr. 13 and 14. The inspection took place entirely from a public road way as shown from his site sketch (Complainant's Ex. 1, p. 4), his testimony at the hearing (Tr. 31), and his inspection affidavit (Complainant's Ex. 1, p. 1).

Entirely corroborating the Complainant's case, is the Respondent's own admission in paragraphs 7 through 9 of his Petition to Contest Administrative Citation that: (1) he owned the site in question at the time in question; and (2) he caused the debris to be deposited at the site from his mobile home park (resulting from an order of the Illinois Department of Public Health); and (3) the debris pile at the time of the inspection consisted of abandoned mobile homes. Respondent also testified that the Complainant's photos and site sketch were accurate (Tr. 45), that he moved the mobile homes from his mobile home park to the site in question (Tr. 49-51), and the pile was visible from the public road (Tr. 52).

At the hearing there was evidence presented of an earlier inspection of this site by Mr. Terry on December 5, 2003. Complainant's Ex. 1, pp 8-9, along with photos of that inspection at pp 10-11. Mr. Terry testified that little had changed at the site from his earlier inspection on December 5, 2003 and the later inspection in March 2004. Tr. 13.

### **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)), and waste includes "any garbage . . . or other discarded material . . . ." 415 ILCS 5/3.535 (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 . . . or anything else of unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly." 415 ILCS 105/3 (2002). Finally, general construction or demolition debris is defined in Section 3.160 of the Act (2004) 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 . . . .”

It is not contested that the Respondent owned and controlled the site at all material times. It also is not contested the Respondent caused the open dumping that is the subject of these proceedings. He admitted the dumping consisted of some abandoned mobile homes from a mobile home park he owns elsewhere.

In its defense the Respondent raises several issues. These arguments are primarily taken up in Respondent’s memorandum supporting its petition to contest the administrative citation (R. Ex. 1-5). Complainant will address each one of the issues as best it can discern from Respondent’s memo what those issues are.

Respondent first raises an issue of credibility of the Complainant inspector’s reports and testimony; and requests this Board to disregard what the inspector observed, recorded, and testified to. The problem with this argument is that virtually all the inspector observed, recorded, and testified to is corroborated by the Respondent. The Respondent admitted the pile contained debris consisting of materials from abandoned mobile homes; and that he put the debris pile on his land. It is disingenuous to now argue the inspector’s report cannot be believed. Mr. Terry has consistently stated what he observed and put that information into his reports and reiterated all of his observations at the hearing. These is absolutely nothing ‘speculative’ (as Respondent argues in his memo) about Mr. Terry’s observations and reports.

The Respondent next argues that it is a necessary element of the Complainant's case that it must prove the debris had been or was likely to be emitted into the environment, citing Section 3.185 of the Act. This is incorrect. Proof of dumping is all that must be shown. Sections 2 and 20 of the Act stand for the proposition and declared public policy in this State that the provisions of the Act are to be liberally construed and that 'the failure to salvage and reuse scrap . . . contributes to the degradation of our environment.'" 415 ILCS 5/415 20(3)(2002). The preceding clause is but one of many of the declared policies of this State to prevent and rectify pollution in all of its forms. A showing of actual or likely emission or pollution runs starkly counter to the broad, preventive, and remedial purpose of the Act; and would make any successful prosecution under Section 21(p) nearly impossible and subject to overly technical scientific theories and data.

The Respondent continues his defense stating that litter is not clearly defined and one cannot know what one is to avoid doing. This argument has already been taken up by this Board and the courts in other cases and concluded that the meaning of the word 'litter' is clearly understood by any person with common intelligence. Miller v. Illinois Pollution Control Board, 267 Ill. App. 3d 160 (4<sup>th</sup> Dist. 1994). The record in this matter speaks for itself. Respondent then argues that the Litter Control Act (415 ILCS 105/1 et. seq.) limits or controls an open dump litter violation under Section 21(p) of the Act. This is also incorrect. Section 21 pertains to littering in an open dumping context. The Litter Control Act speaks to other types of littering violations. Both Acts are cumulative, and not dependent upon each other, as to violations for littering. Moreover, the Litter Control Act does not say (nor has a tribunal of competent jurisdiction ever determined) the provisions and requirements found in the Litter Control Act are applicable to any facet of a Section 21 case other than to the definition of 'litter.' See 415 ILCS 105/8(c). See also Miller at 169; City of Chicago v. City Wide Disposal, Inc., AC 03-11 (Sept. 4, 2003).

The Respondent also argues that it is incorrect to charge him twice for the same thing. Again, this is not correct. This Board has held that multiple charges for the same offense is acceptable and prior Board precedent has allowed it. State of Illinois v. Community Landfill Co., Inc., PCB No. 97-193 (October 3, 2002). Notwithstanding the above, it must be added here the Act intends that each and every violation declared in Section 21(p) is a separate and distinct violation even if the debris causing each of these violations is the same.

The Respondent then takes issue with these proceedings because he believed there was an 'agreement' between the Complainant and him regarding clean up and the Complainant should be bound by the agreement. He states that in January 2004 he spoke with the Complainant's inspector and was given some time to clean up the site. Tr. 35. There are a number of problems with this argument. First, the conversations in January 2004 cannot be labeled as an agreement. The Respondent does not say what is the legal basis for such an 'agreement.' If anything all these conversations amounted to was an attempt to settle the matter without further legal proceedings. In any event, as Respondent admits, he could not fulfill his promise to clean the site up by the time given. Id.. He claims the weather prevented him from doing so. R. Ex. 1-5, p.37. More importantly, 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).

### CONCLUSION

Respondent has admitted, and the record is otherwise clear, to every factual element needed to show Section 21(p)(1) and (7) were violated. The Respondent offers several legal arguments intending to make the case why he, despite the facts, should not be found to have violated the Act. None of the arguments are persuasive. The case at hand is simply about an open dump site operating without the necessary permits owned and controlled by the Respondent who caused abandoned mobile

homes to be deposited at his site from another site also owned and controlled by him. For all the above reasons the Complainant requests the Board to find the Respondent did violate Section 21(p)(1)&(7) of the Act at his Makanda site on March 25, 2004, and impose a fine of \$1,500.00 for each violation for a total of \$3,000.00.

### **SITE NO. 0778125013 - THE CARBONDALE SITE**

#### **FACTS**

Pursuant to the Jackson County Health Department's delegation agreement with IEPA, Don Terry, certified IEPA solid waste inspector conducted an inspection of this site on March 25, 2004. Tr. 14 and Complainant's Ex. 1, pp.12-15. On that day he observed a debris pile approximately ten (10) cubic yards in size that had been burned and comprised of ash and charred remains of demolition lumber. Tr. 14-15. He also observed the charred remains of a mattress spring and metals. Tr. 15. His inspection report and photos from that day (Complainant's Ex. 1, pp.13, 24-26) evidence the pile contained metal frames from furniture, a window air conditioner, a laminate counter top, fences posts, and metal cans. At the hearing the Respondent testified the pile contained lumber, old furniture, and construction material, among other things. Tr. 63. The Respondent further admitted he owned and controlled the site in question and caused and burned the pile. Tr. 62-64. See also Respondent's Amended Petition to Contest Administrative Citation. One of his witnesses also admitted to the burning (Tr. 71) and identified one of the items burned as a sink. Tr. 72. Respondent and one of his witnesses even admitted that Respondent has been burning at the site for years. Tr. 64 & 74.

The inspector, Mr. Terry, further testified and documented that he had initially inspected the site on March 11, 2004. Tr. 16 & Complainant's Ex. 1, pp. 16-21. Mr. Terry further testified that a dwelling unit did not exist on the site. Tr. 16. Nor was one indicated on inspector's site sketch. Complainant's Ex. 1, p. 15. Respondent testified the site is a farm and that his dwelling unit is adjacent to the site. Tr. 59. Mr. Terry said the debris pile had been originally reported to him by another employee of the Health Department; and Mr. Terry could see the pile from the public road with the naked eye. Tr. 40. Respondent refutes that and states the pile could not be seen from the public road. Tr. 62. The site had not been issued the requisite permits to operate as a dump. Tr. 17.

### **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)), and waste includes "any garbage . . . or other discarded material . . ." 415 ILCS 5/3.535 (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 . . . or anything else of unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly." 415 ILCS 105/3 (2002). Open burning is defined as the combustion of any matter in the open or in an open dump. 415 ILCS 5/3.300 (2002). Finally, general construction or demolition debris is defined in Section 3.160 of the Act (2004) 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 . . . .”

As with the first site above, the essential facts of the case are clear. The Respondent caused the dumping of various items and construction debris on his land without proper permits and caused them to be burnt in the open. None of these facts is disputed. The Respondent raises various issues in his trial memorandum (Respondent Ex. 1) that he believes will convince this Board there is not a violation of any laws. The Complainant will address each one of these issues as far as it can discern what the issues are from his trial memo.

Respondent first raises the issue that the search by the inspector, Mr. Terry, was not conducted according to constitutional and statutory framework. Respondent claims the debris pile could not be seen from the road and that the inspector did not have permission or a search warrant to enter onto Respondent’s site. Mr. Terry, however, testified that he could see the pile from the public road with the naked eye; and that the pile had been originally reported to him by another inspector from the Health Department. The Respondent has the burden of persuasion with this defense. Miller v. Illinois Pollution Control Bd., 267 Ill. App. 3d 160 (4<sup>th</sup> Dist. 1994); Village of Bridgeview v. Slominski, 74 Ill. App. 3d 1 (1<sup>st</sup> Dist. 1979).

The inspector stated he saw the pile from the road and went onto the site to get a closer look. In Miller the inspector went onto the defendant’s land after he spotted a potential violation from a road. Miller found nothing wrong with this search and dismissed the defendant’s argument. Moreover, the inspector as the agent of the Illinois Environmental Protection Agency has broad authorities under the Act to inspect and investigate violations. Illinois Environmental Protection Agency v. Thomas, Ac No. 89-215 (January 23 , 1992). The Respondent had no expectation of privacy in a debris pile that could be seen from a public road. Mr. Terry has broad authority to look for violations of the Act; and there was no illegal search.

The Respondent next seems to advocate that it is not a violation of Section 21(p) if only household (whatever that term means) and landscape waste is dumped on the site where it was generated; especially if the accumulation is minor as alleged by the Respondent. There are, however, several problems with this argument. One, the record is clear the Respondent deposited and burned more than landscape and 'household' waste. The record establishes there was also present at the pile demolition lumber, a sink, a sofa, a mattress, an air conditioner, and fence posts. Second, Respondent does not cite any authority for his belief that 'household' waste is okay to accumulate and burn. Third, a ten cubic yard burn pile is not a minor accumulation. See The People v. Dixon-Marquette Cement, Inc. 343 Ill. App. 3d 163 (2d Dist. 2003)(good discussion of the on site waste generation issue). Fourth, a dwelling unit did not exist at the site. Where did the 'household' waste come from? Assuming for argument sake that such a defense for minor accumulations of on site generated waste exists in the context of a Section 21(p) violation, the Respondent has not shown his circumstances fit that defense.

As with the first site (Makanda) above, the Respondent goes on again to take up the issue that illegal open dumping requires a showing the Respondent's debris was actually polluting or likely to pollute the environment. Following that issue the Respondent again reargues the same points with respect to what constitutes littering. Complainant renews and restates the same arguments here it made previously with respect to these particular issues of the Respondent with the first site (Makanda) above.

Respondent then raises the issue that he is exempt from or not in violation of open burning violations because he met or meets the exclusions or conditions found in part 237 of the Board's rules. Respondent argues the items at the site were either domicile waste, landscape waste, or agricultural waste and that he is allowed to burn these items if he meets the conditions of Part 237. Aside from

the obvious point that a mattress and sofa couch cannot be (under any liberal interpretation of the definition of these terms) considered any of these types of wastes, and that there is no domicile on the site, the Respondent's use of Part 237 is misplaced. Part 237 is simply immaterial to a Section 21(p) case as the rule plainly states it implements Section 10 of the Act pertaining to air pollution. No where does it state nor has the Respondent cited any authority that Part 237 provides a basis for a defense or limitation to a Section 21(p) administrative citation brought under Section 31.1 of the Act.

Respondent then takes up the argument that he did not deposit construction or demolition debris at the site. The facts in evidence clearly belie this argument. Dimensional lumber was observed in the debris pile and is clearly visible in the photographs. It can also be seen and it is documented that portions of fence posts were in the pile and burned as well as counter tops. All of these type of items meet the definition of construction or demolition debris.

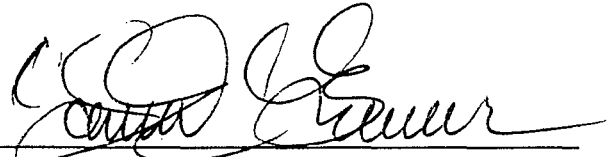
The Respondent then concludes his defense making the same two arguments he did with the Makanda site above averring that the requirements and limitations found in the Litter Control Act are a necessary element for Section 21(p) violations; and that it is improper to cite multiple charges for the same single act. Complainant renews and restates here the same points made previously on these issues in the Makanda site discussion above.

### **CONCLUSION**

Respondent has admitted, and the record is clear, to every factual element needed to show a violation under Section 21(p)(1),(3), and (7) of the Act. None of the arguments advanced by the Respondent are persuasive. This matter is simply about a Respondent depositing a significant amount of waste and debris onto his land from multiple sources and then burning it, all without the required permits. Therefore, for all of the above reasons the Complainant requests this Board to find that respondent did violate sub-section (1), (3), and (7) of Section 21(p) of the Act on March 25, 2004,

and impose a fine of \$1,500.00 for each violation for a total of \$4,500.00.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel Brenner", written over a horizontal line.

Daniel Brenner  
Assistant State's Attorney  
Jackson County Courthouse, 3<sup>rd</sup> Floor  
Murphysboro, Illinois 62966  
618-687-7200

For the Complainant

**PROOF OF SERVICE**

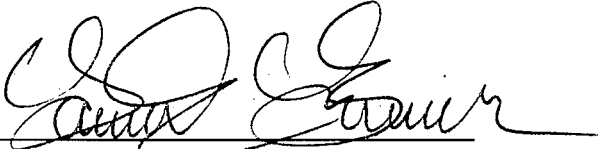
I hereby certify that I did on the 3<sup>rd</sup> day of January 2005, send by U.S. Mail, with postage thereon fully prepaid, by depositing in U.S. Post Office Box a true and correct copy of the following instrument(s) entitled COMPLAINTANT'S POST HEARING/CLOSING BRIEF

To: Gregory A. Veach  
3200 Fishback Road  
P.O. Box 1206  
Carbondale, IL 62903-1206

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



Daniel Bremner  
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