

ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

COUNTY OF VERMILION, ILLINOIS,)

Complainant,)

v.)

VILLAGE OF TILTON,)

Respondent.)

AC No. 04-22

County File No. 03-03

BRIEF OF COMPLAINANT

On June 25, 2003, Doug Toole, a health inspector with the Vermilion County Health Department, inspected the property of Mildred Butler, located near the corner of 15th Street and 1st Street in the Village of Tilton, Vermilion County, Illinois. Doug Toole inspected the property due to a complaint that the Health Department had received concerning solid waste on the property. Upon inspection, Doug Toole observed waste on the property. As a result of this inspection, Mildred Butler was given a compliance date for when she needed to have her property cleaned up, and the waste properly disposed of. In July 2003, Mildred Butler told Doug Toole that the Village of Tilton had an option to purchase her property, and that they were now in charge of cleaning up the property. Doug Toole spoke to David Phillips, Mayor of the Village of Tilton, on July 7, 2003 and he confirmed that the Village of Tilton had an option to purchase Mildred Butler's property, and was in the process of cleaning up the property.

On August 25, 2003, Doug Toole re-inspected the property of Mildred Butler, to confirm that the Village of Tilton had removed the solid waste from the property. Upon arrival, Doug Toole observed that the items that had been scattered throughout the

property at the June 25, 2003 inspection had now been centralized in one pile and had been burned. In the pile of waste was brush, branches, scrap metal, demolition debris, boards, fencing, and rims and steel belts from tires. Doug Toole observed the pile of waste to be smoldering, observed scorch marks, and could smell smoke emanating from the pile of waste. Doug Toole then spoke to Mayor Phillips on August 26, 2003 concerning the burning pile of waste that he had observed on the property on August 25, 2003. Mayor Phillips told Doug Toole that workers from the Village of Tilton piled the debris and burned the brush and other items. As a result of the Village of Tilton's actions, the Village was cited with violating the Environmental Protection Act, 415 ILCS 5/21(p)(3).

The Environmental Protection Act provides that no person shall "cause or allow the open dumping of any waste in a manner which results in...open burning," 415 ILCS 5/21(p)(3). The Environmental Protection Act defines "open dumping" 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. "Refuse" means "waste," 415 ILCS 5/3.385. "Waste" is defined as "any garbage...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..." 415 ILCS 5/3.535.

The Village of Tilton caused or allowed open dumping of waste on the property of Mildred Butler. It is not disputed that during all times relevant to this complaint, Mildred Butler owned the property at issue. It is also not in dispute, that the Village of

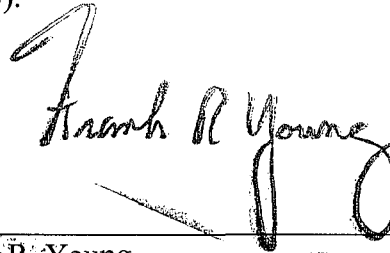
Tilton, during all times relevant to this complaint, had an option to purchase the property at issue and had taken control of cleaning up the property at issue.

Environmental Protection Agency v. Pollution Control Board and John Vander, 579 N.E.2d 1215 (1991), speaks directly to the issue at hand. In this case, John Vander demolished two buildings and then set fire to the debris on the site where the buildings had stood. The Environmental Protection Agency then issued an administrative citation against John Vander charging him with “having caused or allowed the open dumping of waste in a manner which resulted in litter and open burning...” Id. at 1216. The Pollution Control Board ruled that John Vander had not violated the Environmental Protection Act because his conduct did not constitute “open dumping” within the Environmental Protection Act’s definition. However, the Appellate Court reversed the Pollution Control Board’s ruling and found that John Vander’s actions did constitute “open dumping.” The Court held that “ ‘open dumping’ happens not when refuse is consolidated at the point of demolition, but when it is consolidated at a *disposal* site...Thus, there must be more than demolition. There must also be ‘disposal,’ which is defined as ‘the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste...into or on any land...so that such waste...may enter the environment or be emitted into the air...’” Id. at 1217. “The demolition site became the disposal site when Vander decided to incinerate the debris there instead of moving it away.” Id. at 1218.

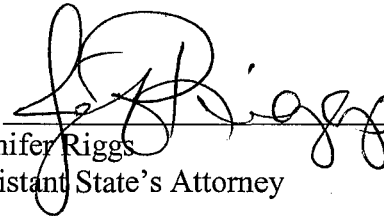
In the case at hand, the property became a disposal site when the Village of Tilton deposited and burned the pile of waste, therefore causing the waste to enter the environment and be emitted into the air. Since the Village of Tilton’s actions caused the property to be a disposal site, and the Village of Tilton consolidated the waste from the

property into one pile on the land, the Village of Tilton caused or allowed open dumping. Whether the Village of Tilton placed the waste on the property is not an issue. The Village of Tilton had control of the property from at least July 7, 2003 until the inspection of August 25, 2003. The Village of Tilton gathered the items that were scattered across the property and placed them in one pile of waste, therefore consolidating the waste. The pile of waste observed by Doug Toole on August 25, 2003 clearly meets the definition of "open dumping," the Village of Tilton engaged in open burning by burning the pile of waste; therefore the Village of Tilton is in violation of the Environmental Protection Act, 415 ILCS 5/21(p)(3).

Dated: 9/29/04



Frank R. Young
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