

ILLINOIS POLLUTION CONTROL BOARD
March 16, 1995

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 94-73
)	(IEPA No. 415-94-AC)
STACY B. HESS,)	(Administrative Citation)
)	
Respondent.)	

MELANIE A. JARVIS, ASSISTANT COUNSEL, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY;

STACY B. HESS APPEARED PRO SE.

CONCURRING OPINION (by J. Yi):

I agree with the outcome and reasoning expressed in the majority opinion. However, I concurred because the majority opinion does not find a violation on the evidence of litter in the record other than the used tires.

The administrative citation issued by the Agency alleges a single violation of Section 21(p)(1) of the Act. (415 ILCS 5/21(p)(1).) Section 21(p)(1) of the Act prohibits open dumping resulting in litter. In St. Clair County v. Louis Mund, (August 22, 1991), AC 90-64, 125 PCB 381, the Board adopted the definition of litter contained in the Litter Control Act:

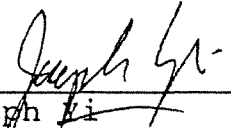
"litter" means any discarded, used or unconsumed substance or waste. "Litter" may include, but is not limited to, any garbage, trash, refuse, debris...abandoned vehicle...or anything else of an unsightly or unsanitary nature which has been discarded, abandoned or otherwise disposed of improperly. (Ill. Rev. Stat. 1990 supp., ch. 38, par. 86.3.) [415 ILCS 105/3].

The Agency offered evidence of litter into the record through the use of the eleven photographs taken by the Agency inspector and the inspectors direct testimony as to what is depicted in those photographs.¹ The Agency inspector testified

¹The photographs were entered into the record as Group Exhibit #7 and the inspectors testimony can be found on pages 16-23 of the transcript of the hearing held on January 26, 1995.

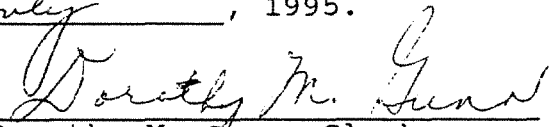
that he observed by direct observations the following litter at the site; white goods, demolition debris, general refuse, old derelict vehicles, scrap metal and used tires. The Board pursuant to Section 31.1(d)(2) of the Act shall adopt an order finding violation if, based on the record, the alleged violation occurred. (415 ILCS 5/31.1(d)(2) (1992).) In determining whether a violation has occurred the Board is directed by the Act to weigh the evidence presented by the Agency in the record which demonstrates the alleged violation. Here, the Agency alleged a violation of Section 21(p)(1) of the Act that provides that no person shall cause or allow the open dumping of any waste in a manner which results in litter. The Agency presented evidence of litter consisting of used tires, white goods, demolition debris, general refuse, old derelict vehicles and scrap metal. I would have included in finding a violation of Section 21(p)(1) of the Act all the evidence in the record that demonstrates litter.

Therefore, I respectfully concur.



Joseph Li
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was filed on the 11th day of July, 1995.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board