

ILLINOIS POLLUTION CONTROL BOARD
June 6, 2002

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 02-21
) (RCRA Enforcement)
 J & F HAULING, INC.,)
)
 Respondent.)

ORDER OF THE BOARD (by T.E. Johnson):

On August 17, 2001, the People of the State of Illinois (complainant) filed a seven-count complaint against J & F Hauling, Inc. (J&F). The complaint alleges, *inter alia*, that J&F caused or allowed open dumping of litter and waste tires, conducted a waste disposal operation at an improper site without a permit, and failed to make special waste and hazardous waste determinations. These activities were alleged to have occurred at 7752 West 47th Street, McCook, Cook County.

On November 9, 2001, the complainant filed a motion to deem facts admitted and for summary judgment. On January 10, 2002, the Board issued an order reserving ruling on the November 9, 2001 motion to allow the complainant to address a service issue. On January 24, 2002, the complainant properly effectuated service of the complaint on J&F. On February 21, 2002, the Board granted complainant leave to withdraw the November 9, 2001, motion. The complainant filed a second motion to deem facts admitted and for summary judgment on April 9, 2002.

For the reasons stated below, the Board grants complainant's motion for summary judgment against J&F.

ADMISSION OF MATERIAL ALLEGATIONS

Complainant alleges in its motion that J&F admitted the material allegations asserted in the complaint because J&F did not file an appearance, answer or otherwise plead within 60 days after the complaint was served. Mot. at 2-3

Sections 103.204(d) and (e) of the Board's regulations (35 Ill. Adm. Code 103.204(d) and (e)) state in relevant part that:

1. Except as provided in subsection (e) of this Section, the respondent may file an answer within 60 days after receipt of the complaint if respondent wants

to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief

2. If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506, the 60-day period to file an answer described in subsection (d) of this Section will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion. 35 Ill. Adm. Code 103.204(d), (e).

J&F failed to file an answer or motion pursuant to 35 Ill. Adm. Code 103.204(d) or (e) as of the date of this order. The Board deems the material allegations concerning J&F in the complaint to be admitted pursuant to 35 Ill. Adm. Code 103.204(d).

Specifically, the Board finds the following material allegations are admitted:

1. J&F is an Illinois corporation and, at all times relevant to the complaint, operated a demolition and waste hauling business on property commonly known as 7753 West 47th Street, McCook, Cook County. Comp. at 2.
2. On July 7, 1999, the Agency inspected the site. During the inspection, the inspector found that:
 - A. A pile of mixed construction and demolition debris and other waste was located on the east side of the site. The pile measured approximately 20 feet high by 150 feet long.
 - B. A pile of worn and damaged tires, not mounted on vehicle rims was located on the south side of the site.
 - C. Piles of scrap metal piping and wires were dumped in the center of the site.
 - D. A large pile of scrap wood, scrap metal and scrap vinyl siding was located on the west border of the site.
 - E. A darkly stained area of soil was located on the northern border of the site. The inspector believed this stained area to be a result of spilled or leaked use oil.
3. From May 23, 2000 to August 17, 2001, a new accumulation of construction and demolition debris was deposited at the northern end of the site.

4. On June 21, 2001, an Agency inspector visited the site and discovered that the tires had been removed, but that all other accumulations remained on the site.
5. At all times relevant to the complaint, the site was not permitted by the Agency for disposal of waste.
6. From June 7, 1999 until May 23, 2000, J&F regularly transported construction and demolition debris, scrap metal piping and wiring, scrap wood and scrap vinyl to the site, and deposited the materials on the ground.
7. From June 7, 1999 until August 17, 2001, J&F did not apply to the Agency for or obtain a permit to conduct a waste disposal operation at the site.
8. J&F spilled or leaked used oil on the ground at the site.
9. From July 7, 1999 to the present, J&F generated solid waste without making a hazardous waste determination.

The Board finds that the above facts concerning J&F are admitted. Accordingly, the Board discusses if the People are entitled judgment as a matter of law based on the admitted facts.

MOTION FOR SUMMARY JUDGMENT

J&F has not yet filed a response to the motion for summary judgment. Pursuant to 101.500(d) of the Board's regulations, if no response to a motion is filed within 14 days the non-responding party will be deemed to have waived the objection to the granting of the motion.

Standard of Review

Summary judgment is appropriate when the pleadings and depositions, together with any affidavits and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *See Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 693 N.E.2d 358 (1998). In ruling on a motion for summary judgment, the Board "must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party." *Dowd*, 181 Ill. 2d at 483, 693 N.E.2d at 370.

Summary judgment "is a drastic means of disposing of litigation," and therefore it should only be granted when the movant's right to the relief "is clear and free from doubt." *Dowd*, 181 Ill. 2d at 483, 693 N.E.2d at 370, citing *Purtill v. Hess*, 111 Ill. 2d 229, 240, 489

N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must “present a factual basis, which would arguably entitle [it] to a judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

DISCUSSION

Relevant Statutes and Regulations

Section 21 of the Act provides in part:

No person shall:

- (1.) Cause or allow the open dumping of any waste.
* * *
- (2.) Conduct any waste-storage, waste-treatment, or waste-disposal operation:
 - A. Without a permit granted by the Agency or in violation of any conditions imposed by such permit;
 - B. In violation of any regulations or standards adopted by the Board under this Act.
* * *
 - C. Dispose, treat, store, or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.
* * *
 - D. 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:
 - (i.) litter. 415 ILCS 5/21(a),(d)(1) and (2),(e),(p)(1) (2000).

Section 55(a) of the Act provides:

1. No person shall:
 - (ii.) Cause or allow the open dumping of any used or waste tires. 415 ILCS 5/55(a)(1) (2000).

35 Ill. Adm. Code 721.102 of the Board’s regulations provides in part:

- (iii.) Materials are solid wastes if they are abandoned by being:
 - (a) Disposed of; or
 - (b) Burned or incinerated; or
 - (c) Accumulated, stored or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated.

35 Ill. Adm. Code 722.111 provides:

A person who generates a solid waste, as defined in 335 Ill. Adm. Code 721.102, shall determine if that waste is a hazardous waste using the following method:

The person should first determine if the waste is excluded from regulation under 35 Ill. Adm. Code 721.104.

The person should then determine if the waste is listed as a hazardous waste in 35 Ill. Adm. Code 721, Subpart D.

(Board Note: Even if a waste is listed, the generator still has an opportunity under 35 Ill. Adm. Code 720.122 and 40 CFR 260.22 (1986) to demonstrate that the waste from the generator's particular facility or operation is not a hazardous waste.)

For purposes of compliance with 35 Ill. Adm. Code 728, or if the waste is not listed as a hazardous waste in 35 Ill. Adm. Code 721, Subpart D, the generator shall then determine whether the waste is identified in 35 Ill. Adm. Code 721, Subpart C by either:

Testing the waste according to the methods set forth in 35 Ill. Adm. Code 721, Subpart C, or according to an equivalent method approved by the Board under 35 Ill. Adm. Code 720.121; or

Applying knowledge of the hazard characteristic of the waste in light of the materials or processes used.

If the generator determines that the waste is hazardous, the generator shall refer to 35 Ill. Adm. Code 724, 725, 728, and 733 for possible exclusions or restrictions pertaining to the management of the specific waste. 35 Ill. Adm. Code 722.111.

35 Ill. Adm. Code 808.121 provides in part:

Generator Obligations

- (a) Each person who generates waste shall determine whether the waste is a special waste.

Board Note: 35 Ill. Adm. Code 722 requires the person to also determine if the waste is a hazardous waste. 35 Ill. Adm. Code 808.121.

35 Ill. Adm. Code 812.101 provides in part:

- (a) All persons . . . shall submit to the Agency an application for a permit to develop and operate a landfill. The applications must contain the information required by this Subpart and by Section 39(a) of the Act except as otherwise provided in 35 Ill. Adm. Code 817. 35 Ill. Adm. Code 812.101.

Count I: Open Dumping of Waste

Complainant alleged that J&F violated Section 21(a) of the Act by consolidating waste from one or more sources at a disposal site that did not fulfill the requirements of a sanitary landfill.

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 5/3.24 (2000). Pursuant to the Act, “Refuse means waste.” 415 ILCS 5/3.31 (2000). Waste includes any garbage or other discarded material. 415 ILCS 5/3.53 (2000).

The record shows that J&F operated a business at the site, and that J&F deposited construction and demolition debris, scrap metal piping and wiring, waste tires, scrap wood and vinyl and spilled or leaded used oil on the site on July 7, 1999. The record also shows that the site was not permitted by the Agency for the disposal of waste, and thus did not fulfill the requirements of a sanitary landfill.

The Board finds that the materials deposited at the site constitutes garbage or other discarded material within the meaning of waste as defined by the Act. The Board also finds that the debris was consolidated into piles constituting a consolidation of refuse at a disposal site not fulfilling the requirements of a sanitary landfill. Thus, the Board finds that J&F caused or allowed open dumping of waste in violation of Section 21(a) of the Act.

Count II: Causing or Allowing Litter

Next, the Board considers whether the open dumping of waste resulted in litter under Section 21(p)(1) of the Act. The Board has found that litter is defined as any discarded, used or unconsumed substance or waste, and may include garbage, trash, refuse, debris, rubbish or anything else of an unsightly or unsanitary nature. County of Will v. Hunter, AC 98-8 (May 7, 1998), slip op. at 3.

Under this definition, the debris at the site constitutes litter, and the Board finds that J&F violated Section 21(p)(1) of the Act.

Count III: Open Dumping of Used and Waste Tires

In count III, the People allege that J&F caused or allowed the open dumping of used or waste tires at the site in violation of Section 55(a) of the Act. A tire is 'used' if it is worn, damaged or defective and not mounted on a vehicle wheel rim. *See* 415 ILCS 5/54.13 (2000). A 'waste tire' is a used tire that has been disposed of. *See* 415 ILCS 5/54.16 (2000).

The record shows that respondent dumped worn and damaged tires, not mounted on vehicle wheel rims, at the site from July 7, 1999 until the filing of the complaint. The record also shows that the site was not a sanitary landfill. The Board accordingly finds that J&F violated Section 55(a) of the Act.

Count IV: Conducting a Waste Disposal Operation Without a Permit

In count IV, the People allege that J&F disposed of waste at the site without first obtaining the appropriate permit thereby conducting a waste disposal operation in violation of Section 21(d)(1) of the Act and 35 Ill. Adm. Code 812.101. As stated above, from June 7, 1999 until May 23, 2000, J&F regularly transported construction and demolition debris, scrap metal piping and wiring, scrap wood and scrap vinyl to the site, and deposited the materials on the ground. The record shows that J&F did not apply to the Agency for or obtain a permit to conduct a waste disposal operation at the site during this time.

The Board finds that the respondent violated Section 21(d)(1) of the Act and 35 Ill. Adm. Code 812.101(a) because it did not have a permit from the Agency to conduct a waste-storage, waste-treatment, or waste-disposal operation at the site.

Count V: Waste Disposal at an Improper Site

In count V, the People allege that J&F disposed of waste at the site that was not permitted for waste disposal, and therefore did not meet the requirements of the Act. The People allege this resulted in a violation of Section 21(e) of the Act. As stated above, from June 7, 1999 until May 23, 2000, J&F regularly transported construction and demolition debris, scrap metal piping and wiring, scrap wood and scrap vinyl to the site, and deposited the materials at a site not permitted for waste disposal. Accordingly, the Board finds that the respondent violated Section 21(e) of the Act.

Count VI: Failure to Make a Special Waste Determination

In count VI, the People allege that J&F failed to make a special waste determination on the oil-contaminated soil from July 7, 1999 to the present, thereby violating 35 Ill. Adm. Code 808.121 and Section 21(d)(2) of the Act. The Act defines “generator” as any person whose act or process produces waste. 415 ILCS 5/3.12 (2000).

The record shows that J&F dumped, spilled or disposed of used oil onto the ground, and that from July 7, 1999 to the present, J&F failed to test the oil-contaminated soil at the site to determine whether it is a special or hazardous waste.

The Board finds that by dumping, spilling, or disposing of the used oil onto the ground, J&F became a generator as defined by the Act. Further, as a result of these actions, J&F conducted a waste disposal operation. The Board finds that by failing to make a special waste determination on the oil-contaminated soil from July 7, 1999 to the present, J&F violated 35 Ill. Adm. Code 808.121, and thereby also violated Section 21(d)(2) of the Act.

Count VII: Failure to Make a Hazardous Waste Determination

In count VII, the People allege that J&F generated solid waste without making a hazardous determination from July 7, 1999, to the present, thereby violating 35 Ill. Adm. Code 722.111 and Section 21(d)(2) of the Act. Materials are solid wastes if they are abandoned by being “1) disposed of; or 2) burned or incinerated; or 3) accumulated, stored or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated.” 35 Ill. Adm. Code 721.102.

The record shows that J&F dumped, spilled or disposed of used oil onto the ground, and that from July 7, 1999 to the present, J&F failed to test the oil-contaminated soil at the site to determine whether it is a special or hazardous waste.

The Board finds that the used oil dumped, spilled or disposed onto the ground was a solid waste as defined in 35 Ill. Adm. Code 721.102. As previously state, J&F is a generator as defined by the Act. The Board finds that by generating solid waste without making a hazardous waste determination from July 7, 1999 to the present, J&F violated 35 Ill. Adm. Code 722.111, and that by conducting a waste disposal operation in violation of 35 Ill. Adm. Cod 722.111 also violated Section 21(d)(2) of the Act.

CONCLUSION

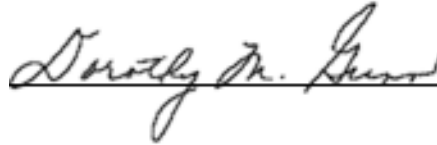
The Board deems admitted the material allegations set forth in the complaint in this matter. The Board finds that complainant is entitled to summary judgment in its favor as a matter of law on all of the alleged violations.

The Board finds that J&F violated Sections 21(a), (d)(1) and (2), (e), and (p)(1); and 55(a) of the Act (415 ILCS 5/21(a),(d)(1) and (2),(e),(p)(1) and 55(a) (2000) and 35 Ill. Adm. Code 722.11, 808.121, and 812.101(a). The Board also finds that J&F may be liable for all costs, pursuant to 42(f) of the Act, including attorney, expert witness, and consultant fees, expended by the State in pursuit of this action against J&F.

The Board directs the parties to hearing as expeditiously as practicable on the specific issue of the appropriate penalty amount, costs, and attorneys fees in this matter. The parties will be limited at hearing to testimony and evidence that are relevant to the factors as set forth in Sections 33(c), 42(f), and 42(h) of the Act (415 ILCS 5/33(c), 42(f), (h) (2000)).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 6, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board