

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

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STATE OF ILLINOIS
Pollution Control Board

COUNTY OF JACKSON,)
)
Complainant,)
)
v.) AC 06-32
) (Site Code: 0778005012)
)
DAVID SKIDMORE,)
)
)
Respondent.)

COMPLAINANT'S POST HEARING BRIEF

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

INTRODUCTION AND PROCEDURAL MATTERS

On March 31, 2006 the Complainant filed an Administrative Citation against David Skidmore, the Respondent, under Section 31.1 of the Illinois Environmental Protection Act 415 ILCS 5/1 *et. seq.*(2004)(the Act). It is alleged the Respondent violated Section 21(p)(1), (p)(3), and (p)(7) of the Act. The Respondent timely filed his response to the Citation on April 25, 2006. Hearing Officer, Carol Webb, heard this matter on July 5, 2006 in Murphysboro, Illinois. On July 6, 2006 she filed her Hearing Report with this Board.

FACTS

On February 23, 2006, certified solid waste inspector, Don Terry, inspected a site known herein after as the site (Site Code No. 0778005012) situated in a rural, unincorporated part of Jackson County, Illinois. Tr. 9. See Also Complainant Ex. 2. The inspection was conducted pursuant to the Jackson County Health Department's delegation agreement with the Illinois Environmental Protection Agency. Tr. 8-9. The site, at the time of the inspection,

was owned by the Respondent. Tr. 9. At the site Mr Terry observed a waste and burn pile, an abandoned mobile home in poor condition, ash, charred metal, general construction demolition debris, and lumber. Tr. 9-10 and Complainant's Ex. 2. See also Complainant's Ex. 1 (Inspection photos). He stated he could see the waste pile and debris with his naked eye from the public road adjoining the property. Tr. 10. He further testified the waste piles looked as if there had been recent burning. Tr. 9. The Respondent admitted to the waste piles and to the burning of building debris. Tr. 14-15 & 25-26. The Respondent's witness, Sondra Skidmore, also admitted to causing some of the burning. Tr. 28-29. Mr Terry stated the site did not have the proper permits for storing waste items. Tr. 13.

In its case in chief the Respondent provided testimony and photos that he cleaned the site; and it was much better than when he bought it. Tr. 22-23. He explained that some of the dumping and burning he did not cause or allow. Tr. 20. He also testified that he had placed no trespassing signs at his property to stop others from dumping at his site. Tr. 18-19. He also stated some of the dumping and burning had occurred before he bought the site. Tr. 17-21.

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 (2004). Refuse is defined as "waste" (415 ILCS 5/3.385 (2004)). Disposal is defined as "the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste . . . into or on any land . . ." 415 ILCS 5/3.185 (2004)). 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 (2004). Section 3.535 defines waste as "any garbage . . . or other discarded material. . . ." 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"

The evidence presented herein clearly shows Mr. Skidmore caused or allowed the deposition of litter, waste, general construction demolition debris and burning at the site. It is not contested the Respondent owned and controlled the site at all material times. Taking the inspection report, the photos of the site, the inspector's testimony and the Respondent's and his witness's statements leaves little room for the Respondent to argue a defense to this charges.

Nevertheless the Respondent argues he has cleaned the site and it looks better than when he bought it. 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).

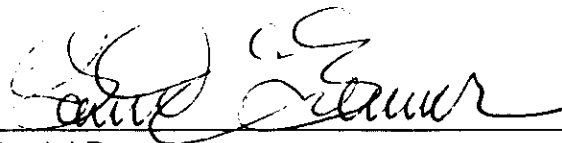
Additionally the Respondent raises the issue, at least with respect to some of the debris, that he bought the site with the violations, or others came on to his site without permission to dump, and he should not be responsible for that debris. The Board has rejected

that argument. IEPA v. Coleman, AC-04-46 (November 4, 2004); IEPA v. Cadwallader, AC-03-13 (May 20, 2004). The record shows in this instance that other than putting up a 'No Trespassing' sign at the site, little else was done by the Respondent to prevent others from dumping at the site. More importantly, and despite his argument, the Respondent admitted to causing some of the dumping and burning of debris on his site.

CONCLUSION

Therefore, 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), (p)(3), and (p)(7) of the Act on February 23, 2006 and impose a fine of \$4,500.00 (\$1,500.00 for each violation).

Respectfully submitted,



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For the Complainant

PROOF OF SERVICE

I hereby certify that I did on the 1st day of August, 2006, 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 COMPLAINANT'S POST HEARING BRIEF.

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

David Skidmore
1 Mineral Springs Dr.
Ava, IL 62907

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



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