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AUG 16 2007

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS**  
**ADMINISTRATIVE CITATION Pollution Control Board**

COUNTY OF JACKSON, )  
)  
Complainant, )  
)  
v. ) AC 07-43  
) (Site Code: 0778105047)  
)  
BOB OSINGA, )  
)  
Respondent. )

**COMPLAINANT'S POST HEARING BRIEF**

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

**INTRODUCTION AND PROCEDURAL MATTERS**

On February 14, 2007 the Complainant filed an Administrative Citation against Bob Osinga, the Respondent, under Section 31.1 of the Illinois Environmental Protection Act 415 ILCS 5/1 *et. seq.*(2006)(the Act). It is alleged the Respondent violated Section 21(p)(1) and (p)(7) of the Act. The Respondent timely filed his response to the Citation on March 12, 2007. Hearing Officer, Carol Webb, heard this matter on July 19, 2007 in Murphysboro, Illinois. On July 23, 2007 she filed her Hearing Report with this Board.

**FACTS**

On January 9, 2007, Environmental Compliance Inspector, Don Terry, inspected a site known herein after as the site (Site Code No. 0778105047) situated in a rural, unincorporated part of Jackson County, Illinois. Tr. 7-8. 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. 7. The site, at the time of the inspection, was owned by the Respondent. Tr. 8. See also Complainant's Ex. 2. At the site Mr Terry observed construction and demolition type material, barrels, an uninhabited and collapsing mobile home, scrap metal, plastic containers and air conditioning covers and units. Tr. 8, 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 way adjoining the property. Tr. 11. The Respondent generally admitted to the waste. Tr. 12-13, 15. Mr Terry stated the site did not have the proper permits for storing waste items. Tr. 11.

In its case in chief the Respondent provided testimony that was cleaning the site. Tr. 12-13. Respondent did not offer a defense to the allegations. His only explanation to the allegations was that he was cleaning the site.

### **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 (2006). Refuse is defined as "waste" (415 ILCS 5/3.385 (2006)). 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 (2006)). 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 (2006). 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 (2006) 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 . . . .”

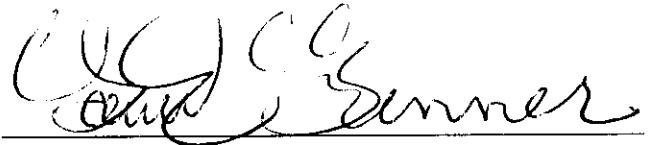
The evidence presented herein clearly shows Mr. Osinga caused or allowed the deposition of litter, waste and general construction demolition debris at the site. It is not contested the Respondent owned and controlled the site at all material times. Taking the inspection report, the photos of the site,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

Nevertheless the Respondent explains he has been cleaning the site. 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). More importantly, and despite his argument, the Respondent does not deny he is responsible for the waste and 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) and (p)(7) of the Act on January 9, 2007 and impose a fine of \$3,000.00 (\$1,500.00 for each violation).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel Brenner". The signature is written in a cursive style and is positioned above a horizontal line.

Daniel Brenner  
Assistant State's Attorney  
Jackson County Courthouse, Third Floor  
Murphysboro, Illinois 62966  
618-687-7200

For the Complainant

**PROOF OF SERVICE**

I hereby certify that I did on the 13<sup>th</sup> day of August, 2007, 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 BRIEF.

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

Bob Osinga  
88 S. Jungle Road  
Murphysboro, IL 62966

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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