

ILLINOIS POLLUTION CONTROL BOARD
March 19, 2009

CITY OF CHICAGO DEPARTMENT OF)
ENVIRONMENT,)
)
Complainant,)
)
v.) AC 06-39
) (Administrative Citation)
SPEEDY GONZALEZ LANDSCAPING,)
INC.,)
)
Respondent.)

CITY OF CHICAGO DEPARTMENT OF)
ENVIRONMENT,)
)
Complainant,)
)
v.) AC 06-40
) (Administrative Citation)
JOSE R. GONZALEZ,)
)
Respondent.)

CITY OF CHICAGO DEPARTMENT OF)
ENVIRONMENT,)
)
Complainant,)
)
v.) AC 06-41
) (Administrative Citation)
1601-1759 EAST 130th STREET, L.L.C.,)
)
Respondent.)

CITY OF CHICAGO DEPARTMENT OF ENVIRONMENT,)	
)	
Complainant,)	
)	
v.)	AC 07-25
)	(Administrative Citation)
1601-1759 EAST 130th STREET, L.L.C.,)	(Consolidated)
)	
Respondent.)	

JENNIFER A. BURKE AND GRAHAM G. McCAHAN, CITY OF CHICAGO DEPARTMENT OF LAW, APPEARED ON BEHALF OF COMPLAINANT; and

JEFFREY J. LEVINE, JEFFREY J. LEVINE, P.C., APPEARED ON BEHALF OF RESPONDENTS.

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

Today the Board consolidates and renders decisions in four administrative citation cases. Each of the four citations, corresponding to dockets AC 06-39, AC 06-40, AC 06-41, and AC 07-25, was issued by the complainant, the City of Chicago Department of Environment (CDOE). The site at issue in all four citations is located at 1601 E. 130th Street in Chicago, Cook County. The site is roughly 7.5 acres in size and is designated with Site Code No. 0316485103. Dockets AC 06-39, AC 06-40, and AC 06-41 concern a single site inspection that took place on March 22, 2006, while the site inspection at issue in docket AC 07-25 took place on October 3, 2006. For the reasons below, the Board finds that CDOE proved some but not all of the alleged violations.

Each of the three administrative citations concerning the March 22, 2006 site inspection (dockets AC 06-39, AC 06-40, and AC 06-41) alleges that the respective respondent violated Sections 21(p)(1), (p)(2), (p)(3), (p)(4), and (p)(7)(i) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(2), (p)(3), (p)(4), (p)(7)(i) (2006)) by causing or allowing the open dumping of waste in a manner resulting in litter, scavenging, open burning, the deposition of waste in standing water, and the deposition of general construction or demolition debris. With each of these three citations, CDOE seeks the statutory civil penalty of \$1,500 per violation, for a total civil penalty of \$7,500 against each respondent, *i.e.*, \$7,500 against Speedy Gonzalez Landscaping, Inc. (SGLI) in AC 06-39; \$7,500 against Jose R. Gonzalez (Mr. Gonzalez) in AC 06-40; and \$7,500 against 1601-1759 East 130th Street, L.L.C. (130th LLC) in AC 06-41. Accordingly, through the first three citations, CDOE asks the Board to impose a total of \$22,500 in civil penalties, as well as hearing costs.

The fourth administrative citation (docket AC 07-25), which is based on the October 3, 2006 site inspection, alleges that 130th LLC violated Sections 21(p)(1) and (p)(7)(i) of the Act

(415 ILCS 5/21(p)(1), (p)(7)(i) (2006)) by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of general construction or demolition debris. With this citation, CDOE seeks the statutory civil penalty of \$1,500 per violation, for a total civil penalty of \$3,000 against 130th LLC, as well as hearing costs.

As discussed in this opinion, CDOE did not establish that SGLI (AC 06-39) caused or allowed the open dumping of waste on March 22, 2006. In the absence of violations by SGLI, the Board will impose no civil penalties or hearing costs on SGLI.

The Board does find that on March 22, 2006, Mr. Gonzalez (AC 06-40) and 130th LLC (AC 06-41) allowed the open dumping of waste in a manner resulting in litter, scavenging, open burning, and the deposition of general construction or demolition debris, violating Sections 21(p)(1), (p)(2), (p)(3), and (p)(7)(i) of the Act, respectively. None of these violations resulted from “uncontrollable circumstances” within the meaning of the Act. As pled by CDOE, Mr. Gonzalez and 130th LLC is each subject to a civil penalty of \$6,000 for the four violations. These two respondents must also pay the respective hearing costs of CDOE and the Board. However, because CDOE did not prove that Mr. Gonzalez or 130th LLC caused or allowed the open dumping of waste in a manner resulting in the deposition of waste in standing water, the Board finds no violation of Section 21(p)(4) of the Act on March 22, 2006.

Finally, the Board finds that the fourth citation must be dismissed because it was improperly issued. 130th LLC is therefore not subject to civil penalties or hearing costs in docket AC 07-25.

After finding the above violations in this interim opinion and order, the Board directs CDOE and the Clerk of the Board to provide cost documentation for the AC 06-40 and AC 06-41 hearings. Mr. Gonzalez (AC 06-40) and 130th LLC (AC 06-41) may respond to the respective hearing cost documentation. After the time periods for the hearing cost filings expire, the Board will issue a final opinion and order stating the violations found and assessing the civil penalties and appropriate hearing costs. The final opinion and order will constitute final action by the Board with respect to all four administrative citation proceedings.

Below, the Board first provides the legal framework for administrative citations. Next, the Board sets forth the procedural history of all four administrative citations, after which the Board rules on motions to consolidate, motions to dismiss, motions to strike, and an offer of proof. This is followed by the Board’s findings of fact and a summary of the parties’ arguments. The Board then discusses the alleged violations and renders its legal conclusions.

LEGAL FRAMEWORK

Under the Act (415 ILCS 5 (2006)), an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may be filed only by the Illinois Environmental Protection Agency (Agency) or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2006); 35 Ill. Adm. Code 108.

The Agency or delegated local authority must serve the administrative citation on the respondent within “60 days after the date of the observed violation.” 415 ILCS 5/31.1(b) (2006); *see also* 35 Ill. Adm. Code 108.202(b). The Agency or delegated local authority also must file a copy of the administrative citation with the Board no later than ten days after serving the respondent. *See* 415 ILCS 5/31.1(c) (2006). To contest the administrative citation, the respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. If the respondent fails to do so, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(1) (2006); 35 Ill. Adm. Code 108.204(b), 108.406.

If the respondent timely contests the administrative citation, but the complainant proves the alleged violations at hearing, the respondent will be held liable not only for the civil penalty but also for the hearing costs of the Board and the complainant. *See* 415 ILCS 5/42(b)(4-5) (2006); 35 Ill. Adm. Code 108.500. Because the Act (415 ILCS 5/42(b)(4-5) (2006)) specifies the penalty for a violation in an administrative citation action, the Board cannot consider mitigating or aggravating factors when determining penalty amounts. *See, e.g., IEPA v. Stutsman*, AC 05-70, slip op. at 2 (Sept. 21, 2006). However, if the Board finds that the respondent “has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.” 415 ILCS 5/31.1(d)(2) (2006); *see also* 35 Ill. Adm. Code 108.500(b).

PROCEDURAL MATTERS

Procedural History of All Four Administrative Citation Cases

CDOE filed the respective administrative citations in dockets AC 06-39, AC 06-40, and AC 06-41 on May 10, 2006. The three respondents filed their respective petitions for review in dockets AC 06-39, AC 06-40, and AC 06-41 on June 2, 2006. In separate orders of June 15, 2006, the Board accepted each petition for hearing.

CDOE filed the administrative citation in docket AC 07-25 on November 21, 2006.¹ 130th LLC filed a petition for review, along with a motion to consolidate AC 07-25 with AC 06-41, in which 130th LLC is also the named respondent. On January 4, 2007, the Board accepted the petition for hearing in AC 07-25, but reserved ruling on the consolidation motion to allow time for any response by CDOE. CDOE filed a response opposing consolidation. In a January 26, 2007 order, the Board denied the motion to consolidate, observing among other things that “AC 06-41 has been pending for approximately eight months and that the matter is, or will soon be, ready for hearing.” *CDOE v. 1601-1759 East 130th Street, L.L.C.*, AC 07-25, slip op. at 2 (Jan. 26, 2007). Thereafter, however, the four cases, AC 06-39, AC 06-40, AC 06-41, and AC 07-25, proceeded on essentially the same procedural path, with coordinated telephone status conference calls and discovery.

¹ The Board cites the administrative citations as follows: “AC(39) at _” for the citation in docket AC 06-39; “AC(40) at _” for the citation in docket AC 06-40; “AC(41) at _” for the citation in docket AC 06-41; and “AC(25) at _” for the citation in docket AC 07-25.

The AC 06-39 hearing was held on May 9, 2007, and resulted in a 219-page transcript (“Tr.(39) at _”). The AC 06-40 hearing was held on May 9, 2007, and was continued on May 17, 2007, and resulted in three separately-paginated transcripts: one 15-pages long (“Tr.(40A) at _”); the next 135-pages long (“Tr.(40B) at _”); and the third 140 pages in length (“Tr.(40C) at _”). The AC 06-41 hearing was held on May 17, 2007, and resulted in a 313-page transcript (“Tr.(41) at _”). The AC 07-25 hearing was held on May 17, 2007, and resulted in a 50-page transcript (“Tr.(25) at _”).

The following persons testified at the hearings indicated: Rafael Maciel, a senior environmental inspector with CDOE (Tr.(39) at 7; Tr.(40A) at 6; Tr.(41) at 78), testified at the AC 06-39 hearing and the AC 06-40 hearing; Chris Antonopoulos, an environmental investigator with CDOE (Tr.(40C) at 5; Tr.(41) at 218), testified at the AC 06-40 hearing; Stanley Kaehler, a field supervisor with CDOE (Tr.(25) at 8), testified at the AC 07-25 hearing; and Jose R. Gonzalez testified at all four hearings. The testimony of CDOE inspectors Maciel and Antonopoulos from the AC 06-40 hearing was, by stipulation of the parties, incorporated into the transcript of the AC 06-41 hearing. Tr.(41) at 6-7.

One exhibit was admitted at the AC 06-39 hearing, a CDOE exhibit. Four exhibits were admitted at the AC 06-40 hearing: three exhibits from CDOE and one from Mr. Gonzalez. Five exhibits were admitted at the AC 06-41 hearing: three exhibits from CDOE and two from 130th LLC. Two exhibits were admitted at the AC 07-25 hearing: one exhibit from CDOE and one from 130th LLC.

Dockets AC 06-39, AC 06-40, and AC 06-41 each have an identical CDOE hearing Exhibit A, which is cited by the Board as “CDOE Exh. A at _.” CDOE’s Exhibit B in the AC 06-40 and AC 06-41 hearings are identical and are cited by the Board as “CDOE(40/41) Exh. B at _.” CDOE’s Exhibit C in the AC 06-40 and AC 06-41 hearings are identical and are cited by the Board as “CDOE(40/41) Exh. C at _.” CDOE’s Exhibit A in the AC 07-25 hearing is cited as “CDOE(25) Exh. A at _.” Hearing Exhibit A of Mr. Gonzalez in AC 06-40 and hearing Exhibit A of 130th LLC in AC 06-41 are identical and are cited by the Board as “Resp.(40/41) Exh. A at _.” 130th LLC’s Exhibit B in the AC 06-41 hearing is cited as “130th LLC(41) Exh. B at _.” 130th LLC’s Exhibit A in the AC 07-25 hearing is cited as “130th LLC(25) Exh. A at _.”

On June 22, 2007, CDOE filed its four initial post-hearing briefs for the four administrative citation actions (“CDOE(39) Br. at _”; “CDOE(40) Br. at _”; “CDOE(41) Br. at _”; “CDOE(25) Br. at _”). With the hearing officer’s leave, the four respondents filed their respective response briefs on August 6, 2007 (“SGLI Resp. Br. at _”; “Mr. Gonzalez Resp. Br. at _”; “130th LLC(41) Resp. Br. at _”; “130th LLC(25) Resp. Br. at _”).

On August 6, 2007, respondents filed four identical motions to consolidate all four proceedings (“Mot. Consol. at _”). Also on August 6, 2007, the four respondents filed identical motions to dismiss their respective administrative citations (“Mot. Dism. at _”). On August 17, 2007, CDOE filed four identical motions to strike the four motions to dismiss (“Mot. Strike at _”). Also on August 17, 2007, CDOE filed four identical responses opposing the consolidation motions (“CDOE Resp. Consol. at _”).

In accordance with the hearing officer orders of April 22, 2008, CDOE filed its four reply briefs on May 13, 2008 (“CDOE(39) Reply Br. at _”; “CDOE(40) Reply Br. at _”; “CDOE(41) Reply Br. at _”; “CDOE(25) Reply Br. at _”). With the hearing officer’s leave, the four respondents filed their respective surreply briefs on June 30, 2008 (“SGLI Surreply Br. at _”; “Mr. Gonzalez Surreply Br. at _”; “130th LLC(41) Surreply Br. at _”; “130th LLC(25) Surreply Br. at _”).

During the January 8, 2009 telephone status conferences for the four proceedings, CDOE represented that while the parties continue settlement discussions, those discussions should not delay the Board’s decisions.

Respondents’ Motions to Consolidate All Four Administrative Citation Cases

After the four hearings were held, all respondents filed identical motions to consolidate the four administrative citation actions. Regarding the three administrative citations issued based on the March 22, 2006 site inspection (dockets AC 06-39, AC 06-40, and AC 06-41), respondents state:

The facts in each case are the same. The allegations arose out of claims made at the same property, largely on the same date and involved the testimony of the same witnesses. The only difference in the cases [is] the identity of the Respondents. However, those Respondents are interconnected. Jose Gonzalez owns both Speedy Gonzalez Landscaping, Inc., and 1601-1759 East 130th Street, LLC. All Respondents are represented by the same counsel. *** No differences exist in the proof presented by the Department of Environment between the three respondents except their individual name. Mot. Consol. at 1.

Respondents add that during the individual hearings, the parties stipulated to allow witness testimony in one action be used in another action. *Id.* at 1-2.

Referencing their motions to dismiss (discussed below), respondents further assert that the “veracity of testimony given by Complainant’s witnesses is called into question when the testimony is compared in the different actions.” Mot. Consol. at 2. Respondents maintain that the “baseless” nature of many of the “multiple claims” made by CDOE is “only revealed when the testimony is compared from each action.” *Id.*

On August 17, 2007, CDOE filed a response opposing respondents’ motions for consolidation. CDOE states that the hearings and post-hearing briefs have been separate. CDOE argues that it would be materially prejudiced unless it is “granted leave to re-write each of its post-hearing briefs to consider testimony and evidence presented in the related proceedings,” which in turn would lead to delay. CDOE Resp. Consol. at 2-3.

Section 101.506 of the Board’s procedural rules states:

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings where the burdens of proof vary. 35 Ill. Adm. Code 101.406.

As is plain in the rule, the Board may consolidate proceedings for decision even if they were not consolidated for hearing. Here, the hearings were conducted separately, though consecutively, and the parties have stipulated to incorporating testimony from one hearing into the transcript of another hearing. Many of the witnesses and hearing exhibits are the same. Of course, the burden of proof does not vary. The site and complainant are the same in all four proceedings, and the respondents are either related or the same. The first three administrative citations concern a single inspection and allege the same violations. The fourth administrative citation is based on a later inspection, but the case raises issues that originated with the first inspection, as elaborated upon later in this opinion. Many of the legal theories of liability and defense are the same in all four proceedings.

Especially in light of the identity of facts and legal issues across the cases and the nature of respondents' motions to dismiss, the Board finds that consolidation of the four proceedings will promote the most convenient, expeditious, and complete determination of all claims. The hearing officer informed the parties in March of 2008 that the Board would take the motions to consolidate with the case, but CDOE did not seek leave to amend its briefs. More importantly, however, having reviewed all of the hearing transcripts and exhibits along with all of the post-hearing briefs, the Board finds that consolidation at this juncture in no way materially prejudices any party. The Board grants respondents' motions to consolidate the four administrative citation cases for purposes of decision. Future filings must reflect the caption of this interim opinion and order.

Respondents' Motions to Dismiss All Four Administrative Citations
CDOE's Motions to Strike Respondents' Motions to Dismiss

On August 6, 2007, SGLI, Mr. Gonzalez, and 130th LLC filed identical motions to dismiss the four administrative citations brought against them. Respondents seek dismissal based on alleged CDOE misconduct, including solicitation of a bribe, false allegations, inadequate investigation, selective prosecution, selective responses in deposition testimony, failure to provide subpoenaed documents, and false testimony. Mot. Dism. at 2-7.

CDOE filed identical motions to strike respondents' motions to dismiss on August 17, 2007. Relying on Section 101.504 of the Board's procedural rules (35 Ill. Adm. Code 101.504), CDOE asserts that the motions should be stricken because they cite no legal authority or legal basis for the relief requested. Mot. Strike at 2. Section 101.504 of the Board's procedural rules provides in relevant part: "All motions and responses must clearly state the grounds upon which the motion is made and must contain a concise statement of the position or relief sought." 35 Ill. Adm. Code 101.504.

CDOE also argues that the motions are untimely under the “30-day limit” of 35 Ill. Adm. Code 101.506. Mot. Strike at 2. Section 101.506 of the Board’s procedural rules provides:

All motions to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board must be filed within 30 days after the service of the challenged document, unless the Board determines that material prejudice would result. 35 Ill. Adm. Code 101.506

CDOE concludes that the dismissal motion “simply is a rant of unsupported legal and factual argument which is directed at the sufficiency of the City’s case-in-chief as presented at the hearings,” adding that arguments should be limited to the record at hearing or post-hearing briefs. Mot. Strike at 2.

The Board notes initially that it is troubled by the lack of any citation to legal authority in respondents’ motions to dismiss. The Board cannot find, however, that the motions fail to state any supporting “grounds” as required of motions by Section 101.504 of the Board’s procedural rules. The motions do provide reasons why respondents believe dismissal is appropriate. Nor do respondents’ motions to dismiss run afoul of Section 101.506. The motions, which were filed in early August 2007, are premised not on a “pleading” filed with the Board but instead on testimony provided at hearing, the transcripts of which arrived in late May or early June 2007.

Given the gravity of the charges leveled by respondents, and the concomitant risk of material prejudice to respondents if the Board were not to consider their dismissal motions, the Board denies CDOE’s motions to strike. The parties were informed by the hearing officer in March 2008 that the Board would take the motions to dismiss and strike with the case, but CDOE did not file responses to respondents’ motions to dismiss. In the interest of administrative economy and expeditious decision, the Board will rule on respondents’ motions without any CDOE responses.

The Board has carefully reviewed all of the charges made by respondents in the motions to dismiss. Many of the offenses CDOE allegedly committed are very serious, but none of them have merit. First, evidence relating to the claimed attempt of CDOE inspector Maciel to solicit a bribe is inconclusive. Second, for the purportedly false allegations, respondents refer to a list of *municipal* violations attached to the inspection checklist. Administrative citations are limited to alleged violations of Sections 21(o) and (p) of the Act (415 ILCS 5/21(o), 21(p), 31.1(a) (2006)), and the municipal violations were never pled in the administrative citations here. Respondents also make arguments about liability and the uncontested fact of who owns the property at issue, but nowhere identify false allegations.

Third, in claiming dismissal is required because CDOE inadequately investigated and then selectively prosecuted these cases, respondents assert that CDOE also should have issued administrative citations to the Chicago Transit Authority (CTA), E. King Hauling, and Paschen Construction. In making these claims, respondents fail to understand the administrative citation process under the Act. Once an administrative citation is timely filed and contested, the Board decides whether the complainant has met the burden of proving the alleged violation under the

Act. 415 ILCS 5/31.1(d)(2) (2006). However, to whom CDOE issues administrative citations is not within the Board's purview, but rather is within CDOE's prosecutorial discretion as a delegated unit of local government. 415 ILCS 5/4(r) (2006). The Act, by its terms, does not require that the complainant issue administrative citations to every possible respondent for a given occurrence. 415 ILCS 5/31.1(b) (2006).

As for alleged irregularities in discovery, the FBI training of CDOE inspector Maciel is irrelevant, and the documentation here consisted of customary documents for an administrative citation proceeding, including an inspection checklist, a narrative evaluation, a site sketch, and photographs of the property. Moreover, counsel for all respondents, Jeffrey J. Levine, had multiple hearings to solicit cross-examination testimony about the March 22, 2006 site inspection, and consolidation is granted above. The alleged discovery omissions were harmless.

Finally, the allegedly false testimony of CDOE inspector Maciel centers around whether he believed debris was being deposited on or removed from the site when he arrived there on March 22, 2006. The Board has reviewed the entirety of the CDOE witness' testimony and related documentary evidence, and finds that the claimed false testimony is merely in the nature of clarification and amplification. As discussed later in this opinion, the debris in question, which was originally destined for CID Landfill, was *both* deposited on and later removed from the site. The Board can and does give appropriate weight to all record evidence, and finds no material prejudice to respondents here.

For all of these reasons, the Board denies the respective motions to dismiss.

Offer of Proof in AC 06-39

In AC 06-39, counsel for SGLI made an offer of proof at hearing after CDOE counsel's objection to a line of questioning was sustained by the hearing officer. Based on lack of relevance, CDOE objected to questioning regarding an alleged solicitation of bribery. Tr.(39) at 125-26. SGLI's questioning concerned whether CDOE inspector Maciel solicited a bribe from Mr. Gonzalez prior to the March 22, 2006 site inspection. Tr.(39) at 126-28, 181-83. The Board has reviewed the questions and testimony making up SGLI's offer of proof, along with the evidence contradicting the claim. The Board cannot find these grave allegations irrelevant. The Board accepts the offer but, as stated above, finds the claim of bribery solicitation unsubstantiated.

FACTS

The facts concerning the March 22, 2006 inspection are set forth first, followed by the facts concerning the October 3, 2006 inspection.

AC 06-39, AC 06-40, AC 06-41 (March 22, 2006 Site Inspection)

Respondents, Site, and Inspection

The site is located at 1601 E. 130th Street in Chicago, Cook County, and is designated with Site Code No. 0316485103 (the Site). CDOE Exh. A at 6²; Tr.(39) at 8; Tr.(40A) at 7-8; Tr.(40C) at 6-7; Tr.(41) at 79, 220, 222-23. The Site was inspected on Wednesday, March 22, 2006, by CDOE inspectors Rafael Maciel, Edward Collins, and Chris Antonopoulos, by a CDOE field supervisor, Stanley Kaehler, and by CDOE Director of Inspections, John Kryl. CDOE Exh. A at 2, 6-7; Tr.(39) at 8, 15, 55-56, 102, 114, 131, 139, 146-47; Tr.(40A) at 7-8, 11, 16; Tr.(40C) at 6-8; Tr.(41) at 79, 81-83, 220, 222-23. The inspection began at 10:00 a.m. and concluded at 1:30 p.m. CDOE Exh. A at 2.

On March 22, 2006, the Site was owned by 130th LLC. Tr.(39) at 171-72; Tr.(40B) at 120-21; Tr.(41) at 10-11, 17-18, 67-68; CDOE Exh. A at 32. 130th LLC acquired the Site in January 2005. Tr.(40C) at 134-35; Tr.(41) at 67-68; CDOE(40/41) Exh. B.³ Mr. Gonzalez owns 130th LLC. Tr.(41) at 10-11; Tr.(39) at 172. SGLI is a landscaping company owned by Mr. Gonzalez. Tr.(39) at 40, 100, 171.

No permits have been issued by the Agency for any operations at the Site. Tr.(40C) at 134; Tr.(41) at 67. The Site has a roughly 10,000-square foot, metal warehouse on it, located in the Site's southeast corner. The Site is otherwise vacant of structures, though a concrete slab is present roughly in the center of the Site. The warehouse and slab were present at the time 130th LLC acquired the Site. Tr.(39) at 23, 187; Tr.(40B) at 5-6; Tr.(40C) at 102, 112; Tr.(41) at 31, 88-89, 145; CDOE Exh. A at 8.

The Site has a single entrance, which has a chain-link fence and gate with a chain and lock. The entrance is at the northeastern corner of the Site, off of East 130th Street. The northern and western perimeter of the Site has a roughly four-foot tall berm, with vegetation growing out of the top of the berm. The Site is bordered by railroad tracks to the south and by a business and fence to the east. Tr.(39) at 10-11, 62-64, 173, 197-98; Tr.(40A) at 9; Tr.(40B) at 12-14, 86; Tr.(40C) at 8, 27, 122; Tr.(41) at 80-81, 95-97, 169, 189, 207, 230, 274; CDOE Exh. A at 8, 9-11 (Photos 1-5) 14 (Photo 12), 16 (Photo 15), 18 (Photo 18), 20 (Photo 20). The person who sold the Site to 130th LLC created the berm by scrapping up and pushing to the border the surface of the Site. Tr.(40C) at 122; Tr.(41) at 49. The Site cannot be accessed by a vehicle except through the Site entrance. Tr.(40C) at 17-18, 27-28, 108, 123; Tr.(41) at 240.

² CDOE's Exhibit A in the AC 06-39, AC 06-40, and AC 06-41 hearings are identical. The exhibits include an open dump inspection checklist, a narrative evaluation, a sketch of the Site, and photographs from the March 22, 2006 inspection. The Board cites the exhibits as "CDOE Exh. A at _."

³ CDOE's Exhibit B in the AC 06-40 and AC 06-41 hearings is a trustee's deed. The exhibits are identical. The Board cites the exhibits as "CDOE(40/41) Exh. B."

Brown Line Renovation Materials

At the time of the March 22, 2006 inspection, approximately 800 cubic yards of materials from a CTA Brown Line renovation project at 567 West Lake Street, Chicago, were present at the Site, deposited directly on the ground. The CTA materials included broken concrete, bricks, wood, soil, scrap metal, and plastic piping. Tr.(39) at 17, 25, 60, 112, 177, 213; Tr.(40A) at 34, 42; Tr.(40B) at 10; Tr.(40C) at 114, 116, 125; Tr.(41) at 12, 15-16, 22, 18, 84-85, 93, 117, 137-38, 307-08; CDOE Exh. A at 6-7, 13 (Photos 9, 10), 17 (Photo 17), 21 (Photo 21), 22 (Photo 22); Resp.(40/41) Exh. A.⁴ Some of the soil in the CTA material was discolored and had an odor. Tr.(39) at 25, 159; Tr.(40B) at 10, 95-96; Tr.(41) at 84, 93, 178-79; CDOE Exh. A at 13 (Photos 9, 10).

When CDOE inspectors first arrived at the Site, a dump truck from E. King Hauling was present at the Site, as was a front-end loader, which was pushing CTA debris into a larger pile. A second E. King Hauling dump truck arrived during the inspection. CDOE Exh. A at 6; Tr.(39) at 10, 16, 24-25, 31-32, 46-47, 136, 163; Tr.(40A) at 12; Tr.(40B) at 7-10; Tr.(41) at 25, 80-81, 83, 90-93. With the aid of the front-end loader, the trucks received loads of the CTA debris. The trucks were then transporting CTA material off-site for disposal at Waste Management's CID Landfill, which neighbors the Site. Tr.(39) at 10, 14, 25, 43-44, 61, 74-78, 137-38, 179-80, 194-95, 203-04, 211-12; Tr.(40B) at 54-55, 67-68, 70-71; Tr.(40C) at 116, 125-26, 132; Tr.(41) at 12-13, 15-16, 22, 25, 53-54, 62-63, 65-66, 80, 150-51, 154, 156, 190, 244, 259, 300; CDOE Exh. A at 6, 21 (Photo 21), 23-31; Resp.(40/41) Exh. A.⁵

Mr. Gonzalez arrived at the Site during the CDOE inspection, after receiving a call informing him that a CDOE inspector had stopped a dump truck operator from leaving the Site. CDOE inspector Maciel told the driver of an E. King Hauling dump truck not to leave the Site and not to remove any material from the Site until further notice. The dump truck driver and the operator of the front-end loader indicated they would continue their work unless Mr. Gonzalez told them otherwise. CDOE Exh. A at 6; Tr.(39) at 29-33, 45-46, 47-49, 74, 80-81, 96-98, 116, 150, 180; Tr.(40A) at 47-49; Tr.(40B) at 11, 68-69; Tr.(41) at 61-62, 101, 151-53, 170. The driver of the truck worked for E. King Hauling and the operator of the front-end loader worked for either E. King Hauling or Paschen Construction. Tr.(39) at 184. Paschen Construction was a

⁴ Hearing Exhibit A of Mr. Gonzalez in AC 06-40 and hearing Exhibit A of 130th LLC in AC 06-41 is each a waste manifest. The exhibits are identical. The Board cites the exhibits as "Resp.(40/41) Exh. A."

⁵ As stated in footnote 2, CDOE's Exhibit A is identical in dockets AC 06-39, AC 06-40, and AC 06-41. In the AC 06-39 hearing, the AC 06-40 hearing, and the AC 06-41 hearing, counsel for respondents objected to admission of pages 23 through 31 of CDOE's Exhibit A, but was overruled by the hearing officer. Tr.(39) at 36-38; Tr.(40B) at 26-28; Tr.(41) at 8-9. Pages 23 through 31 of each Exhibit A constitute a fax transmission from Waste Management to CDOE of an analytical report prepared by First Environmental Laboratories, Inc. for the "CTA - Brown Line" project. CDOE Exh. A at 23-31. Respondents did not file their objections with the Board after hearing and therefore waive them. See 35 Ill. Adm. Code 101.502(b). The Board considers the analytical report not for the substance of its results but rather as further evidence that CTA debris was destined for CID Landfill.

contractor on the CTA renovation project and E. King Hauling was a hauler. Tr.(39) at 49, 88, 114-15, 177, 211; Tr.(40B) at 54-55; Tr.(40C) at 126; Tr.(41) at 12, 16, 138; CDOE Exh. A at 6; Resp.(40/41) Exh. A.

Mr. Gonzalez informed the CDOE inspectors that they were on private property, had no right to be there, and needed to leave. Mr. Gonzalez was asked by CDOE inspector Maciel to cease the removal activities on the Site. CDOE Exh. A at 6; Tr.(39) at 34-36, 74, 98, 194; Tr.(40B) at 25, 68-69; Tr.(41) at 61-62, 108, 197. In response, Mr. Gonzalez directed the operator of the front-end loader as follows:

I told the operator, "Just keep loading the trucks." I said, "We're not doing nothing illegal." I said, "We're loading it and we're taking it to a legal dump." I said, "Keep loading them." Tr.(39) at 194; *see also* Tr.(40C) at 110; Tr.(41) at 33-34, 52; CDOE Exh. A at 6.

The loading and releasing of trucks continued. Tr.(39) at 194-95; CDOE Exh. A at 6.

Mr. Gonzalez and E. King Hauling had entered into an agreement under which "contaminated soil" from the CTA renovation project would be staged at the Site by E. King Hauling over night and during weekends, until CID Landfill re-opened the next business day, at which point E. King Hauling would transport the material to CID Landfill. Tr.(39) at 14, 49, 61, 82, 140, 176-77; Tr.(40B) at 44; Tr.(40C) at 31-34, 76, 79-80, 112-13; Tr.(41) at 11-12, 61, 127, 138, 244-45, 259, 300, 302; CDOE Exh. A at 6; Resp.(40/41) Exh. A. The agreement called for E. King Hauling to pay Mr. Gonzalez \$500 per night for leasing the Site to so stage the CTA material. Tr.(39) at 177; Tr.(40C) at 112-13, 133; Tr.(41) at 61. As part of the agreement, Mr. Gonzalez gave E. King Hauling a key to the lock on the Site's entrance gate. Tr.(39) at 178; Tr.(40C) at 134; Tr.(41) at 61.

Under the agreement, E. King Hauling was supposed to keep all loads of CTA debris inside roll-off containers (dumpsters) or the beds of the dump trucks while on the Site. Tr.(39) at 49, 59-60, 73-74, 79-80, 140, 143, 177; Tr.(40B) at 44, 53, 84; Tr.(40C) at 31-35, 99, 113-14, 126; Tr.(41) at 12-13, 18, 61, 127, 136, 142-43, 167, 244, 262, 312; CDOE Exh. A at 6; Resp.(40/41) Exh. A. However, on the weekend of March 18 and 19, 2006, several days before the March 22, 2006 site inspection, E. King Hauling trucks placed CTA debris directly onto the ground at the Site. Tr.(39) at 177-179, 214; Tr.(40C) at 114; Tr.(41) at 13. On Monday, March 20, 2006, Mr. Gonzalez was informed that the Site gate was open, at which time Mr. Gonzalez travelled to the Site (approximately 10 minutes from his office) and discovered that an estimated 1,000 to 1,500 cubic yards of CTA debris had been deposited on the ground at the Site. Tr.(39) at 178-80; Tr.(40C) at 114, 116.

Burned Items

During the March 22, 2006 inspection, one or more E. King Hauling employees at the Site, to stay warm, were burning vegetation and wood debris that was deposited on the ground among concrete materials. Tr.(39) at 9-10, 17-18, 93, 195-96; Tr.(40A) at 8; Tr.(40B) at 15-16, 79-80, 88; Tr.(41) at 39, 80, 98-99, 163, 171, 198; CDOE Exh. A at 6, 18 (Photo 18). Also

present on the Site was a frayed wire with insulation. The wire and insulation had been burned and ash was present. Tr.(39) at 21-23, 100-102; Tr.(40B) at 115; Tr.(40C) at 12, 71; Tr.(41) at 224-25, 284; CDOE Exh. A at 12 (Photo 8).

Pre-Existing and “Fly-Dumped” Materials

When 130th LLC acquired the Site in January 2005, the Site already had debris on it (“pre-existing” debris), including piles of used tires, rusted street signs, and scrap metal. Tr.(39) at 173-74, 186-87; Tr.(40B) at 5; Tr.(40C) at 102, 108-09, 111-12; Tr.(41) at 11, 49-50; CDOE Exh. A at 15 (Photo 14), 16 (Photo 16); 130th LLC(41) Exh. B at 45 (Photo 3). The Site was purchased with the debris left in place after Mr. Gonzalez and the seller of the Site arrived at a financial accommodation, which was based on an estimated price for removing the pre-existing debris. Tr.(39) at 209-10. Before the acquisition, Mr. Gonzalez learned from the seller that “fly-dumping” on the Site was a recurring problem.⁶ Some of the pre-existing debris on the Site had been fly-dumped there. Tr.(39) at 173-74, 206, 209-10; Tr.(40C) at 108-09.

Mr. Gonzalez installed a locking gate at the Site entrance. The Site has had debris fly-dumped on it approximately 15 times since 130th LLC acquired the Site. Tr.(39) at 173-75, 205; Tr.(40C) at 106-07; Tr.(41) at 11, 25-27. When fly-dumpers have accessed the Site, they have knocked down the gate, pulled it off of its hinges, or cut its lock. Tr.(39) at 173-74, 205; Tr.(40C) at 107-08; Tr.(41) at 26-27. Mr. Gonzalez has repaired and made improvements to the gate numerous times. Tr.(39) at 175; Tr.(41) at 26. Mr. Gonzalez had the hinges welded onto the gate so there are no bolts that can be removed. Tr.(41) at 26. Mr. Gonzalez also added another lock and another bigger chain to the gate. *Id.*

The following materials were present at the Site and had been fly-dumped: a pile of vegetation debris, scrap metal, concrete, and bricks (Tr.(39) at 105-07, 175-76; Tr.(40A) at 13-14; Tr.(40B) at 5; Tr.(40C) at 106; Tr.(41) at 27, 242; CDOE Exh. A at 9 (Photo 1)); a pile of soil mixed with miscellaneous debris, including fencing materials (Tr.(39) at 105-07, 175-76; Tr.(40A) at 13-14; Tr.(41) at 242; CDOE Exh. A at 9 (Photo 2)); a pile of used mesh fabric (Tr.(39) at 17, 105-07, 175-76; Tr.(40C) at 108-09; Tr.(41) at 27-28, 242; CDOE Exh. A at 8, 10 (Photo 3)); piles of used concrete building blocks and dimensional lumber (Tr.(39) at 105-07, 175-76, 201-02; Tr.(40C) at 108-09; Tr.(41) at 27-28, 242; CDOE Exh. A at 10 (Photo 4), 11 (Photos 5, 6)); a pile of wood ties (Tr.(39) at 26-27, 215; Tr.(40B) at 4-5; Tr.(41) at 87-88; CDOE Exh. A at 8, 14 (Photo 11)); piles of scrap metal, broken concrete, soil, wood, and brick (Tr.(40C) at 111; CDOE Exh. A at 16 (Photo 15)); and piles of broken concrete, rebar, bricks, scrap metal, plastic piping, and wood ties situated in one-half to several-inch deep waters (Tr.(39) at 19-20, 196-200; Tr.(40B) at 6, 101-02; Tr.(40C) at 111; Tr.(41) at 89-90, 184-85, 194; CDOE Exh. A at 8, 15 (Photo 13), 18 (Photo 18), 19 (Photo 19)).

The fly-dumped piles were disorganized; most of the piles consisted of commingled materials; and none of the piles consisted of materials from or for an SGLI job. Tr.(40C) 27-29, 28, 93-94, 109; Tr.(39) at 195; Tr.(41) at 46, 241, 263.

⁶ For purposes of this opinion, the Board uses the term “fly-dumping” to refer to trespassers hauling waste materials onto the Site and depositing the materials on the ground at the Site.

Miscellaneous Items

Also on the Site was the body of a water tanker truck with the words “Speedy Gonzalez” spray-painted on its side. Tr.(39) at 25-27; CDOE Exh. A at 6, 8, 11 (Photos 5, 6). The water tanker formerly belonged to SGLI. Tr.(39) at 200-01. Mr. Gonzalez testified that the “old tanker”:

didn't pass the DOT inspection, so we basically have to cut it up and throw it away. If not, I have to spend, like, 8 grand to fix it, and it's not even worth it. *Id.* at 201.

Mr. Gonzalez added that the tanker was being stored at the Site for the time being. *Id.* Next to the tanker is a 48-foot flatbed truck that SGLI uses. *Id.* Mr. Gonzalez testified that the truck is used:

to store, like, materials when we do a playground. We take it out on-site, and we just put all the materials in there and lock it for playgrounds. *Id.*

Gravel Road and Cleanup

Approximately one week before the March 22, 2006 site inspection, Mr. Gonzalez arranged to have gravel brought onto the Site and spread to make a road. The gravel road allowed vehicles to drive on the Site without getting stuck in the mud. Tr.(39) at 187-92; Tr.(40B) at 88-89; Tr.(40C) at 38, 73-74, 104-05; Tr.(41) at 28-29, 32, 172-73, 251, 287; CDOE Exh. A at 11 (Photo 5), 12 (Photo 7), 14 (Photo 11). Mr. Gonzalez purchased approximately 25 to 30 semi-truck loads of gravel for the job. Tr.(40C) at 104; Tr.(41) at 28-29. The gravel road was necessary for the E. King Hauling trucks to use the Site for staging CTA debris as contemplated by the agreement. Tr.(39) at 191; Tr.(40C) at 104-06; Tr.(41) at 29. The gravel road was initially about 200 feet long, extending from the entrance gate toward the west. Tr.(40C) at 105; Tr.(41) at 28-31; CDOE Exh. A at 8.

Early in the morning of Monday, March 20, 2006, Mr. Gonzalez complained to Elaine King of E. King Hauling about the CTA material having been deposited on the ground at the Site. E. King Hauling trucks arrived at the Site at roughly 8:00 a.m. on March 20, 2006, and a front-end loader arrived later that day, to begin removing the CTA debris from the Site. Tr.(39) at 176, 179; Tr.(40C) at 114-15; Tr.(41) at 19-21, 41. The cleanup work for the CTA debris began that Monday, and was continuing on Wednesday, March 22, 2006, when the CDOE inspectors arrived at the Site at 10:00 a.m. Tr.(39) at 179-180; Tr.(40C) at 110; CDOE Exh. A at 6-7. Mr. Gonzalez did not pay for the cleanup of the CTA debris from the Site, and all workers on the Site at the time of the CDOE inspection were employed by E. King Hauling or Paschen Construction. Tr.(39) at 179, 184-86; Tr.(41) at 25.

So that CID Landfill would continue to accept the CTA materials for disposal, workers from E. King Hauling came to the Site and began removing broken concrete, bricks, wood debris, rubber, wood ties, and piping from the CTA material piles. The workers sorted these

removed materials into segregated piles on the Site. Tr.(39) at 29, 133-34, 175-76, 202-03, 211-213, 215-16; Tr.(40A) at 12; Tr.(40B) at 4-5, 14-15, 118-19; Tr.(40C) at 110, 117-19, 132-33; Tr.(41) at 22, 24-25, 29, 39, 41-42, 58-60, 63-64, 70, 83, 88, 97-98, 201-02, 264-65; CDOE Exh. A at 6, 10 (Photo 4), 11 (Photo 6), 14 (Photo 12), 21 (Photo 21), 22 (Photo 22). The removed concrete and metal materials were taken for recycling and the other items removed from the CTA debris piles were taken to Tri-State Disposal. Tr.(39) at 212; Tr.(41) at 56, 60.

Mr. Gonzalez planned to begin removing the non-CTA debris (*i.e.*, pre-existing and fly-dumped materials) from the Site once the gravel road allowed for it and the “weather broke.” Tr.(39) at 187-88, 190; Tr.(40C) at 103. Mr. Gonzalez testified that before then, it was “real cold” and “[a]ll the garbage that was there was frozen.” Tr.(40C) at 103. To allow for the cleanup of the non-CTA debris, Mr. Gonzalez extended the gravel road in a generally southwestern direction toward the warehouse on the Site. Tr.(41) at 32, 72; CDOE Exh. A at 8.

After E. King Hauling began removing the CTA debris, Mr. Gonzalez arranged with E. King Hauling to have the non-CTA materials removed from the Site while the front-end loader was available. Tr.(39) at 189-90; Tr.(40C) at 114; Tr.(41) at 66. Under this arrangement with E. King Hauling, Mr. Gonzalez was to pay for the trucking and disposition of these materials. Tr.(39) at 189-90; Tr.(40C) at 114; Tr.(41) at 33, 41, 66-67. Because Elaine King had not followed the agreement with respect to staging the CTA materials, Mr. Gonzalez did not have to pay E. King Hauling for the machinery or the man-hours associated with the cleanup of the non-CTA materials. Tr.(41) at 67.

CDOE inspectors Antonopoulos and Collins returned to the Site on Friday, March 24, 2006, at 11:00 a.m., two days after the initial inspection. Tr.(40C) at 12, 16; Tr.(41) at 225-28; CDOE(40/41) Exh. C at 62.⁷ Some of the debris present during the March 22, 2006 inspection had been removed. Tr.(40C) at 13, 58, 110, 117; Tr.(41) at 32-36, 226, 270-73, 279; CDOE Exh. A at 8; CDOE(40/41) Exh. C at 63, 64 (Photo 1), 67 (Photos 7, 8), 68 (Photos 9, 10). During the March 24, 2006 inspection, an E. King Hauling supervisor was on the Site. The piles of stone had been spread. Approximately six workers were on the Site with a front-end loader and a Bobcat, moving debris piles around, and sorting and segregating metal and wood materials. The debris was being loaded into E. King Hauling trucks for off-site removal. Tr.(40C) at 16, 18-20, 52-54, 58-62, 64, 68, 110, 117-18, 132-33; Tr.(41) at 21-22, 34, 38, 41-42, 70, 231-33, 265-67, 271-78, 281-82, 284-85; CDOE(40/41) Exh. C at 62, 66 (Photos 5, 6), 67 (Photos 7, 8), 68 (Photos 9, 10), 69 (Photos 11, 12); *see also* Tr.(41) at 47-48 and 130th LLC(41) Exh. B at 44 (Photos 1, 2) (cleanup activities at the Site on March 23, 2006).

Mr. Gonzalez was at the Site during the cleanup, “making sure that they cleaned up the site the way I wanted it cleaned up.” Tr.(40C) at 121; Tr.(41) at 33. The CTA materials and almost all of the other identified debris (*i.e.*, pre-existing and fly-dumped materials) have been removed from the Site since the March 22, 2006 inspection. Tr.(39) at 204-05; Tr.(40C) at 109-110; Tr.(41) at 33-34, 49; CDOE Exh. A at 10 (Photo 4) 11 (Photo 6). To dispose of non-CTA

⁷ CDOE’s Exhibit C in the AC 06-40 and AC 06-41 hearings is CDOE’s March 24, 2006 site inspection report. The exhibits are identical. The Board cites the exhibits as “CDOE(40/41) Exh. C.”

debris, Mr. Gonzalez paid approximately \$30,000 in disposal fees to Tri-State Disposal. Tr.(40C) at 123, 127-29; Tr.(41) at 41-42, 55. For other non-CTA debris, Mr. Gonzalez arranged for piles of rebar, broken concrete, bricks, scrap metal, plastic piping, and wood ties to be taken to "Lincoln." Tr.(40C) at 129-32; Tr.(41) at 55; CDOE Exh. A at 18 (Photo 18), 19 (Photo 19).

Future Plans for the Site

Mr. Gonzalez planned to develop the Site:

It's in a design stage right now. The blueprints for the property are probably, like, 80 percent done. I'm going to develop the property. I'm going to put commercial precast buildings on it, and I'm going to set up my company there. We're going to put six buildings, about 36,000 square feet each building, and we're going to lease out the space to tenants for the Ford Company. Tr.(40C) at 101-02; *see also* Tr.(41) at 49, 52.

AC 07-25 (October 3, 2006 Site Inspection)

On October 3, 2006, CDOE field supervisor Stanley Kaehler and CDOE inspector Lafayette Robertson inspected the Site, which is located at 1601 East 130th Street in Chicago, Cook County and is designated with Site Code No. 0316485103. Tr.(25) at 9; CDOE(25) Exh. A at 73; AC(25) at 1. The inspection lasted from 12:30 p.m. to 1:00 p.m. CDOE Exh. A(25) at 71. The Site entrance has a fence with a gate that was locked with a chain at the time. Tr.(25) at 12; CDOE(25) Exh. A at 73. The inspectors made their observations from along the edge of the Site, on top of the Site's roughly four-foot tall berm. Tr.(25) at 10, 12-13; CDOE(25) Exh. A at 73. The Site had one building. Tr.(25) at 13.

Approximately thirty truckloads of broken concrete and asphalt grindings or soil were on the Site. Tr.(25) at 12; CDOE(25) Exh. A at 73, 77 (Photos 1, 2), 78 (Photo 4). These materials had been fly-dumped on the Site. Tr.(25) at 30. Some of these materials were present as of the March 22, 2006 inspection, but the rest had been deposited since then. Tr.(25) at 39-40, 42-44; 130th LLC(25) Exh. A.

Also present on the Site was a separate pile of about 15 cubic yards of broken concrete. Tr.(25) at 12; CDOE(25) Exh. A at 73, 78 (Photo 3). These materials had been fly-dumped on the Site and were present as of the March 22, 2006 inspection. Tr.(25) at 31, 38-42, 44-45; 130th LLC(25) Exh. A.

The fly-dumpers accessed the Site by cutting the rod on the entrance gate. Tr.(25) at 31-32. In response to fly-dumpers, Mr. Gonzalez had the entrance gate's hinges welded onto the fence. He also had a bigger lock and a bigger chain added to the gate. Tr.(25) at 31-33.

On October 3, 2006, the Site was owned by 130th LLC. Tr.(25) at 35-36. No permits have been issued by the Agency for any operations at the Site. Tr.(25) at 36. The Site is divided into three approximately 2.5-acre lots. Mr. Gonzalez plans to build a 42,000-square foot building on the western-most lot. Tr.(25) at 33. The identified debris is located on that lot and

would need to be removed for that project. *Id.* To remove and dispose of all of the debris observed on October 3, 2006, Mr. Gonzalez estimated that it would cost between \$6,000 and \$7,500. Tr.(25) at 34.

PARTIES' ARGUMENTS

The parties' arguments concerning the administrative citations issued based on the March 22, 2006 inspection (AC 06-39, AC 06-40, AC 06-41) are set forth first, followed by the arguments concerning the administrative citation issued based on the October 3, 2006 inspection (AC 07-25). Because the parties make virtually identical arguments for and against the liability of Mr. Gonzalez in AC 06-40 and 130th LLC in AC 06-41, those arguments are summarized together immediately below.

CDOE's Arguments Against Mr. Gonzalez (AC 06-40) and 130th LLC (AC 06-41) **March 22, 2006 Inspection**

CDOE alleges that Mr. Gonzalez is the president of SGLI and the manager of 130th LLC. AC(40) at 1. Mr. Gonzalez is not the owner of record for the Site, but CDOE notes that Mr. Gonzalez admitted he acquired an interest in this property. CDOE Reply Br.(40) at 2. CDOE alleges that 130th LLC is an Illinois limited liability corporation and that as of the March 22, 2006 inspection, 130th LLC owned the Site. AC(41) at 1; CDOE Br.(40) at 1; CDOE Br.(41) at 1.

CDOE emphasizes that Mr. Gonzalez and 130th LLC admitted that after the March 22, 2006 inspection, at least some of the debris on the Site was disposed of at three separate landfills: Tri-State Disposal, Lincoln Disposal, and the CID Landfill. CDOE Br.(40) at 2; CDOE Br.(41) at 2. The fact that the materials were landfilled "demonstrates that the materials lacked productive or re-use value and, therefore, constitute 'discarded material' within the meaning of the term 'waste.'" CDOE Br.(40) at 2; CDOE Br.(41) at 2.

CDOE argues that Mr. Gonzalez caused or allowed the open dumping because "he controlled access to and operations on the Site." CDOE Br.(40) at 3. According to CDOE, Mr. Gonzalez "showed significant personal knowledge of the Site and personal involvement with activities at the Site," repeatedly referring to the Site as his property and describing in detail his preparations and future plans for the Site. *Id.* at 4. Among other things, Mr. Gonzalez knew the specific landfill destinations for each type of waste material on the Site; arranged to use a friend's account at a landfill to dispose of some of the materials; and asked the CDOE inspectors to leave the Site. *Id.* at 4-5. CDOE notes that Mr. Gonzalez admitted that "he provided a key to E. King and that E. King dumped between 1,000 to 1,500 cubic yards of waste on the Site." *Id.* at 5. Mr. Gonzalez "had extensive control over the movement of trucks, people and materials onto and off of the Site," and he admits that he repeatedly secured the property and offered to rent the land to E. King Hauling. CDOE Reply Br.(40) at 3.

CDOE argues that 130th LLC caused or allowed the open dumping because at the time of the inspection, 130th LLC "was the owner of the Site and was thereby able to exercise control

over the Site.” CDOE Br.(41) at 3. A landowner can be held liable even if it did not “actively participate in the dumping.” *Id.*

As for the claims of Mr. Gonzalez and 130th LLC about dumping by fly-dumpers and E. King Hauling, CDOE states that a person can commit an open dumping violation without knowledge or intent. It is therefore irrelevant that neither Mr. Gonzalez nor 130th LLC gave permission for the dumping. CDOE Br.(40) at 5-6; CDOE Br.(41) at 3-4. As for waste allegedly present when 130th LLC purchased the property in January 2005, CDOE argues that Mr. Gonzalez and 130th LLC are liable for open dumping because they allowed the waste to remain on the Site for approximately 15 months prior to the March 22, 2006 inspection. CDOE Br.(40) at 6; CDOE Reply Br.(40) at 4; CDOE Br.(41) at 4-5. Nor are the cleanup efforts here a defense for Mr. Gonzalez or 130th LLC. CDOE Br.(40) at 6; CDOE Br.(41) at 5.

Concerning the allegation of open dumping resulting in scavenging, CDOE states that “people were sorting and segregating materials on the Site for the purpose of returning some of the materials to productive use,” noting that Mr. Gonzalez and 130th LLC admitted that metal was being taken out of the waste materials on the Site to be recycled. CDOE Br.(40) at 8; CDOE Br.(41) at 6. CDOE argues that because the Site was not a permitted landfill:

the return of any waste materials on the Site to productive use could not conform to the definition of “salvaging” contained in the Illinois Administrative Code. This definition of “salvaging” requires that “salvaging” activities take place at a “landfill” and under the supervision of a “landfill operator.” 35 Ill. Adm. Code 810.103. *** Therefore, any removal of materials from the Site for the purpose of returning them to productive use must constitute “scavenging” and not “salvaging.” CDOE Br.(40) at 8; CDOE Br.(41) at 6-7.

Responses of Mr. Gonzalez (AC 06-40) and 130th LLC (AC 06-41)
March 22, 2006 Inspection

Mr. Gonzalez and 130th LLC, “a corporation owned by Jose R. Gonzalez,” concede that debris was on the Site but question the thoroughness of CDOE’s investigation. 130th LLC(41) Resp. Br. at 1-3; Mr. Gonzalez Resp. Br. at 2-3. According to these respondents, they did not cause or allow the dumping of the debris. Mr. Gonzalez Resp. Br. at 3; 130th LLC(41) Resp. Br. at 3. Instead, Mr. Gonzalez and 130th LLC continue, all of the debris came from the CTA Brown Line renovation, was fly-dumped, or was already on the Site when the property was purchased. Mr. Gonzalez Resp. Br. at 3; 130th LLC(41) Resp. Br. at 3.

Mr. Gonzalez emphasizes that his agreement with E. King Hauling called for CTA waste material from the Brown Line job to be stored at the Site in trucks or roll-off boxes over the weekend, after which the materials would be disposed of at CID Landfill when the landfill opened. Mr. Gonzalez Resp. Br. at 4-5; 130th LLC(41) Resp. Br. at 3-4. Mr. Gonzalez’ response brief explains:

In an effort to make the storage pay for the gravel road needed (in order to get the front-end loader and heavy trucks to the back of his land [to] clean up the

property), Mr. Gonzalez offered to rent the land to E. King. He stated that in order to clean the property, he had to purchase over twenty dump truck loads of gravel and construct a gravel road to gain access to the back of the property. Mr. Gonzalez Resp. Br. at 4; *see also* 130th LLC(41) Resp. Br. at 4.

Without Mr. Gonzalez' knowledge, that storage agreement was not followed by E. King Hauling when the hauler "dumped the CTA waste at the site." Mr. Gonzalez Resp. Br. at 4-5; 130th LLC(41) Resp. Br. at 4. When Mr. Gonzales learned CTA waste had been dumped on the Site, he "immediately and vociferously demanded that the waste be cleared from the property." Mr. Gonzalez Resp. Br. at 5; 130th LLC(41) Resp. Br. at 5.

Mr. Gonzalez and 130th LLC state that despite the fact that the Site is surrounded by a mound and has a locked gate fence, fly-dumpers gain access to the property. Mr. Gonzalez Resp. Br. at 5; 130th LLC(41) Resp. Br. at 5. Fly-dumpers have "knocked down his gate, cut his locks and pulled the gate off the hinges." Mr. Gonzalez Resp. Br. at 5; 130th LLC(41) Resp. Br. at 5. CDOE witness Antonopoulos testified that "numerous piles of debris on the site look like 'classic fly dumping.'" Mr. Gonzalez Resp. Br. at 5-6; 130th LLC(41) Resp. Br. at 5.

According to Mr. Gonzalez and 130th LLC, when material is fly-dumped, it is not segregated into different types of materials. CDOE witnesses Maciel and Antonopoulos explained that if a load was sent to a landfill containing copper, PVC tubing, or railroad ties, the entire load would be rejected. Mr. Gonzalez Resp. Br. at 5-6; 130th LLC(41) Resp. Br. at 5. Mr. Gonzalez and 130th LLC emphasize that according to CDOE witness Antonopoulos, if a property owner discovers fly-dumped material on his property:

the owner would be required to segregate the dumped material prior to taking it to a landfill or transfer station. Mr. Antonopoulos testified that the segregation of waste piles and moving of piles and loading of debris was consistent with an entity or individual cleaning up the site. *** Mr. Antonopoulos concluded that, in the course of [t]he investigation he had no information that segregation of material in the course of cleaning the site was not what was occurring at the site. Mr. Gonzalez Resp. Br. at 5-6; 130th LLC(41) Resp. Br. at 5-6.

Mr. Gonzalez and 130th LLC note that CDOE inspector Maciel, on March 22, 2006, halted the E. King Hauling truck drivers and "told them not to remove the material from the site." Mr. Gonzalez Resp. Br. at 8; 130th LLC(41) Resp. Br. at 7. Further, CDOE witness Antonopoulos testified that if a landowner has waste dumped on his property, it is common for investigators to give the owner time to clean up the property, and that an owner with a large amount of waste would be given more time than one with less waste. Mr. Gonzalez Resp. Br. at 9; 130th LLC(41) Resp. Br. at 7; Mr. Gonzalez Surreply Br. at 3-4 (respondent would be given a reasonable time from the date of the inspection to clean up the property).

Mr. Gonzalez and 130th LLC note that while the Act does not require proof of knowledge or intent, neither does it does impose strict liability. They assert that there is no competent evidence that either respondent exercised sufficient control over the source of the

pollution to be held liable. Mr. Gonzalez Resp. Br. at 11; 130th LLC(41) Resp. Br. at 7. Mr. Gonzalez and 130th LLC conclude:

The waste deposited by fly-dumpers, who repeatedly cut the lock on the gate or knocked it down, must be deemed uncontrollable circumstances. The CTA waste deposited by E. King Trucking (which was supposed to[] be stored in containers) was removed within the reasonable time indicated by the City's witness. Mr. Gonzalez Surreply Br. at 4; *see also* 130th LLC(41) Surreply. Br. at 3.

CDOE's Arguments Against SGLI (AC 06-39)
March 22, 2006 Inspection

CDOE alleges that SGLI is an Illinois corporation doing business in Cook County. AC(39) at 1. CDOE asserts that SGLI "caused" the open dumping of waste by disposing of the "old 'Speedy Gonzalez' water tanker" at the Site. CDOE(39) Br. at 3. According to CDOE, the testimony of Mr. Gonzalez demonstrates that "the tanker lacked productive or re-use value and, therefore, constituted 'discarded material' within the meaning of the term 'waste.'" *Id.* SGLI is the "source or generator" of this litter, violating Section 21(p)(1) of the Act. CDOE(39) Reply Br. at 2.

CDOE also points out that:

other landscaping waste and debris - such as compost material, wood, fencing material, cinder blocks, and mesh netting commonly used in landscaping - had also been discarded on the Site. CDOE(39) Br. at 3-4.

CDOE argues that SGLI is the "likely source or generator" of this litter, also a violation of Section 21(p)(1). CDOE(39) Reply Br. at 3. Further, according to CDOE, SGLI would require:

access to and control over the Site to retrieve these materials for use on off-site landscaping projects. The fact that Respondent is a landscaping company with access to and control over the Site supports a conclusion that the landscaping materials on the Site that do qualify as waste and litter were discarded there by Respondent. CDOE(39) Reply Br. at 3.

Because SGLI had the capability of control over the Site, CDOE argues that SGLI violated Sections 21(p)(2), 21(p)(3), 21(p)(4), and 21(p)(7)(i) of the Act by "allowing" open dumping. CDOE(39) Br. at 4; CDOE(39) Reply Br. at 4, 6. CDOE cites the presence at the Site of the SGLI flatbed truck used for storing playground equipment at off-site projects. CDOE does not maintain that the flatbed constitutes "waste," but instead that:

the presence of the Respondent's flatbed, as well as the discarded "Speedy Gonzalez" water tanker and other landscaping waste and materials, reveals the degree to which Respondent had access to and control over the Site. In order to utilize the flatbed or other property for off-site projects, Respondent would

need to have access to the Site in order to retrieve its property. In addition, Respondent would need to exercise control over the Site to ensure that its property was secure. CDOE(39) Br. at 4-5.

On this basis, according to CDOE, SGLI is liable not only for the water tanker and alleged landscaping materials deposited on the Site, which constitute litter, but also for scavenging, open burning, waste standing in water, and the deposition of general construction or demolition debris. CDOE(39) Reply Br. at 4, 6; CDOE(39) Br. at 4-8.

SGLI's Response (AC 06-39)
March 22, 2006 Inspection

SGLI argues that CDOE's prosecution "offered no evidence that this respondent was in any way responsible for committing any violations." SGLI Resp. Br. at 1. SGLI notes that CDOE witness Maciel testified that he had no information of whether SGLI "caused or allowed any of the alleged violations." *Id.*

SGLI asserts that there is no evidence that it generated any waste, including alleged "landscaping waste." SGLI Resp. Br. at 2. CDOE concedes that SGLI does not presently own the tanker truck. SGLI Surreply Br. at 1, 2. SGLI notes inspector Maciel's deposition testimony that "the tanker truck on the site was not a violation." *Id.* at 2 (emphasis in original). Further, CDOE attributes Mr. Gonzalez' intentions as to the tanker to SGLI, the company that formerly owned the tanker. *Id.* SGLI adds that the tanker was not surrounded by high vegetation. *Id.* at 3.

According to SGLI, CDOE has also failed to demonstrate that SGLI had the capability of control over the Site. SGLI disputes CDOE's suggestion that access to a property equals control over the property: "Such a result would hold all citizens responsible for any garbage dumped in City parks." SGLI Surreply Br. at 3.

CDOE's Arguments Against 130th LLC (AC 07-25)
October 3, 2006 Inspection

CDOE alleges that 130th LLC is an Illinois limited liability corporation and that it owned the Site as of the October 3, 2006 inspection. AC(25) at 1; CDOE Br.(25) at 1. CDOE inspectors observed broken concrete, asphalt, wood, metal, and other debris accumulated in various piles on the Site. According to CDOE, because 130th LLC admitted at hearing that it planned to remove and dispose of these materials to fulfill future development plans for the Site, the materials "lacked productive or re-use value and, therefore, constituted 'discarded material' within the meaning of the term 'waste.'" CDOE Br.(25) at 2. Further, as 130th LLC "admitted that the waste observed on October 3, 2006 had been fly-dumped on the Site," the waste was consolidated from one or more sources within the meaning of "open dumping." *Id.* at 2-3.

CDOE argues that 130th LLC caused or allowed the open dumping observed on October 3, 2006, because it "was the owner of the Site and was thereby able to exercise control over the Site at that time." CDOE Br.(25) at 3. CDOE notes that a landowner can be held liable for open

dumping without actively participating in the dumping and without knowledge or intent. Further, a landowner may commit an open dumping violation by failing to remove waste from the Site:

Respondent admitted that some of the waste observed on the Site on October 3, 2006 had been on the Site since the time of the CDOE inspection six months prior in late March 2006 and that the waste had been there long enough for weeds to have sprouted in and around it. *** Respondent further admitted that additional waste had been dumped on the Site at least three or four weeks prior to the October 3, 2006 inspection and that this waste had not been removed. *Id.* at 3-4.

130th LLC's Response (AC 07-25)
October 3, 2006 Inspection

130th LLC states that it did not dump the subject debris on the Site. Mr. Gonzalez testified that it would make no sense to do so because "if he dumped material on his own property, he would just have to pay another hauler to take it to the dump." 130th LLC Br.(25) at 2. In other words, "[h]e would be paying double." *Id.*

130th LLC also argues that the Act does not impose strict liability and that 130th LLC did not exercise sufficient control over the source of the pollution to have caused or allowed the open dumping. 130th LLC Br.(25) at 3-4. "Extraordinary efforts were taken to secure the gate" by 130th LLC's agent, Mr. Gonzalez, who "repeatedly sought to secure the site," only to have fly-dumpers cut the gate lock, take the gate off of its hinges, and knock the gate down. 130th LLC Surreply Br.(25) at 3. According to 130th LLC, the "fly-dumped material was deposited due to uncontrollable circumstances." *Id.*

130th LLC acknowledges that some of the debris observed on October 3, 2006, "is the same debris from the past violations on March 22, 2006." 130th LLC Br.(25) at 2. Mr. Gonzalez had undertaken a "massive clean-up," which included removal of the CTA waste. 130th LLC Surreply Br.(25) at 2-3. However, this "effort at clean-up resulted in charges." *Id.* at 3; 130th LLC Br.(25) at 3 (130th LLC "was cleaning refuse when ticketed"). Mr. Gonzalez was "never contacted by [CDOE] and given time to clean up the debris." 130th LLC Br.(25) at 2. Instead, "[h]e was just given additional violations." *Id.*; 130th LLC Surreply Br.(25) at 3 (CDOE "again ticketed him on October 3, 2006"). According to 130th LLC:

All evidence demonstrates that Mr. Gonzalez's efforts were directed toward securing the property from fly-dumpers and cleaning the garbage that was placed on the property by others. The evidence adduced at the hearing further demonstrates that Department of the Environment inspectors hindered clean-up efforts.

Respondent, a minority contractor, repeatedly secured the property, put down a gravel road and was in the process of cleaning the property for purposes of future development when the investigators stopped the removal of debris and charged Mr. Gonzalez for his efforts. 130th LLC Br.(25) at 3-4.

130th LLC concludes that CDOE “seeks to impose a ‘Catch 22,’” as “Mr. Gonzalez and his companies are ticketed when cleaning the property, and they are again ticketed when th[e]y stop cleaning the property.” 130th LLC Br.(25) at 4.

DISCUSSION

Alleged Violations in All Four Administrative Citations

In three separate administrative citations (AC 06-39, AC 06-40, and AC 06-41), CDOE alleges that on March 22, 2006, SGLI, Mr. Gonzalez, and 130th LLC each violated Sections 21(p)(1), (p)(2), (p)(3), (p)(4), and (p)(7)(i) of the Act (415 ILCS 5/21(p)(1), (p)(2), (p)(3), (p)(4), (p)(7)(i) (2006)) at the Site. In the fourth administrative citation (AC 07-25), CDOE alleges that on October 3, 2006, 130th LLC violated Sections 21(p)(1) and (p)(7)(i) of the Act (415 ILCS 5/21(p)(1), (p)(7)(i) (2006)) at the Site.

Section 21(p) of the Act provides in relevant part:

No person shall: 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:

- (1) litter;
- (2) scavenging;
- (3) open burning;
- (4) deposition of waste in standing or flowing waters;
- ***
- (7) deposition of:
 - (i) general construction or demolition debris as defined in Section 3.160(a) of this Act 415 ILCS 5/21(p)(1), (p)(2), (p)(3), (p)(4), (p)(7)(i) (2006)).

Mr. Gonzalez and 130th LLC March 22, 2006 Site Inspection

Open Dumping of Waste

As a threshold matter, to prove a violation of Section 21(p), CDOE must first prove a violation of Section 21(a) of the Act (415 ILCS 5/21(a) (2006)). Section 21(a) provides that “[n]o person shall: Cause or allow the open dumping of any waste.” 415 ILCS 5/21(a) (2006). “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” means “waste.” 415 ILCS 5/3.385 (2006). The Act defines “waste” as:

[A]ny garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility 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 (2006).

The Act defines “sanitary landfill” as:

[A] facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day’s operation, or by such other methods and intervals as the Board may provide by regulation. 415 ILCS 5/3.445 (2006).

The Board finds that as of March 22, 2006, “waste” had been “open dumped” at the Site. It is undisputed that discarded materials from multiple sources were consolidated on the Site and that the Site did not meet the requirements for a sanitary landfill. The CTA debris from the Brown Line renovation project, which had been destined for disposal at CID Landfill, was deposited on the ground at the Site. These materials included broken concrete, discolored soil, and plastic piping.

Also constituting waste was the non-CTA debris scattered or piled around the Site. The non-CTA debris included materials that were already on the property when 130th LLC acquired the Site in January 2005 (*e.g.*, used tires, scrap metal). Some of this “pre-existing” debris had been “fly-dumped,” *i.e.*, trespassers had hauled the waste onto the Site and deposited it on the ground. Other piles of debris had been fly-dumped on the Site after the sale. Fly-dumped materials included broken concrete, rebar, bricks, scrap metal, plastic piping, and wood ties.

Cause or Allow

CTA Waste. E. King Hauling deposited the CTA waste onto the ground at the Site without permission. This fact, however, is of no aid to 130th LLC or Mr. Gonzalez. The Illinois Supreme Court has established that one may “allow” a violation of the Act without knowledge or intent. In People v. Fiorini, 143 Ill. 2d 318, 574 N.E.2d 612 (1991), the court stated that “knowledge or intent is not an element to be proved for a violation of the Act. This interpretation of the Act . . . is the established rule in Illinois.” Fiorini, 143 Ill. 2d at 336, 574 N.E.2d at 618; *see also* Freeman Coal Mining Corp. v. PCB, 621 Ill. App. 3d 157, 163, 313 N.E.2d 616, 621 (5th Dist. 1974) (the Act is *malum prohibitum* and no proof of guilty knowledge or *mens rea* is necessary to find liability).

Ownership of property is not a prerequisite to violating Section 21(p) of the Act. IEPA v. Dan Cadwallader, AC 03-13, slip op. at 6 (May 20, 2004). A complainant “must show that the alleged polluter has the capability of control over the pollution or that the alleged polluter was in control of the premises where the pollution occurred.” People v. A.J. Davinroy Contractors, 249 Ill. App. 3d 788, 793-96, 618 N.E.2d 1282, 1286-88 (5th Dist. 1993); *see also* Meadowlark Farms, Inc. v. PCB, 17 Ill. App. 3d 851, 861, 308 N.E.2d 829, 836 (5th Dist. 1974).

The Board finds that 130th LLC and Mr. Gonzalez were in control of the Site when the CTA waste dumping took place and had the capability of controlling the pollution. 130th LLC owned the Site at the time of the March 22, 2006 inspection, having acquired the property in January 2005. Mr. Gonzalez concedes that 130th LLC is “a corporation owned by Jose R. Gonzalez” (Mr. Gonzalez Br. at 1) and that he “controls the LLC that owns the property” (Mr. Gonzalez Surreply Br. at 1). Mr. Gonzalez built a fence and gate at the entrance to the Site. Mr. Gonzalez gave E. King Hauling a key to the Site’s entrance gate and entered into an agreement with E. King Hauling to allow the CTA materials to be staged at the Site in roll-off containers or dump trucks. Mr. Gonzalez had a gravel road installed on the Site to allow for the ingress and egress of E. King Hauling trucks. Mr. Gonzalez was present on the Site after the CTA material was deposited, both monitoring the cleanup of the Site and telling the CDOE inspectors to leave the premises. Mr. Gonzalez had extensive plans for developing the Site.

130th LLC and Mr. Gonzalez failed to take reasonable precautions against the dumping of the CTA waste. 130th LLC and Mr. Gonzalez could have, for example, had a representative on the Site when E. King Hauling first arrived with the CTA materials, to ensure the waste would be left in containers. Mr. Gonzalez’ office was ten minutes from the Site. Mr. Gonzalez’s agreement with E. King Hauling does not preclude a finding that he and 130th LLC violated the Act. Greater care was warranted by these respondents, given that truckloads of waste were being brought to the Site. *See* CDOE v. Eddie Greer, AC 04-13, slip op. at 5 (Sept. 16, 2004) (respondent property owner allowed open dumping when he permitted a third party to bring waste to his site in exchange for rent). Nor is the fact that the CTA waste was cleaned up after the inspection a defense to liability: “The Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative or voluntarily cleans-up the site” IEPA v. Jack Wright, AC 89-227, slip op. at 7 (Aug. 30, 1990). The Board finds that 130th LLC and Mr. Gonzalez allowed the open dumping of the CTA waste.

Pre-Existing and “Fly-Dumped” Waste. At the time of the March 22, 2006 inspection, some non-CTA waste had been on the Site since 130th LLC acquired the property in January 2005. The debris that was left in place at the time of the sale included fly-dumped waste.

Mr. Gonzalez testified about refuse being frozen at the Site prior to the March 2006 inspection, and the lack of a gravel road to enable cleanup. However, even if those Site conditions precluded cleanup at that time, 130th LLC and Mr. Gonzalez offer no explanation for why the pre-existing waste was not removed for some 15 months.

The Board has held that a violation of Section 21(p) for “allowing” open dumping can be found based on present inaction by a current owner or operator to remedy a previously caused violation. For example, in IEPA v. Rawe, AC 92-5 (Oct. 16, 1992), the Board held:

[P]assive conduct amounts to acquiescence sufficient to find a violation of Section 21(a) of the Act. *** Present inaction on the part of the landowner to remedy the disposal of waste that was previously placed on the site, constitutes “allowing” litter in that the owner allows the illegal situation to continue. Rawe, AC 92-5, slip op. at 6; *see also* Dan Cadwallader, AC 03-13, slip op. at 6 (current site operator liable for letting the waste dumped by prior owner and operator remain on the site while under his control).

The Board finds that 130th LLC and Mr. Gonzalez “allowed” the open dumping of the pre-existing waste by letting it remain on the Site for so long. Further, once a respondent has allowed open dumping, the respondent is not excused from liability under an administrative citation merely because the subsequent cleanup may be hindered by extreme winter weather. *See* IEPA v. Marshall Pekarsky, AC 01-37 (Feb. 7, 2002), *rev’d sub nom.* IEPA v. IPCB and Marshall Pekarsky, No. 2-02-0281 (2nd Dist. Mar. 18, 2003) (unpublished order under Illinois Supreme Court Rule 23).

Even after Mr. Gonzalez erected a locking gate and fence across the single entrance to the Site, numerous piles of waste were fly-dumped. The entrance is the only way a vehicle could access the Site. The fly-dumpers repeatedly knocked down the gate, pulled it off of its hinges, and cut its lock. Mr. Gonzalez repaired and improved the gate on a number of occasions. CDOE does not dispute these facts.

The Act does not impose strict liability on an alleged polluter for pollution resulting from a cause beyond his control. Perkinson v. PCB, 187 Ill. App. 3d 689, 694-95, 543 N.E.2d 901, 904 (3d Dist. 1989). A property owner is not liable where “the facts establish the owner either lacked the capability to control the source [of pollution] . . . or had undertaken extensive precautions to prevent vandalism or other intervening causes.” Perkinson, 187 Ill. App. 3d 689, 693-95, 543 N.E.2d 901, 903-04; *see also* Phillips Petroleum Co. v. PCB, 72 Ill. App. 3d 217, 220, 390 N.E.2d 620, 623 (2nd Dist. 1979) (owner of chemical tank car did not cause, threaten, or allow poisonous gas release where tank car was under the sole control of transporting railroad at time of derailment); A.J. Davinroy Contractors, 249 Ill. App. 3d at 793, 618 N.E.2d at 1286.

If the waste that was fly-dumped despite the locked gate had remained on the Site for an undue duration of time, Mr. Gonzalez and 130th LLC would be found to have “allowed” the open dumping. Rawe, AC 92-5, slip op. at 6; IEPA v. Douglas S. Carrico, d/b/a Carrico’s Auto Heap, AC 04-27, slip op. at 8-9 (Sept. 2, 2004) (“the Board has held that a current owner or operator can be found to have ‘allowed’ litter . . . by failing to remove an accumulation of refuse for which that person was not initially liable”); IEPA v. M.K. O’Hara, AC 94-96, 94-97 (consol.), slip op. at 6 (Apr. 6, 1995). However, the evidence does not demonstrate how long these materials had been present as of March 22, 2006. CDOE bears the burden of proving alleged violations. 415 ILCS 5/31.1(d)(2) (2006). CDOE has not proven that Mr. Gonzalez or 130th LLC caused or allowed the open dumping of this fly-dumped waste. *Cf.* Perkinson, 187

Ill. App. 3d at 693-94, 543 N.E.2d at 903 (liability found where “[t]here is nothing to indicate that Perkinson had taken any precautions against vandalism” that resulted in pollution); Cadwallader, AC 03-13, slip op. at 6-7 (respondent “allowed” open dumping where he “failed to take reasonable precautions against trespassers, like installing a fence”); County of Jackson v. Donald Taylor, AC 89-258, slip op. at 9 (Jan. 10, 1991) (respondent liable where he took no measures to stop unknown dumpers).

Litter

In Miller v. PCB, 267 Ill. App. 3d 160, 642 N.E.2d 475 (4th Dist. 1994), the court stated:

A person of common intelligence can understand the term “litter.” *** Given its ordinary meaning, “litter” refers to material of little or no value which has not been properly disposed of. The examples of litter set forth in the Litter Control Act [citation omitted] provide additional guidance. Miller, 267 Ill. App. 3d at 168-69, 642 N.E.2d at 483.

The Board has adopted the definition of “litter” provided in the Litter Control Act for purposes of Section 21 of the Act. *See* St. Clair County v. Mund, AC 90-64, slip op. at 4, 6 (Aug. 22, 1991). The Litter Control Act defines “litter” as:

[A]ny discarded, used or unconsumed substance or waste [and] may include, but is not limited to, any garbage, trash, refuse, debris, rubbish, grass clippings, or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned vehicle (as defined in the Illinois Vehicle Code), motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, potentially infectious medical waste as defined in Section 3.360 of the Environmental Protection Act, or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly. 415 ILCS 105/3(a) (2006).

The CTA waste and the pre-existing waste were discarded and disposed of improperly on the Site and therefore constituted “litter.” Accordingly, the Board finds that 130th LLC and Mr. Gonzalez violated Section 21(p)(1) of the Act by allowing the open dumping of waste in a manner resulting in litter.

Scavenging

A definition of “scavenging” is not set forth in the Act. However, Section 21(o) of the Act, which also may be enforced by administrative citation, prohibits conducting a sanitary landfill operation in a manner that results in “scavenging as defined by Board regulations.” 415 ILCS 5/21(o)(8) (2006). The Board has used its regulatory definition of “scavenging” when considering an alleged violation of Section 21(p)(2) in an administrative citation proceeding. *See* County of Jackson, Illinois v. Gary Easton, AC 96-58 (Dec. 19, 1996).

Under the Board's Part 810 waste disposal regulations, "scavenging" is defined as "the removal of materials from a solid waste management facility or unit which is not salvaging." 35 Ill. Adm. Code 810.103; *see also* 35 Ill. Adm. Code 807.104 (like definition), 807.308 (scavenging prohibition). In turn, "salvaging" means:

the return of waste materials to use, under the supervision of the landfill operator, so long as the activity is confined to an area remote from the operating face of the landfill, it does not interfere with or otherwise delay the operations of the landfill, and it results in the removal of all materials for salvaging from the landfill site daily or separates them by type and stores them in a manner that does not create a nuisance, harbor vectors or cause an unsightly appearance. 35 Ill. Adm. Code 810.103; *see also* 35 Ill. Adm. Code 807.307 (salvaging rule); 35 Ill. Adm. Code 811.108 (salvaging rule).

Removing concrete, metal, and other debris from the various waste piles on the Site was required by CID Landfill. E. King Hauling workers removed the debris and sorted it, at least some for off-site recycling. Because these activities were supervised, organized, and undertaken as part of an active, continuous cleanup of the Site, the Board finds that they do not constitute scavenging in violation of Section 21(p)(2).

The presence of the burned wire on the Site, however, demonstrates the stripping away of the insulation to access the metal wire. The fact that the ashes associated with this burn were still present on the Site shows that the burning had taken place since January 2005. *See IEPA v. Piolet Bros. Trading, Inc.*, PCB 80-185, slip op. at 3-4 (Dec. 17, 1981) (trespassing scavengers starting fires to burn the insulation from reclaimable insulated copper wire). Based on these facts, the Board finds that 130th LLC and Mr. Gonzalez violated Section 21(p)(2) of the Act by allowing the open dumping of waste in a manner resulting in scavenging.

Open Burning

The Act defines "open burning" as "the combustion of any matter in the open or in an open dump." 415 ILCS 5/3.300 (2006). On March 22, 2006, E. King Hauling workers were burning vegetation and wood debris at the Site. In addition, as just noted, wire insulation had been recently burned on the Site. Both of these occurrences constitute open burning. The Board finds that 130th LLC and Mr. Gonzalez violated Section 21(p)(3) of the Act by allowing the open dumping of waste in a manner resulting in open burning.

Deposition of Waste in Standing Waters

The waste in standing waters at the Site had been fly-dumped. Mr. Gonzalez and 130th LLC allowed pre-existing waste, including fly-dumped waste, to be open-dumped by not removing it for over a year since the property acquisition. The evidence here is insufficient, however, to establish that either of these respondents caused or allowed the open dumping of waste that, despite the presence of the locked gate, was fly-dumped after the purchase of the Site.

The Board finds that there is not enough evidence to determine whether the fly-dumped waste in standing waters was pre-existing waste, or how long it had been on the Site. Without that evidence, the Board cannot determine whether either of these respondents allowed the open dumping of this waste in a manner resulting in the deposition of waste in standing waters. CDOE therefore failed to meet its burden of proving that Mr. Gonzalez or 130th LLC violated Section 21(p)(4) of the Act.

Deposition of General Construction or Demolition Debris

The Act defines “general construction or demolition debris” in part as follows:

(a) “General construction or demolition debris” means 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 other roof coverings; reclaimed or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and piping or metals incidental to any of those materials. 415 ILCS 5/3.160(a).

The CTA waste deposited on the Site was from the Brown Line renovation project and included commingled piles of broken concrete, bricks, wood, soil, scrap metal, and plastic piping. At least some of the CTA waste constituted general construction or demolition debris. The Board finds that 130th LLC and Mr. Gonzalez violated Section 21(p)(7) of the Act by allowing the open dumping of waste in a manner resulting in the deposition of general construction or demolition debris.

SGLI **March 22, 2006 Site Inspection**

CDOE has not demonstrated that SGLI caused or allowed the open dumping of any waste at the Site. The Board finds that the presence of SGLI’s flatbed truck and its former water tanker does not prove that SGLI controlled the Site or had the capability of control over any pollution sources. SGLI’s ability to park and access the flatbed truck on the Site is insufficient to establish that SGLI had control over this large piece of real estate, and it is undisputed that SGLI no longer owns the water tanker.

CDOE also argues that SGLI is liable as an “off-site generator” (*i.e.*, “any person who deposits waste on property which they do not own or control”) because SGLI allegedly disposed of “landscaping waste” and the water tanker at the Site. *People ex rel. Ryan v. McFalls*, 313 Ill. App. 3d 223, 227, 728 N.E.2d 1152, 1155 (3rd Dist. 2000) (an off-site generator may cause open dumping). CDOE speculates that various piles of purportedly typical “landscaping waste” came from SGLI. These materials, however, were not from or for any SGLI job, but instead had been

fly-dumped on the Site by trespassers. Additionally, even if the water tanker is considered “waste” under the Act, there is no evidence that SGLI brought the tanker to the Site.

Further, CDOE did not prove that the water tanker constitutes waste. While Mr. Gonzalez testified that his plan for the tanker is to cut it up and “throw it away,” it is not reasonable to infer from this general reference that the tanker will necessarily be disposed of rather than recycled. Tr.(39) at 201. Of course, whether the tanker has market value is not itself determinative of whether the tanker has been discarded. Northern Illinois Service Co. v. IEPA & PCB, 381 Ill. App. 3d 171, 177, 885 N.E.2d 447, 452 (2nd Dist. 2008). It is also true that “[s]imply asserting an intended use for an item at some unspecified date in the future cannot insulate the item from ever becoming ‘discarded’ or ‘disposed of.’” IEPA v. Michael Gruen and Jon Eric Gruen, d/b/a Jon’s Tree Service, AC 06-49, slip op. at 10-12 (Jan. 24, 2008) (inoperable vehicles were “discarded” and thus “waste” where, despite intent to repair vehicles, they exhibited signs of not having been moved for a substantial period of time); *see also* County of Sangamon v. Daily, AC 01-16, 01-17 (consol.), slip op. at 10-13 (Jan. 10, 2002), *aff’d. sub nom. Daily v. County of Sangamon and PCB*, No. 4-02-0139 (4th Dist. Sept. 18, 2003) (unpublished order under Illinois Supreme Court Rule 23).

The tanker is not rendered “waste,” however, merely because it will not be put to its originally-intended purpose. Alternate Fuels, Inc. v. Director of IEPA, 215 Ill. 2d 219, 242, 830 N.E.2d 444, 457 (2004) (“materials that may otherwise be discarded by the supplier may be diverted from becoming waste and returned to the economic mainstream”). It is simply not clear whether the tanker has been discarded or is in the process of being timely “returned to the economic mainstream in the form of raw materials or products.” Alternate Fuels, 215 Ill. 2d at 239-40, 830 N.E.2d at 455 (quoting 415 ILCS 5/3.380). Critically, there is no evidence of how long the tanker has been present at the Site. *Cf.* Northern Illinois Service Co., 381 Ill. App. 3d 171, 176-77, 885 N.E.2d 447, 451-52 (uprooted, dead trees were “discarded” and thus “waste” as they were decaying, unprocessed, and had not been moved in months, and some had been on the site for ten years); Michael Gruen and Jon Eric Gruen, d/b/a Jon’s Tree Service, AC 06-49, slip op. at 10-12 (Board considers “the considerable length of time [the material] has remained deposited”; vehicles that had been inoperable for a sufficient amount of time to allow vegetation to grow up around them were waste; rusted tank on-site for one or two years is waste).

The burden of proof is on CDOE. 415 ILCS 5/31.1(d)(2) (2006). The Board finds that CDOE has not proven that SGLI caused or allowed the open dumping of waste resulting in a violation of Section 21(p)(1), (p)(2), (p)(3), (p)(4), or (p)(7)(i) of the Act (415 ILCS 5/21(p)(1), (p)(2), (p)(3), (p)(4), (p)(7)(i) (2006)).

130th LLC
October 3, 2006 Site Inspection

Some of the waste observed on the Site during the October 3, 2006 inspection was also present during the March 22, 2006 inspection. The six or so months since March 22, 2006, was ample time for 130th LLC to have removed this fly-dumped waste. The other waste observed on October 3, 2006, had been fly-dumped more recently, despite measures taken to secure the Site’s gate.

On March 22, 2006, during the cleanup of the Site, CDOE inspector Maciel directed Mr. Gonzalez and a dump truck driver to cease all removal activities. Mr. Gonzalez, however, continued with the cleanup, which included removal work witnessed by CDOE inspectors on March 24, 2006. Then, a little over one month later, in early May 2006, the first three administrative citations were issued (AC 06-39, AC 06-40, AC 06-41). For the reasons below, the Board finds that the fourth citation (AC 07-25) was improperly issued.

The Board has held that a complainant's actions can lead to an improperly issued administrative citation. Jack Wright, AC 89-227, slip op. at 7. The case of IEPA v. Charles Goodwin, AC 02-17 (July 11, 2002) is especially instructive. In that case, the Board dismissed an administrative citation as improperly issued where one of the Agency's inspectors, during the initial inspection, instructed the respondent to stop cleanup and demolition activities on the property until asbestos approvals were received. The respondent accordingly ceased further cleanup efforts and pursued the asbestos approvals. While the respondent was pursuing those approvals, another Agency inspector visited the property. Based on that second inspection, an administrative citation was issued because of the presence of waste—waste that had been left on the property while the cleanup was suspended to obtain the asbestos approvals. The respondent was “angry, upset, [and] confused about what to do.” Charles Goodwin, AC 02-17, slip op. at 2-3.

The Board in Charles Goodwin found that “the Agency improperly issued the administrative citation due to lack of effective communication between the inspectors of the air and land bureaus, and lack of effective communication between them and Mr. Goodwin.” Charles Goodwin, AC 02-17, slip op. at 5. The respondent had been acting in good faith to clean up his property but stopped his cleanup efforts at the request of the first Agency inspector. The respondent was confused by “what appeared to him to be the Agency's conflicting requirements.” *Id.* The respondent:

relied on Inspector Grimmer's direction to cease all clean up and demolition operations until receiving a permission from the Agency's air bureau. As a result of this order, Goodwin ceased clean up activities which led to the land bureau's administrative citation. *Id.*

130th LLC faced similar circumstances with respect to issuance of the administrative citation in AC 07-25. Mr. Gonzalez was asked at the AC 07-25 hearing about debris observed at the Site on October 3, 2006:

A. That pile was already there from the last time. They're going out there and taking pictures of stuff that was already there that we haven't cleaned up. Because if I go out there, they're going to start again with the troubles, and I don't want no trouble. Tr.(25) at 39.

A. That was there, we haven't touched it. It all stood there, I haven't -- since that last incident that we had when they told me to just chill out and leave the property alone, I just chilled out and I left it alone. Tr.(25) at 41.

Q. Were you ever contacted by the City of Chicago Department of Environment and asked to be given a reasonable time to clean up this waste?

A. Never. Tr.(25) at 45.

Mr. Gonzalez provided similar testimony in the other hearings. He was asked at the AC 06-40 hearing if he was in the process of cleaning up the Site:

A. Well, we were. But then they shut us down. I mean, every time we go out there the City will go out there and start giving us tickets. We just stopped until we resolve this issue.

Q. Were you cleaning up the property on March 22 and 24?

A. Yes. Tr.(40C) at 109-10.

He was later questioned at the AC 06-41 hearing about his cleanup efforts:

A. Well, I kind of stopped – what’s being fly dumped, I just left it there because I’m kind of afraid of going in there and then having Mr. Raphael [Maciel] show up and say that I’m back at it again and giving me more tickets. Because I’m already in a world of trouble with this. So there is material there that’s been fly dumped. But it – I’m not doing nothing with the property, so I just left it there. Tr.(41) at 71; *see also id.* at 52 (“[A]ll I was doing was cleaning the property. And they came out and they cited me with ten million violations.”).

During the cross-examination of CDOE inspector Maciel at the AC 06-40 hearing, the following exchange occurred:

Q. And you told them not to remove the material from the site until further notice?

A. Correct.

Q. What material were they told not to remove from the site?

A. Anything from the site. Tr.(40B) at 68-69.

The Board has stated that:

The communication between the parties during the period from the inspection to the issuance of the administrative citation is most important in administrative citation cases. Communication is important because the citizens who are being cited . . . are often unfamiliar with the Act and enforcement procedures. Jack Wright, AC 89-227, slip op. at 6.

There was a “lack of effective communication” between CDOE and 130th LLC. Charles Goodwin, AC 02-17, slip op. at 5. When Mr. Gonzalez continued to clean up the Site despite the CDOE inspector’s directive of March 22, 2006, Mr. Gonzalez and his companies received three administrative citations. Those citations did not instruct any of the respondents to clean up the Site. None of these facts are disputed.

If an open dumping violation is observed, an administrative citation may issue, and a subsequent clean up of the waste is not a defense. Jack Wright, AC 89-227, slip op. at 7. Nor is an administrative citation complainant required to give a reasonable amount of time to clean up a site before issuing the citation. *Id.* Further, the Act does not require that an administrative citation direct a respondent to clean up open dumped waste, and if a respondent allows the waste to remain after a citation is issued, the respondent risks additional enforcement, including potentially higher penalties. *See* 415 ILCS 5/31, 31.1, 42(b)(4-5) (2006). Here, however, the CDOE inspector directed Mr. Gonzalez and the dump truck driver to cease removing waste from the Site. Given that Mr. Gonzalez' refusal to comply with the CDOE inspector's command was met with three citations, it is not surprising that the cleanup was discontinued "until further notice" from CDOE. CDOE Exh. A at 6. That notice never came. Instead, CDOE returned to the Site on October 3, 2006, observed debris, and issued a fourth citation. Under these unique circumstances, the Board finds that CDOE improperly issued the citation to 130th LLC in AC 07-25.

Uncontrollable Circumstances

Only if the Board finds a violation in an administrative citation proceeding does the Board consider whether that violation resulted from "uncontrollable circumstances." 415 ILCS 5/31.1(d)(2) (2006); *see also* 35 Ill. Adm. Code 108.500(b). Section 31.1(d)(2) provides:

[I]f the Board finds that the person appealing the citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty. 415 ILCS 5/31.1(d)(2) (2006).

The Board finds that neither Mr. Gonzalez (AC 06-40) nor 130th LLC (AC 06-41) has established that any of the violations found by the Board for litter, scavenging, open burning, or the deposition of general construction or demolition debris resulted from uncontrollable circumstances within the meaning of the Act. *Cf. Village of Rantoul*, AC 87-100, slip op. at 8 (Sept. 22, 1988) (daily cover violation at landfill resulted from rare rainstorm and flash flood constituting uncontrollable circumstances).

Violations, Civil Penalties, and Hearing Costs

Because Mr. Gonzalez and 130th LLC violated Sections 21(p)(1), (p)(2), (p)(3), and (p)(7)(i) of the Act on March 22, 2006, and those violations were not the result of uncontrollable circumstances, the Board now discusses civil penalties and hearing costs. Both are addressed in Section 42(b)(4-5) of the Act:

In an administrative citation action under Section 31.1 of this Act, any person⁸ found to have violated any provision of subsection (p) of Section 21 of this Act

⁸ The Act defines "person" as follows: "any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate,

shall pay a civil penalty of \$1,500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency, except that the civil penalty amount shall be \$3,000 for each violation of any provision of subsection (p) of Section 21 that is the person's second or subsequent adjudicated violation of that provision. 415 ILCS 5/42(b)(4-5) (2006).

Based on the conditions of the Site observed during the March 22, 2006 inspection, CDOE filed three administrative citations, each alleging violations of the same provisions of the Act. One citation was issued to SGLI, one to Mr. Gonzalez, and another to 130th LLC, seeking separate civil penalties from each of the three respondents. Historically in such circumstances, the Agency and delegated units of local government have typically filed a single administrative citation seeking one set of civil penalties from the multiple respondents. *See, e.g., IEPA v. Frank H. & Mary Lou Record and Frank Record d/b/a Quality Disposal*, AC 09-3, slip op. at 1 (Sept. 30, 2008); *Michael Gruen and Jon Eric Gruen, d/b/a Jon's Tree Service*, AC 06-49 (Jan. 24, 2008); *County of Ogle v. Jeff Allen and Stella Allen*, AC 00-83 (July 13, 2000); *IEPA v. RCS, Inc. and Michael Duvall*, AC 97-7 (Oct. 3, 1996).

However, nothing in Section 31.1 or 42(b)(4-5) of the Act precludes the pleading approach taken by CDOE in dockets AC 06-39, AC 06-40, and AC 06-41, and the approach finds support in Board precedent. In *St. Clair County v. Louis I. Mund*, AC 90-64 (Aug. 22, 1991), *St. Clair County v. Arthur Fields*, AC 90-65 (Aug. 22, 1991), *St. Clair County v. Sandra L. Petroff*, AC 90-66 (Aug. 22, 1991), and *St. Clair County v. Timothy E. Doctor*, AC 90-67 (Aug. 22, 1991), after a single site inspection, four administrative citations were issued based on the same occurrence of open dumping. The Board found four sets of the same two violations (open dumping resulting in litter and open burning) and separately imposed the same statutory penalties on each of the four respondents. Consistent with the *St. Clair County* precedent, the Board will not now read "exceptions, limitations, or conditions" into the Act. *Alternate Fuels*, 215 Ill. 2d at 238, 830 N.E.2d at 455. Nor have respondents here urged any such construction of the Act. Accordingly, for AC 06-40 and AC 06-41, the Board finds that Mr. Gonzalez and 130th LLC are each subject to a civil penalty of \$6,000, which will be imposed in the Board's final opinion and order.

In addition, Mr. Gonzalez (AC 06-40) and 130th LLC (AC 06-41) must pay the corresponding AC 06-40 and AC 06-41 hearing costs of CDOE and the Board. CDOE and the Clerk of the Board are each ordered to file a statement of costs, supported by affidavit, and to serve the filing on Mr. Gonzalez and 130th LLC. Mr. Gonzalez and 130th LLC may respond to the respective hearing cost documentation, as provided in the order below. The Board's final opinion and order will assess appropriate hearing costs.

political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns." 415 ILCS 5/3.315 (2006).

CONCLUSION

The Board grants respondents' motions to consolidate AC 06-39, AC 06-40, AC 06-41, and AC 07-25 for purposes of decision, denies CDOE's motions to strike respondents' motions to dismiss these cases, and denies respondents' motions to dismiss.

Based on CDOE's March 22, 2006 inspection of the Site, CDOE issued three administrative citations, each to a different person. The Board finds that Mr. Gonzalez (AC 06-40) and 130th LLC (AC 06-41) allowed the open dumping of waste in a manner resulting in litter, scavenging, open burning, and the deposition of general construction or demolition debris. Accordingly, Mr. Gonzalez and 130th LLC violated Sections 21(p)(1), (p)(2), (p)(3), and (p)(7)(i) of the Act on March 22, 2006. None of these violations resulted from uncontrollable circumstances. Mr. Gonzalez and 130th LLC are therefore subject to civil penalties and must pay the respective hearing costs of CDOE and the Board, as discussed further below.

However, CDOE did not establish that Mr. Gonzalez (AC 06-40) or 130th LLC (AC 06-41) caused or allowed the open dumping of waste in a manner resulting in the deposition of waste in standing water. Therefore, CDOE failed to prove that Mr. Gonzalez or 130th LLC violated Section 21(p)(4) of the Act on March 22, 2006. Additionally, the Board finds CDOE did not demonstrate that SGLI (AC 06-39) caused or allowed the open dumping of waste at the Site on March 22, 2006. The Board will accordingly impose no civil penalties or hearing costs on SGLI.

CDOE issued a fourth administrative citation concerning the Site, this time based on CDOE's October 3, 2006 inspection of the Site. This citation was issued only to 130th LLC (AC 07-25). The Board finds that the citation was improperly issued and will be dismissed in the final opinion and order. The Board therefore finds no violation of Section 21(p)(1) or (p)(7)(i) of the Act on October 3, 2006. Accordingly, 130th LLC is not subject to civil penalties or hearing costs in AC 07-25.

As set forth in the order below, the Board directs CDOE and the Clerk of the Board to file hearing cost documentation for AC 06-40 and AC 06-41, to which Mr. Gonzalez and 130th LLC may respectively respond. After the time periods for the filings on hearing costs have run, the Board will issue a final opinion and order imposing civil penalties and assessing appropriate hearing costs. The final opinion and order will constitute final action by the Board regarding all four administrative citation proceedings: AC 06-39, AC 06-40, AC 06-41, and AC 07-25.

This opinion constitutes the Board's interim findings of fact and conclusions of law.

ORDER

1. The Board grants respondents' motions to consolidate AC 06-39, AC 06-40, AC 06-41, and AC 07-25 for purposes of decision. The Board denies CDOE's motions to strike respondents' motions to dismiss AC 06-39, AC 06-40, AC 06-41, and AC 07-25. The Board denies respondents' motions to dismiss AC 06-39, AC 06-40, AC 06-41, and AC 07-25.

2. In AC 06-39, the Board finds that CDOE did not prove that SGLI violated Section 21(p)(1), (p)(2), (p)(3), (p)(4), or (p)(7)(i) of the Act on March 22, 2006.
3. In AC 06-40, the Board finds that on March 22, 2006, Mr. Gonzalez violated Sections 21(p)(1), (p)(2), (p)(3), and (p)(7)(i) of the Act. The Board finds that CDOE did not prove that Mr. Gonzalez violated Section 21(p)(4) of the Act on March 22, 2006.
4. In AC 06-41, the Board finds that on March 22, 2006, 130th LLC violated Sections 21(p)(1), (p)(2), (p)(3), and (p)(7)(i) of the Act. The Board finds that CDOE did not prove that 130th LLC violated Section 21(p)(4) of the Act on March 22, 2006.
5. In AC 07-25, the Board finds that the administrative citation against 130th LLC for alleged violations of Sections 21(p)(1) and (p)(7)(i) of the Act on October 3, 2006, was improperly issued and must be dismissed.
6. By April 20, 2009, CDOE must file a statement of its hearing costs in AC 06-40 and AC 06-41, supported by affidavit. By April 20, 2009, the Clerk of the Board must file a statement of the Board's hearing costs in AC 06-40 and AC 06-41, supported by affidavit.
7. Within 21 days after service of the filings required by paragraph 6 of this order, Mr. Gonzalez and 130th LLC may file responses challenging the claimed costs.
8. Within 14 days after service of any response permitted under paragraph 7 of this order, CDOE may file a reply to the response.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on March 19, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board