

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of Solid Waste
Field Citation Issued to Marc D. Woods,
Respondent

**FINDINGS OF FACT,
CONCLUSIONS AND
DECISION**

This matter was assigned to Administrative Law Judge Eric L. Lipman. On Wednesday, October 24, 2006, Administrative Law Judge Steve M. Mihalchick presided over a hearing in this matter, at the Stearns County Courthouse, in Saint Cloud, Minnesota.

Ann E. Cohen, Esq., Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, represented the Minnesota Pollution Control Agency (the Agency) at the hearing. The Appellant, Marc D. Woods, 21575 Fieldgate Drive, Richmond, Minnesota 56368, participated on his own behalf without counsel (the Appellant or Mr. Woods).

Following the close of the hearing record on October 24, 2006, Judge Lipman reviewed the tape recordings of the hearing and the documentary evidence entered into the record, and renders the following Findings of Fact, Conclusions and Decision.

NOTICES

This Report is only a recommendation to the Commissioner of the Minnesota Pollution Control Agency and is not a final decision. The Commissioner will make her final decision after reviewing this report and the hearing record. In making that decision the Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation that appear in this report.

Under Minnesota Law,^[1] the Commissioner may not make his final decision until at least five days after the receipt of this Report. During that time the Commissioner must give the person or persons to whom the order was issued an opportunity to comment on the Report. Parties should contact the office of Brad Moore, Acting Commissioner of the Minnesota Pollution Control Agency, 520 Lafayette Road North, St. Paul, Minnesota 55155, to find out how to file comments.

The record of this contested case proceeding closes upon the filing of comments on the report with the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision.^[2]

Under Minn. Stat. § 14.62, subd. 1, the Commissioner must serve his final decision upon each party and the Administrative Law Judge by first-class mail.

STATEMENT OF THE ISSUES

(1) Whether or not Mr. Woods violated Minnesota law^[3] by disposing of solid waste at a location not authorized by law; and

(2) If so, whether the \$2,000 penalty imposed on Mr. Woods should be affirmed or modified?

Based upon the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Marc D. Woods lives at 21575 Fieldgate Drive, Richmond, Minnesota, 56368.^[4]

1. As an investment venture, Mr. Woods and his wife, Julie, purchased a home at 37 – 20th Avenue South, Saint Cloud, Minnesota, 56301. The couple took possession of the house on April 28, 2006 and began renovating the house a few days later. The renovation work continued through the next few months.^[5]

2. During the process of renovating and refurbishing the home on 20th Avenue South, a considerable amount of wood, construction debris and household fixtures were removed from the structure. These items were temporarily placed in the backyard of the home, adjacent to the garage and rear alleyway.^[6]

3. As the piles of debris mounted, Mr. Woods noticed that passersby in the alleyway would help themselves to some of the disposed items. Additionally, on days when the weather conditions made progress on the renovations impractical, Mr. Woods would occasionally take loads of debris up to his in-laws' farm, or, with the aid of his son, to the Tom Kraemer disposal company in Cold Spring, Minnesota.^[7]

4. The Woods burned some materials at their family farm and disposed of two loads of other items at the Kraemer disposal site.^[8]

5. The Kraemer facility is adjacent to Highway 23 in Cold Spring, approximately 15 miles southwest of the 20th Avenue South address in Saint Cloud. At the Kraemer facility, in addition to the regular charges for disposing of trash and debris, patrons are required to sort differing types of material according to categories that have been established by the facility's management. For example, the Kraemer facility required Mr. Woods to separate the scrap metal and appliances from the wood construction debris that Woods deposited there.^[9]

6. A similar restriction applied to the trash dumpsters that were available for placement at the home on 20th Avenue South. Mr. Woods was quoted a rental and disposal price of \$200 for a dumpster that was filled with construction debris. However, a surcharge of \$50 would be added to that price if scrap metal or appliances were added to the dumpster load.^[10]

7. Throughout the renovation project, Mr. and Mrs. Woods disagreed about the nature and extent of the updating that should occur in the home. Marc Woods favored fewer changes to the existing features of the home and, wherever possible, using materials from the scrap pile adjacent to the garage in the repairs.^[11] Julie Woods, however, was convinced that newer items and "a fresh look" were needed if the couple was to boost the return on investment that they would receive when the home was eventually resold. Disagreeing over both the current costs and the direction of the repair work, the couple "fought long and hard" about details of the project.^[12]

8. On Tuesday, July 18, 2006, Mr. Woods' physician issued orders restricting Woods from returning to work with his employer, a local granite company.^[13] Woods had sought medical attention due to pain and numbness that he was experiencing following an injury. The doctor's restrictions likewise curtailed the role that Mr. Woods played in the renovation work on the home at 20th Avenue South.^[14]

9. On Saturday, July 26, 2006, Stephen Peterka, the Manager of the Anderson Crane Company, arrived at the company's offices to discover a large mound of construction debris abandoned in the office parking lot.^[15] Anderson Crane's offices are located in an industrial park adjacent to Highway 23, approximately five miles south west of Saint Cloud as one travels between Saint Cloud and Cold Spring.^[16] The Anderson Crane company did not grant anyone permission to dump trash or debris in its parking lot.

10. After telephoning the Sterns County Sheriff's Department to report the dumping, Mr. Peterka and another employee of Anderson Crane Company spent the next two hours loading the debris into an empty dumpster that was owned by the company. The debris – which included scraps of wood, pieces of linoleum, metal vents from various appliances, nails, among other items – exceeded the capacity of a 4' x 6' x 4' dumpster.^[17]

11. As the two men were filling the dumpster with the debris, Lieutenant Robert Schwegel of the Sterns County Sheriff's Department arrived at the scene. After gathering some details from Mr. Peterka, Lt. Schwegel urged Peterka to be on the lookout for any distinctive materials in the pile that could be used to identify those who left the trash in the parking lot. At a point later that same day, Lt. Schwegel took digital photographs of the dumpster and material that had been left in the Anderson Crane parking lot.^[18]

12. In a voicemail message left for Lt. Schwegel, Mr. Peterka reported that among the dumped debris he found a wooden toilet seat with a distinctive tag. The tag listed included the name and telephone number of Gina Carlson of "Four Seasons Cleaning Services."^[19] When Lt. Schwegel reached Ms. Carlson by telephone, she confirmed that her firm performs winterization services on homes that have been repossessed by lenders and will be unoccupied pending a later resale. Based upon the information garnered from the tag, Ms. Carlson was able to send Lt. Schwegel the address of, and digital photographs from, the winterized home. Ms. Carlson identified the home as 37 – 20th Avenue South, Saint Cloud, and sent to Lt. Schwegel digital photographs of the wood toilet seat and a distinctive pink porcelain bathroom sink from the home.^[20]

13. Both Lt. Schwegel and Mr. Peterka matched the pink sink and wooden toilet seat pictured in the photographs from Four Season Cleaning Services with the items that were abandoned in the Anderson Crane parking lot.^[21]

14. During the days that followed, Lt. Schwegel, and then Conservation Officer Brian Mies, continued the investigation with interviews of Mr. and Mrs. Woods. While Mr. and Mrs. Woods denied any role in the dumping of construction debris from their remodeling project, their denials did not persuade either of the investigating officers.^[22]

15. On August 2, 2006, Officer Mies wrote a Solid Waste Field Citation No. 61712 and served it upon Mr. Woods.^[23] At Mr. Woods' request, Officer Mies only named Mr. Woods in the citation.^[24] Based upon the measurements of the dumpster, and believing that more than 100 cubic feet of material had been illegally disposed at the Anderson Crane site, Officer Meis determined that, at the statutory rate of \$20 per cubic foot of material, the \$2,000 maximum penalty was due.^[25]

16. Mr. Woods requested a hearing on the Administrative Penalty Order, and this contested case proceeding ensued.^[26]

17. At the hearing in this matter, Mr. and Mrs. Woods agreed that at least some of the waste and debris left at the Anderson Crane Company on July 22, 2006 was material from the home at 37 – 20th Avenue South, Saint Cloud, Minnesota.^[27]

18. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

19. The Memorandum that follows explains the reasons for these Findings, and, to that extent, the Administrative Law Judge incorporates that Memorandum into these Findings.

20. The Administrative Law Judge adopts as Findings any Conclusions which are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Minnesota law^[28] gives the Administrative Law Judge and the Commissioner authority to conduct this proceeding, to consider the issues raised here, and to make findings, conclusions, recommendations, and decisions.

2. The Agency gave Mr. Woods proper and timely notice of the hearing, and it has also fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. Minn. Stat. § 116.073, subd. 1(1), authorizes conservation officers employed by the Department of Natural Resources to issue citations to a person, among others, who:

. . . disposes of solid waste as defined in section 116.06, subdivision 22, at a location not authorized for the disposal of solid waste without permission of the owner of the property;

4. Minn. Stat. § 116.06, subd. 22, defines "solid waste" as:

garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from industrial, commercial, mining, and agricultural operations, and from community activities

5. The material that Stephen Peterka found in the Anderson Crane Company parking lot on July 22, 2006, was solid waste within the meaning of Minn. Stat. § 116.06, subd. 22.

6. Anderson Crane Company did not give anyone permission to place solid waste there on or about July 30, 2003.

7. Minnesota law^[29] authorizes the Agency's Commissioner to issue administrative penalty orders, based on field citations, to persons who dispose of solid waste locations not authorized for the disposal of solid waste without permission of the property owners.

8. Minn. Stat. § 116.072, subd. 6, grants persons to whom the Commissioner has issued administrative penalty orders the right to an expedited administrative hearing to review whether or not the order has been issued in conformity with Minnesota law.

9. The rules that govern expedited administrative hearings for review of an administrative penalty order provide that the party proposing that an action be taken has the burden of supporting the proposed action by a preponderance of the evidence.^[30]

10. In this proceeding, the Agency has the burden of proving by a preponderance of the evidence that it was Mr. Woods who deposited the solid waste that was found in the Anderson Crane Company parking lot on July 22, 2006.

11. The Agency has proved by a preponderance of the evidence that it was Mr. Woods who deposited the solid waste that was found in the Anderson Crane Company parking lot on July 22, 2006.

12. The Memorandum that follows explains the reasons for these Conclusions, and, to that extent, the Administrative Law Judge incorporates that Memorandum into these Conclusions.

13. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Commissioner AFFIRM the Administrative Penalty Order issued to Marc D. Woods.

Dated: November 28, 2006

s/Eric
Lipman

L.

ERIC L. LIPMAN
Administrative Law Judge

Reported: Taped (2 tapes)

MEMORANDUM

In this case, the undersigned was asked to decide between two alternate versions of events: The Woods' version of how the construction debris came to be in the Anderson Crane parking lot and the Agency's version of events.

In the Woods' view, an unknown person (or persons) collected a truck load worth of construction debris from behind the house at 20th Avenue South, Saint Cloud, and then deposited these some days or weeks later in the parking lot of Anderson Crane – a distance of nearly 5 miles away. The items gathered up by the dumper (or dumpers) included broken pieces of wood, discolored rose-patterned linoleum, metal vents and old nails.

In the Agency's view, the dumping was an opportunity for Mr. Woods to save himself the cost and the bother of properly disposing of this material. As the Agency argues, Mr. Woods would have been familiar with the area along Highway 23 between his home in Richmond, Minnesota, and the project site on 20th Avenue in Saint Cloud. Moreover, in the early hours of Saturday, July 22, 2006, neither the employees of the Anderson Crane Company, nor other motorists along Highway 23, would have observed someone dumping solid waste in the Anderson Crane parking lot. Concludes the Agency, Mr. Woods had the motive, means and opportunity to engage in this dumping.

The Woods' explanation of events is simply implausible. Not even the most ravenous, or impatient scavenger would have gathered up more than 100 cubic feet of construction debris for the purpose of later extracting a smaller number of useable items from this pile. It is an explanation that defies common sense.

By contrast, the Agency's explanation of events, pointing to Mr. Woods as the dumper, comports with all of the other surrounding facts: Mr. Woods was undoubtedly familiar with the area along Highway 23; Mr. Woods had regular access to a pick-up truck;^[31] Anderson Crane is along the route to the Kraemer disposal facility when one is traveling west from the house on 20th Avenue, South;^[32] the Kraemer disposal facility charges money for its services;^[33] the Kramer disposal facility also obliges its customers to sort deposited debris, a task that Mr. Woods would have found difficult to complete following his injury earlier in July;^[34] Mr. Woods rejected the idea of placing a dumpster for debris at the home on 20th Avenue South on the grounds that the \$250 charge for this service was too costly;^[35] Mr. Woods is angry over the spiraling and unexpected costs of the home repairs;^[36] and, four days before the dumping occurred, Mr. Woods was restricted from undertaking his regular employment^[37] – undoubtedly increasing the financial strain being felt by the Woods during the renovation project.

Collectively these facts combine to meet the agency's burden of proof in this case. The Administrative Penalty Order should be affirmed.

E.L.L.

^[1] Minn. Stat. § 116.072 (6)(e) (2006).

^[2] Minn. Stat. § 14.62 (2a) (2006).

^[3] Minn. Stat. § 116.073 (2006).

^[4] Testimony of M. Woods.

^[5] Testimony of J. Woods.

^[6] Test. of M. Woods; Test. of J. Woods.

^[7] Test. of M. Woods.

^[8] *Id.*

^[9] *Id.*

^[10] *Id.*

^[11] Test. of M. Woods.

^[12] Test. of J. Woods.

^[13] Ex. 11; Test. of M. Woods; Test. of J. Woods.

^[14] Test. of M. Woods; Test. of J. Woods.

^[15] Testimony of S. Peterka.

^[16] Ex. 1; Test. of S. Peterka.

^[17] Ex. 9; Test. of S. Peterka.

^[18] Testimony of R. Schwegel; see, Ex. 9.

- [19] Ex. 5; Test. of R. Schwegel; Test. of S. Peterka.
- [20] Exs 2, 3, 5, and 7; Test. R. Schwegel.
- [21] Exs 2, 3, 7, and 9; Test. R. Schwegel; Test. of S. Peterka.
- [22] Test. R. Schwegel; Testimony of B. Mies.
- [23] Ex. 10; Test. of B. Mies.
- [24] Test. of B. Mies.
- [25] Ex. 10; Test. of B. Mies.
- [26] Ex. B.
- [27] Test. of M. Woods; Test. of J. Woods.
- [28] Minn. Stat. §§ 14.50, 116.072 (2006).
- [29] Minn. Stat. § 116.072 (1) (2006).
- [30] Minn. R. 1400.8608 (2005).
- [31] Test. of M. Woods; Test. of J. Woods.
- [32] Exs. 1 and 9; Test. of R. Schwegel.
- [33] Test. of M. Woods.
- [34] *Id.*
- [35] *Id.*
- [36] *Id.*
- [37] Ex. 11; Test. of M. Woods; Test. of J. Woods.