

OCT - 8 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Respondent.

(IEPA No. 35-04-AC)

THIS FILING SUBMITTED ON RECYCLED PAPER

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STATE OF ILLINOIS
Pollution Control Board

POST-HEARING BRIEF OF COMPLAINANT

Illinois EPA has demonstrated that Respondent caused or allowed open dumping on the site. "Open dumping" means "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 (2002). "Refuse" means "waste," (415 ILCS 5/3.385 (2002)), and "waste" includes "any garbage . . . or other discarded material" (415 ILCS 5/3.535 (2002)). The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that various material including old broken windows and window frames, bottles, clothes, paper products, computer and stereo

equipment, furniture, dishes, tires, wood, and various metal and plastic objects were accumulated on the site. Tr. at 9-10; Exh. 1, pp. 3-4, 7-15. These materials constitute "discarded material" within the meaning of the term "waste." The photographs and site sketch in Exhibit 1 show that these items were arranged in various piles around the site. *Id.* The piles and other waste visible in the photographs in Exhibit 1 constitute the "consolidation of refuse from one or more sources" within the meaning of the term "open dumping." *Id.*

Respondent was responsible for the operation of the property on January 13, 2004. Tr. at 8. As such, Respondent caused or allowed the open dumping of waste observed on that date.

Respondent's causing or allowing the open dumping of these wastes resulted in "litter" under Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2002)). The Act does not define "litter," but in similar cases, the Board has looked to the definition of "litter" in the Litter Control Act:

"Litter" means any discarded, used or unconsumed substance or waste. "Litter" may include, but is not limited to, any garbage, trash, refuse, debris, rubbish...or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

415 ILCS 105/3(a) (2002); see *St. Clair County v. Louis I. Mund* (Aug. 22, 1991), AC 90-64, slip op. at 4, 6. Using this definition, the windows, clothes, books, tires, electronics, furniture, dishes, glass, wood, plastic and metal constitute "litter" under Section 21(p)(1) of the Act, and therefore Respondent violated that section.

Respondent's open dumping of these wastes also resulted in deposition of construction or demolition debris, in violation of Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2002)).

"General Construction or Demolition Debris" is defined in Section 3.160(a) of the Act, 415 ILCS 5/3.160(a) (2002), in relevant part, as "...materials resulting from the construction, remodeling, repair, and demolition of utilities, structures and roads, limited to...wood, including...wood

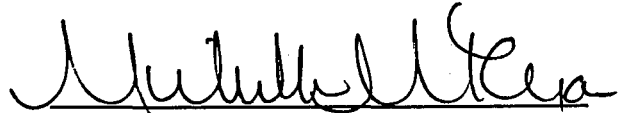
products...plumbing fixtures...glass...and piping or metals incidental to any of those materials”

As described above, various types of these items were observed at the site, which constitutes “deposition of construction or demolition debris” under Section 21(p)(7) of the Act, and therefore Respondent violated that section.

The Illinois EPA photographs and inspection report and the eyewitness testimony show that Respondent allowed open dumping of waste in a manner resulting in litter and deposition of construction and demolition debris in violation of Sections 21(p)(1) and 21(p)(7) of the Act. Illinois EPA requests that the Board enter a final order finding that Respondent violated these sections and imposing the statutory penalty.

Respectfully Submitted,

DATED: October 7, 2004

A handwritten signature in black ink, appearing to read "Michelle M. Ryan", written over a horizontal line.

Michelle M. Ryan
Special Assistant Attorney General

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD OCT - 8 2004

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

v.

CHRISTOPHER COLEMAN,

Respondent.

AC 04-46

(IEPA No. 35-04-AC)

MOTION TO FILE INSTANTER

NOW COMES the Complainant, the Illinois Environmental Protection Agency ("Illinois EPA"), by and through its attorney, Michelle M. Ryan, pursuant to 35 Ill. Adm. Code 101.522, and respectfully states as follows:

(1) Pursuant to the Hearing Report issued in this matter on September 16, 2004, Complainant's post-hearing brief was due on October 6, 2004.

(2) Due primarily to an organizational error by the assigned attorney, the post-hearing brief was filed one day late.

(3) The transcript for the September 15, 2004 hearing was not available on the Pollution Control Board's ("Board") website until October 7, 2004, rendering the aforementioned organizational error harmless.

(3) Pursuant to 35 Ill. Adm. Code 101.522, the Board may allow for an extension of time for filing any document either before or after the due date.

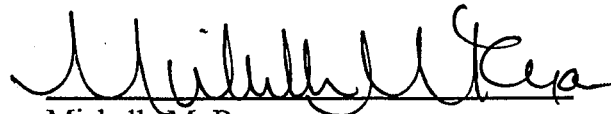
(4) No prejudice will result to the Board by granting this motion, as this case does not contain a statutory decision deadline.

(5) No prejudice will result to the Respondent, in that he did not participate in the hearing and is not expected to file a post-hearing brief. Furthermore, Complainant has no objection to a commensurate extension of Respondent's due date.

WHEREFORE, Illinois EPA requests that the Board grant this Motion to File Instantly and accept Complainant's Post-Hearing Brief as timely filed.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,
Complainant

DATED: October 7, 2004

A handwritten signature in black ink, appearing to read "Michelle M. Ryan", written over a horizontal line.

Michelle M. Ryan
Special Assistant Attorney General

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PROOF OF SERVICE

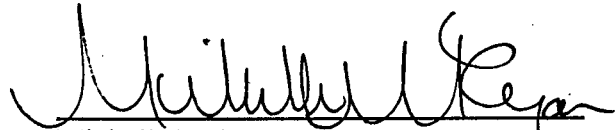
I hereby certify that I did on the 7th day of October 2004, send by U.S. Mail with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled POST-HEARING BRIEF OF COMPLAINANT and MOTION TO FILE INSTANTER

To: Christopher Coleman
Route 7, Box 103
Weslaco, Texas 78596

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

and the original and nine (9) true and correct copies of the same foregoing instruments

To: Dorothy Gunn, Clerk
Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601



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