

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 14 2004

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)

Complainant,)

v.)

JOHN BROWN,)

Respondent.)

AC 04-82

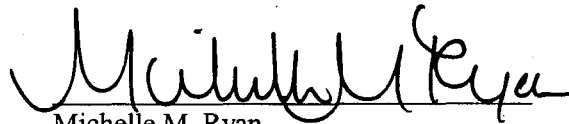
(IEPA No. 270-04-AC)

NOTICE OF FILING

To: John Brown
1805 Neville Street
Metropolis, IL 62960-1443

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled POST-HEARING BRIEF OF COMPLAINANT.

Respectfully submitted,



Michelle M. Ryan
Special Assistant Attorney General

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Dated: December 13, 2004

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ILLINOIS ENVIRONMENTAL
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STATE OF ILLINOIS
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(IEPA No. 270-04-AC)

JOHN BROWN,

Respondent.

POST-HEARING BRIEF OF COMPLAINANT

On June 2, 2004, the Illinois Environmental Protection Agency ("Illinois EPA") issued an Administrative Citation to John Brown ("Respondent"). The citation alleges violations of Section 21(p)(1) and 21(p)(7) of the Environmental Protection Act ("Act") (415 ILCS 5/21(p)(1) & (7) (2002)), in that Respondent caused or allowed open dumping of waste, resulting in litter and the deposition of construction or demolition debris. The violations occurred at a property located at 955 Country Club Road, just north of Metropolis, Massac County, Illinois. Transcript, p. 6; Exhibit 1.

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 wood and metal, which had previously been part of a building, were accumulated on the site. Tr. at 7-8, 10; Exh. 1, pp. 3, 5-6. These materials constitute "discarded material" within the meaning of the term "waste." The

testimony from all witnesses shows that Respondent owned the property at the time of the inspection. Tr. at 6, 9, *see also* Tr. at 16. Respondent further admitted that he brought the waste from a burned building out to the site. Tr. at 10. As such, Respondent caused or allowed the open dumping of waste observed on April 7, 2004.

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) (2000); *see St. Clair County v. Louis I. Mund* (Aug. 22, 1991), AC 90-64, slip op. at 4, 6. Using this definition, the wood and metal from the burned building 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 the deposition of construction or demolition debris in violation of Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2002)). "Construction or demolition debris" is defined in part, as follows:

"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 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) (2002) (emphasis added).

As described above, the waste material located on the site was wood and metal from a burned structure. The term "demolition" is not separately defined in the Act, but the American Heritage Dictionary, Second College Edition (1991) defines demolition as "The act or process of wrecking or destroying, esp. destruction by explosives." Clearly, this definition contains no element of intent, and includes unintentional destruction as well as intentional wrecking. Further, the burning of a building can properly be characterized as "destroying," particularly in this case, where the resulting debris needed to be disposed. Therefore, the wood and metal from the burned building on the site meets the definition of "construction or demolition debris" for purposes of Section 21(p)(7) of the Act, and therefore Respondent violated that section.

Respondent alleged that he did not know that hauling the burned debris to his site for dumping and further burning was illegal. Tr. at 10. A person can cause or allow a violation of the Act without knowledge or intent. *County of Will v. Utilities Unlimited, Inc., et al.* (July 24, 1997), AC 97-41, slip op. at 5, citing *People v. Fiorini*, 143 Ill.2d 318, 574 N.E.2d 612 (1991). Furthermore, the conversation Respondent had with the Illinois EPA inspector about the illegality of his actions occurred in October 2003, approximately 6 months before the April 7, 2004 inspection date relevant to this Administrative Citation action. *Id.* Therefore, Respondent's alleged ignorance of the law is no defense.

Respondent also alleged that he could not remove the waste due to the wet weather. Tr. at 10. The Illinois EPA inspector testified that although some areas were wet during the April inspection, there were dry areas as well. *Id.* Furthermore, the weather during April 2004 is not as relevant to Respondent's alleged inability to conduct the work as the weather between the time the material arrived on site and April 7, 2004, when the inspection was conducted. Illinois EPA originally observed the material on site in October 2003. Tr. at 12. According to the National

Weather Service, monthly normal temperatures for the State of Illinois remain below freezing for the months of December, January and February.¹ Although these averages may not be specifically representative of the weather in Massac County in 2003, it is likely that the ground would have been dry and/or frozen during at least some part of the period between October 2003 and April 2004. The Illinois EPA inspector testified that it would have taken no more than two weeks to remove the estimated 30-40 cubic yards of material from the site. Tr. at 12. Therefore, Respondent's complaints about poor weather do not rise to the level of the "uncontrollable circumstances" required by Section 31.1(d)(2) of the Act to provide a defense to the violations.

Respondent also raises the common defense of poverty, in that he was financially unable to remove the waste from the site during the six months between October 2003 and April 2004. Tr. at 13, 16. In fact, Respondent did not have the waste removed until October 2004, approximately a year after it was first observed by Illinois EPA. Tr. at 14. However, Respondent offered no documentary evidence of his financial condition, either by way of tax returns, bank account statements, or credit reports to verify his claims. Therefore, he has not carried his burden of proof as to this affirmative defense. Furthermore, even if the allegation that Respondent had a financial inability to comply with the law were taken as true, Respondent introduced no evidence that his financial condition was the result of "uncontrollable circumstances," as required by Section 31.1(d)(2) of the Act to provide a defense. At worst, the evidence shows that Respondent's financial situation is fluctuating, because he was able to afford to properly dispose of the waste, once Illinois EPA filed this Administrative Citation and set it for hearing. Tr. at 13, 17.

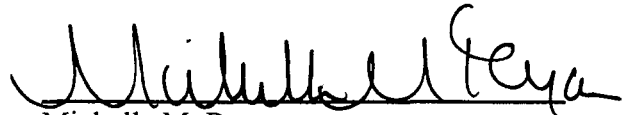
The Illinois EPA photographs and inspection report and the eyewitness testimony show that Respondent allowed open dumping of waste in a manner resulting in litter and deposition of

¹ See http://www5.ncdc.noaa.gov/climate_normals/hcs/HCS_41.pdf

construction or 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: December 13, 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

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

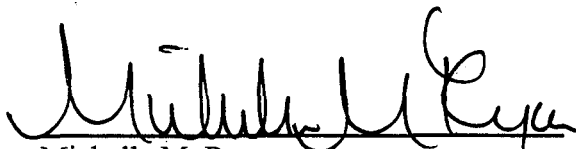
PROOF OF SERVICE

I hereby certify that I did on the 13th day of December 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

To: John Brown
1805 Neville Street
Metropolis, IL 62960-1443

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

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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