

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

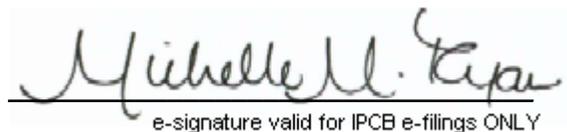
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 08-28
)	
v.)	(IEPA No. 52-08-AC)
)	
ROB PINSKI,)	
)	
Respondent.)	

NOTICE OF FILING

To: Rob Pinski
529 S. Madison St.
Du Quoin, IL 62832

PLEASE TAKE NOTICE that on this date I electronically filed 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,



e-signature valid for IPCB e-filings ONLY

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: November 13, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
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POST-HEARING BRIEF OF COMPLAINANT

On April 8, 2008, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Rob Pinski (“Respondent”)¹. The citation alleges violations of Section 21(p)(1), 21(p)(3) and 21(p)(7)² of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1), (3) & (7) (2006)), in that Respondent caused or allowed open dumping of waste resulting in litter, open burning, and the deposition of clean or general construction or demolition debris. The violations occurred at a property located at 1043 North Walnut Street, St. Johns, Perry County. 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 (2006). “Refuse” means “waste,” (415 ILCS 5/3.385 (2006)), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2006)). Respondent admitted to the Illinois EPA inspector that he hauled waste from a demolition site in DuQuoin to the St. Johns site. Tr. at 9.

¹ Joseph Cosentino was dismissed from this action on June 5, 2008, due to the fact that he predeceased this action.

Respondent also admitted in his Response to the Administrative Citation that he “told the home owner (Miss Cook) that [he] was going to take the wood and burn it in the country” and that he “took 3 pick up truck loads of wood to the country and burnt it.” Petition for Review, filed May 12, 2008, p.1. Respondent further indicated that this activity took place the day prior to the inspection on February 29, 2008. *Id.* The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that materials including vinyl siding comparable to that seen at the demolition site, demolition wood, and ash from burning were commingled at the site.³ Tr. at 12-15; Exh. 1, pp. 4-5, 10-16. Therefore, Respondent caused or allowed the open dumping of waste observed on February 29, 2008.

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) (2006)). 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) (2006); see *St. Clair County v. Louis I. Mund* PCB AC 90-64, (Aug. 22, 1991) pp. 4, 6. According to the definition and supporting case law, the vinyl siding, dimensional lumber, and ash constitute “litter” under Section 21(p)(1) of the Act, and therefore Respondent violated that section.

² At hearing, Complainant moved to substitute this violation of 21(p)(7) for the violation of 21(p)(4), which was originally contained in the Administrative Citation. This substitution issue will be addressed further, below.

³ The disposal site contained three distinct areas of waste, labeled in the inspection report as Areas A, B, and C. *See*, Exh. 1, p. 10. Because the waste in Area A was the most consistent with the materials apparently removed from the demolition site in DuQuoin, Illinois EPA is focusing its arguments on the Area A waste. *See* Transcript, p. 15.

Respondent's open dumping of these wastes also resulted in open burning in violation of Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2006)). Charred wood, warped vinyl siding, and ash were consolidated in a pile immediately below a tree, which had limbs that were scorched up to 15 or 20 feet high. Tr. at 12-13; Exh. 1, pp.11-13. As argued above, Respondent caused or allowed the open dumping of this waste. Because the open dumping resulted in the open burning of waste, Respondent also violated Section 21(p)(3) of the Act.

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) (2004)). "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) (2006).

The inspector observed vinyl siding and dimensional lumber at the site. Tr. at 9-10. These materials derived from the house located at the DuQuoin demolition site, which was a "structure" under Section 5/3.160(a). Further, "[d]imensional lumber qualifies as construction or demolition debris under the Act." *Illinois EPA v. Yocum, et al.*, PCB Nos. AC 01-29 and AC 01-30 (consolidated), June 6, 2002, p. 7; *aff'd, Yocum, et al. v. Illinois Pollution Control Board*, (4-02-0709), June 20, 2003 (unpub.). All of these wastes meet the definition of "construction or demolition debris" for purposes of Section 21(p)(7) of the Act, and therefore Respondent violated that section.

Respondent indicated in his Petition for Review that he didn't know that it was illegal to burn the demolition debris. Petition for Review, p.1. However, a person can cause or allow a violation of the Act without knowledge or intent. *County of Will v. Utilities Unlimited, Inc.*, et al. PCB AC 97-41, (July 24, 1997) p. 5, citing *People v. Fiorini*, 143 Ill.2d 318, 574 N.E.2d 612 (1991). Respondent further stated in his Petition for Review that after the Illinois EPA inspector told him he "could not take anything off the job site and burn it," he "complied with this request...nothing else was desposed (sic) of illegally." Petition for Review, pp.1-2. However, this statement is impeached by the photos sent to the Illinois EPA inspector later that same day, which showed the Area A burn pile in flames. Exh. 1, p. 17; Transcript p. 16.

Respondent also reported that the Illinois EPA inspector told him that he "was going to get 3 warning tickets most likely if [he] complied (sic) with this agreement (sic)" to dispose of the remaining waste properly. Petition for Review, p. 2. In fact, Respondent did receive an Administrative Citation with three violations. However, the third violation was inadvertently listed in the original Administrative Citation as a violation of 21(p)(4), when it should have been 21(p)(7). Section 21(p)(4) prohibits open dumping resulting in waste in standing or flowing water, which has never been at issue in this case. Rather, the violation of 21(p)(7) was correctly cited in the inspection report attached to the Administrative Citation, and demolition debris was clearly the subject of the discussion between the Illinois EPA inspector and Respondent on the date of the inspection. Respondent has never addressed the error in the one violation originally cited, and Illinois EPA became aware of this error immediately prior to hearing, at which time Illinois EPA moved to substitute a corrected page. Transcript, pp. 5-6. The corrected violation clearly comports with the activities Respondent has admitted occurred at the dump site, and which were contained in the inspection report. Petition for Review, p.1, Exh. 1, pp. 2-5, 10-13. Respondent was originally

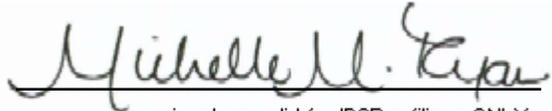
expecting "3 warning tickets," which is the same number he received. He apparently did not prepare to defend against the 21(p)(4) violation, as he did not raise it in his Petition for Review or subsequently, nor did he appear at hearing to defend himself at all. For all these reasons, Respondent will suffer no prejudice if this error is corrected.

The Illinois EPA photographs, inspection report and the testimony show that Respondent caused or allowed open dumping of waste in a manner resulting in litter, open burning and the deposition of construction and demolition debris in violation of Sections 21(p)(1) and (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: November 13, 2008



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Special Assistant Attorney General

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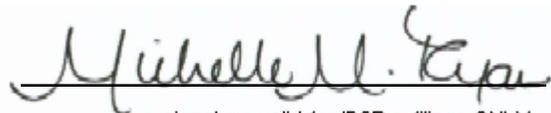
PROOF OF SERVICE

I hereby certify that I did on the 13th day of November, 2008, 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: Rob Pinski
529 S. Madison St.
Du Quoin, IL 62832

and an electronic copy of the same foregoing instrument on the same date via electronic filing

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



e-signature valid for IPCB e-filings ONLY

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Special Assistant Attorney General

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