

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

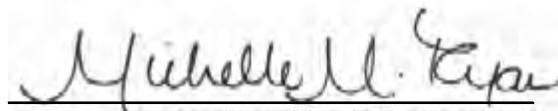
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 09-56
)	
v.)	(IEPA No. 136-09-AC)
)	
GARY J. SZCZEBLEWSKI and)	
JAMES R. SZCZEBLEWSKI,)	
)	
Respondents.)	

NOTICE OF FILING

To: Gary J. Szczeblewski, Esq.
111 East Franklin Avenue
Sesser, IL 62884

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: December 8, 2009

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POST-HEARING BRIEF OF COMPLAINANT

On June 25, 2009, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Gary J. and James R. Szczeblewski (“Respondents”). The citation alleges violations of Section 21(p)(1) and (7) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1) & (7) (2008)), in that Respondents caused or allowed open dumping of waste resulting in litter and the deposition of clean or general construction or demolition debris. The violations occurred at a property located at 402 East Yung Road, outside Sesser, Franklin County. Transcript, pp. 7, 60; Exhibit 1.

Illinois EPA has demonstrated that Respondents 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 (2008). “Refuse” means “waste,” (415 ILCS 5/3.385 (2008)), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2008)). Respondents have had a farm partnership with respect to the property for approximately twenty years. Tr. at 61. The June 11, 2009 inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that

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materials including a tire, cement block or cinder block, roofing material, dimensional lumber, a child's bed, a child's plastic slide, a cigarette sorter from a store, deteriorated steel drums, plastic tarp, a toilet, a couch, drywall and other miscellaneous items were present at the site. Tr. at 9-11, 19; Exh. 1, pp. 3-10. These materials were overgrown with vegetation (Tr. at 9-10; Exh. 1, pp. 3-10), indicating that they had been present in their current location for a significant period of time. In fact, Respondents' testimony indicated some of the waste was present when they bought the property, and such dumping has "probably" been continuing for "more than fifty years." Tr. at 61-63. Therefore, Respondents caused or allowed the open dumping of waste observed on June 11, 2009.

Respondents' 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) (2008)). 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 tire, cement block or cinder block, roofing material, dimensional lumber, a child's bed, a child's plastic slide, a cigarette sorter from a store, deteriorated steel drums, plastic tarp, a toilet, a couch, drywall and other miscellaneous items constitute "litter" under Section 21(p)(1) of the Act, and therefore Respondents violated that section.

Respondents' causing or allowing the 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) (2008)). "Construction or demolition debris" is defined in part, as follows:

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“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) (2008).

The cement block or cinder block, roofing material, and drywall at the site are included within the above definition of general construction or demolition debris. In addition, “[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.). The cement or cinder block, roofing material, drywall, and dimensional lumber dumped at the site all meet the definition of “construction or demolition debris” for purposes of Section 21(p)(7) of the Act, and therefore Respondents violated that section.

Respondents admitted that at least some of the waste observed at the site was present since before they owned the property, and may have been there for more than fifty years. Tr. at 61-63. This Board has long held that present inaction of the part of a current landowner to remedy past illegal disposal of waste previously placed on the site constitutes “allowing” open dumping, in that the owner allows the illegal situation to continue. *Illinois EPA v. William Shrum*, AC 05-18 (March 16, 2006), p. 8 (citations omitted); *Sangamon County v. Lee Hsueh*, AC 92-79 (July 1, 1993), pp. 4-5.

Respondents also failed to prevent additional open dumping that they were aware was happening at the site. Access to the site was not restricted in any way, and the gate was wide open at

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the time of the June 11, 2009 inspection. Tr. at 40-41. Respondents allegedly made attempts to lock the gates at some point in the past, but someone cut off the locks. Tr. at 60. However, it is clear from the further testimony on this issue that the reason for these gates was not to prevent open dumping but theft, because “they was stealing everything, grain, electric motors, everything.” In fact, Respondent “had to end up moving the grain bin.” Tr. at 61. Obviously, the need for the locked gates became less important to them when there was nothing on the property left to steal, and Respondents had abandoned any attempt to secure the site by the time of the June 2009 inspection. It is difficult to imagine someone so interested in fly dumping on a certain piece of property that they would cut a lock to access a private field road, rather than leaving their waste along the public rural roadway. Therefore, it does not appear that Respondents took reasonable steps to secure the site against additional open dumping.

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). However, Respondents were well aware that the dumping on their property was in violation of the Act, because Illinois EPA issued an Administrative Citation Warning Notice (“ACWN”) on April 16, 2009, almost two months before the inspection that resulted in this Administrative Citation. Exh. 2. Contrary to Respondent’s assertion that “we were given no notice of it, we were not asked to solve this problem...They didn’t give us an opportunity to do anything,” (Tr. at 23), the ACWN did exactly that. Testimony showed that the purpose behind the ACWN was to give Respondents a chance to clean up their property. Tr. at 43. However, by the time of the June 11, 2009 inspection, “it was perfectly clear that [Respondents] weren’t going to clean it up within the timeframe” given in the ACWN. Tr. at 47. The ACWN itself warned that further action such as this

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Administrative Citation could be taken without additional notice. Exh. 2. Respondents did respond in writing to the ACWN, but they gave no indication that they had any intention of cleaning up the site. Exh. 3, Tr. at 43.

There was some indication in the testimony that Respondents were confused about the exact deadline for remediation of the site. The written evidence provided in Exhibits 2 and 4 indicate that May 31, 2009 was the Illinois EPA's original deadline. Exhibit 4 further indicated: "You may request, *in writing*, an extension of the deadline. If you request an extension, provide a clean up plan including dates and proper disposal methods for the documented waste along with a method to prevent future open dumping and open burning at the site." Exh. 4, *emphasis added*. Rather than following these written instructions, Respondents relied upon the notes of the law office manager/secretary of her telephone conversation with Tom Edmonson of Illinois EPA that an extension was granted through July 31. Tr. at 56. As Gary Szczeblewski is a lawyer, this behavior is completely unreasonable. Furthermore, although the secretary's testimony showed that Mr. Edmondson mentioned a 30-day extension during the May 28, 2009 phone call, (Tr. at 54) her notes inexplicably stated July 31 was the new deadline (Tr. at 56), which is 63 days from the date of the phone call. Illinois EPA's witness indicated that a 30-day extension was granted, subject to further written request, as required by the letter. Tr. at 50. No written extension request was ever received from Respondents (Tr. at 50), and no clean up was performed, even by the July 31, 2009 date. Tr. at 57. Respondents have never evidenced any intention of cleaning up their site, and in fact they have never cleaned up any open dumped waste since they acquired the property. Tr. at 62. They cannot now claim surprise at the issuance of an Administrative Citation, which they were warned against in April 2009, and did nothing to prevent.

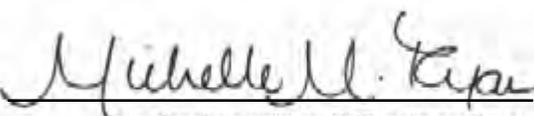
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Respondents mention several other apparent defenses, which can be disposed of quickly. Respondents claim that the property is under the control of the Abandoned Mines Program. *See* Petition for Review. However, the inspection report that is the subject of this Administrative Citation does not address the mine waste (Tr. at 49), and Exhibit 4 makes clear that the waste at issue in this Administrative Citation is not going to be addressed by that program. Respondents claim that “small town politics” are involved in this case. Tr. at 49, 53. Illinois EPA’s inspector found this laughable (Tr. at 53), because Illinois EPA reports are based upon the inspections of the property, and nothing else. Tr. at 33. Respondent also claimed in opening statements that the waste may be on the railroad right-of-way (Tr. at 5), but Illinois EPA testified that this was clearly not the case. Tr. at 13.

The Illinois EPA photographs, inspection report and the testimony show that Respondents caused or allowed open dumping of waste in a manner resulting in litter and the deposition of clean or general construction or 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 Respondents violated these sections and imposing the statutory penalty.

Respectfully Submitted,

DATED: December 8, 2009



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Michelle M. Ryan
Special Assistant Attorney General

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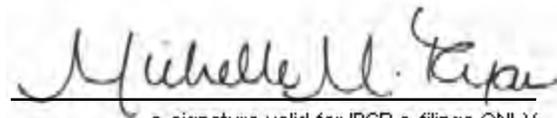
PROOF OF SERVICE

I hereby certify that I did on the 8th day of December, 2009, 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: Gary J. Szczeblewski, Esq.
111 East Franklin Avenue
Sesser, IL 62884

and the original of the same foregoing instrument on the same date by electronic filing

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



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