

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
RAY NEWINGHAM,)
)
Respondent.)

AC 11-13

(IEPA No. 305-10-AC)

RECEIVED
CLERK'S OFFICE
NOV 28 2011
STATE OF ILLINOIS
Pollution Control Board

ORIGINAL

NOTICE OF FILING

To: Ray Newingham
715 West Day Street
Roodhouse, Illinois 62082

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 28, 2011

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 11-13
)	
v.)	(IEPA No. 305-10-AC)
)	
RAY NEWINGHAM,)	
)	
Respondent.)	

POST-HEARING BRIEF OF COMPLAINANT

On November 1, 2010, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Ray Newingham (“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) (2008)), 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 the corner of Worchester and Clay Streets in Roodhouse, Greene County, on September 16, 2010. Transcript, pp. 8, 16; 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 (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)). The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that a television, bricks, compressed gas tanks, electrical components and conduit, pipe, plastics, metals, a vehicle battery, a road warning saw horse, wood pallets, wire, asphalt, a toilet, a saw blade, a metal desk, plaster, drywall, a fan,

a mattress, a kitchen sink, corrugated hose, used tires, shingles, insulation and carpet were present at the site. Tr. at 10-13; Exh. 1, pp. 3-17. These materials constitute “discarded material” within the meaning of the term “waste.” Respondent has owned the site (*see* Respondent’s Petition for Review, filed December 29, 2010) since before the buildings there collapsed in 2009 (Tr. at 9). The only noted change to the condition of property between the collapse and the September 16, 2010 inspection was that dirt and asphalt was brought there from off site. Tr. at 11. Therefore, Respondent caused or allowed open dumping of waste observed on September 16, 2010.

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) (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) (2002); *see St. Clair County v. Louis I. Mund* (Aug. 22, 1991), AC 90-64, slip op. at 4, 6. Using this definition, the materials noted above at the site 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) (2008)). “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) (2008).

Evidence introduced at hearing showed that bricks, electrical components and conduit, pipe, plastics, metals, wire, a toilet, plaster, drywall, a kitchen sink, corrugated hose, shingles, insulation and carpet were present throughout the site. Tr. at 10-13; Exh. 1, pp. 3-17. These materials meet the definition of “construction or demolition debris” for purposes of Section 21(p)(7) of the Act, and therefore Respondent violated that section.

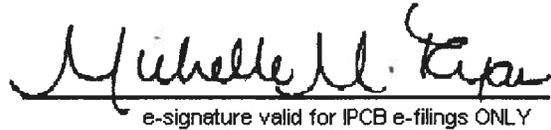
Respondent has indicated that the collapse of the buildings was not within his control, and that he had financial problems. *See* Respondent’s Petition for Review, filed December 29, 2010. However, the collapse occurred on May 28, 2009 (*see* attachment to Petition for Review), and the inspection on September 16, 2010 demonstrating that the site had not been properly address was over 15 months later, giving Respondent plenty of time to address the problems. Furthermore, 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). Therefore, these arguments by Respondent do not provide a defense to the proven violations. Respondent did not appear at hearing to offer other evidence in his defense. Tr. at 4.

The Illinois EPA photographs, inspection report and the testimony show that Respondent allowed open dumping of waste in a manner resulting in litter and deposition of construction or demolition debris in violation of Sections 21(p)(1) and (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: November 28, 2011



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

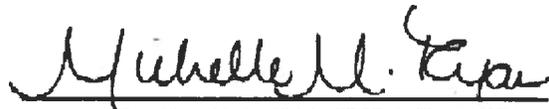
PROOF OF SERVICE

I hereby certify that I did on the 28th day of November, 2011, 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: Ray Newingham
715 West Day Street
Roodhouse, Illinois 62082

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

To: John Therriault, 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

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