

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
DAVID CHARLES BETTIS,)
)
Respondent.)

AC 10-21

(IEPA No. 124-10-AC)

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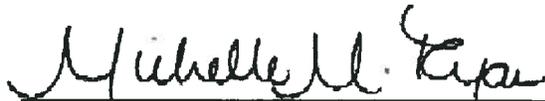
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: David C. Bettis
P.O. Box 20621
St. Louis, MO 63139

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 29, 2011

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ILLINOIS ENVIRONMENTAL)
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POST-HEARING BRIEF OF COMPLAINANT

On April 1, 2010, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to David Charles Bettis (“Respondent”). The citation alleges violations of Section 21(p)(1) and 21(p)(3) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1) & (3) (2008)), in that Respondent caused or allowed open dumping of waste resulting in litter and open burning. The violations occurred at a property known as the Carrollton Livestock Auction, located on the south side of Route 108, one mile east of the City of Carrollton, Greene County, on February 19, 2010. Transcript, pp. 8-9; 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 wood, bed springs, box springs, television sets, paper, Styrofoam cups, cabinets, an empty bottle, glass, plastics, cans, nails, and

ashes were present at the site. Tr. at 10; Exh. 1, pp. 4-8. These materials constitute “discarded material” within the meaning of the term “waste.”

Respondent had owned the site since October 2008 (Tr. at 16), and therefore was in control of the premises for more than a year prior to the inspection on February 19, 2010. Fly dumping by unknown parties had been a problem” ongoing from day one” (Tr. at 25) and Respondent had been warned of this problem by the previous owner (Tr. at 17). Even though Respondent knew about these problems at the site, 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). Respondent doesn’t dispute the fact of “stuff being dumped back there and it being burned,” but he did not conduct the dumping or burning himself. Tr. at 12. At hearing, Respondent presented a defense in which he appears to argue that the violations were the result of “uncontrollable circumstances,” (*see* 35 Ill. Adm. Code 108.206(d)), which is addressed below.

Respondent obviously did not have complete control over unknown parties, but because Respondent was aware of the fly dumping problem, he took some steps in an attempt to prevent it by putting up signs (Tr. at 12), making announcements at almost every sale (Tr. at 21) and by installing lights, which “did help a little bit,” because “not too long after that, you know, it kind of quit.” Tr. at 15. However, Respondent “didn’t have the money to post cameras” (Tr. at 15) to help identify the fly dumpers. Most problematic was the manner in which Respondent chose to run his business, particularly the “junk and hay sale” described below.

In addition to the main business of the sale of livestock, Respondent continued a tradition of the “junk and hay sale,” which consisted of random customers bringing in “Lord knows what, lawn mowers and farm equipment and any old thing...whatever they brought to sell.” Tr. at 17.

People brought in miscellaneous items all week long on an almost daily basis. Tr. at 19. The fly dumping occurred in the same area that farmers and other customers were permitted to store their items for the sale (Tr. at 23) and unsellable items such as mattresses and broken furniture were dumped there. Tr. at 25. Even though Respondent was aware of the fly dumping problems perpetually related to the “junk and hay sale,” he made a conscious business decision not to restrict access to the property in order to provide a service. Tr. at 18-19. “[A]lthough we had considered putting up chains across the driveways, because of our customers, *we couldn’t refuse access* the rest of the week.” Tr. at 18, *emphasis added*. Respondent’s refusal to inconvenience his customers is the real reason that the fly dumping continued unabated at the site, because “by not refusing access, there was no way we could eliminate people coming in and dumping.” Tr. at 19.

Property owners are responsible for environmental violations on their property, unless the facts establish that they have no capability to control the source of the problem or that they have taken “extensive precautions” against such violations. *Gonzalez v. Illinois Pollution Control Board*, 2011 IL App (1st) 093021 ¶33, *citing Perkinson v. Illinois Pollution Control Board*, 187 Ill. App. 3d 689, 695 (1989). In the *Gonzalez* case, the property owner had installed a locked gate at the site, but allowed a dumper to have a key to the gate and to access the property without supervision. *Id.* at ¶¶34-35. Similarly, Respondent in this case refused to prevent *anyone* from accessing the site without supervision, so as not to incur the wrath of legitimate customers who may have suffered the inconvenience of storing their sale items until sale day each week. Signs, announcements, and lighting do not amount to “extensive precautions,” because Respondent could have limited access to the site to times when supervision was available, but chose not to do so. Respondent argues that “human beings can only do so much” to prevent violations on their

property (Tr. at 15), but property owners are in a much better position than Illinois EPA or any other entity to take appropriate precautions. This is not a case where “uncontrollable circumstances” resulted in the violations. Respondent chose his own business interests over the requirements of the Act. As such, Respondent caused or allowed open dumping of waste observed on February 19, 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.

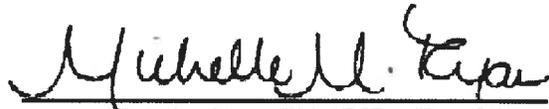
Respondent’s open dumping of these wastes also resulted in open burning in violation of Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2008)). “Open burning” is defined in Section 3.300 of the Act, 415 ILCS 5/3.300 (2008), as “the combustion of any matter in the open or in an open dump.” As described above, the waste piles located on the site meet the definition of “open dumping.” The waste was partially burned and charred, as evident from the photos and admitted by the Respondent. Exh. 1, pp. 6-7; Tr. at 12. Again, the burning was conducted by unknown parties. See Tr. at 12, 14. However, the Act prohibits “open dumping of waste in a manner that *results in...open burning*” 415 ILCS 5/21(p)(3), *emphasis added*. Because Respondent was responsible for allowing the open dumping, he is also responsible for the result of open burning, regardless of how

the burning occurs, even if it was by accident. *Illinois EPA v. Alan Smith*, PCB No. AC 01-42 (June 6, 2002), p. 7. Therefore, Respondent violated Section 21(p)(3) of the Act.

The Illinois EPA photographs, inspection report and the testimony show that Respondent allowed open dumping of waste in a manner resulting in litter and open burning in violation of Sections 21(p)(1) and (p)(3) 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 29, 2011



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Michelle M. Ryan
Special Assistant Attorney General

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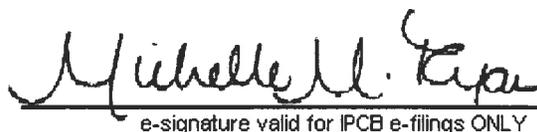
PROOF OF SERVICE

I hereby certify that I did on the 29th 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: David C. Bettis
P.O. Box 20621
St. Louis, MO 63139

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



Michelle M. Ryan
e-signature valid for IPCB e-filings ONLY

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