

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 15-25
)	
v.)	(IEPA No. 424-14-AC)
)	
MARK E. BOSECKER,)	
)	
Respondent.)	

NOTICE OF FILING

To: Mark E. Bosecker
7053 E. 350 Road
Mt. Carmel, IL 62863

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: September 24, 2015

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

On December 30, 2014, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Mark E. Bosecker (“Respondent”). The citation alleges violations of Section 21(p)(1) and 55(k)(1) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1) and 55(k)(1) (2014)), in that Respondent caused or allowed open dumping of waste resulting in litter and the accumulation of water in used or waste tires. The violations occurred at a property located off Route 1, between Cowling and Keenesburg, south of Mt. Carmel, Wabash County, on December 8, 2014. 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 (2014). “Refuse” means “waste,” (415 ILCS 5/3.385 (2014)), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2014)). The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show several vehicles and vehicle parts, some of which were in unusable condition, had expired registrations, and/or were overgrown with vegetation were present at the site, as well as tires, demolition waste, and lumber, some of which

had rotted, and several 55-gallon drums. Tr. at 8-13; Exh. 1, pp. 5-12. These materials constitute “discarded material” within the meaning of the term “waste.” Respondent owns the site (Tr. at 6) and does not deny the presence of these open dumped wastes during the inspection. Therefore, Respondent caused or allowed open dumping of waste observed on December 8, 2014.

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) (2014)). 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 also allowed water to accumulate in used or waste tires in violation of Section 55(k)(1) of the Act (415 ILCS 5/55(k)(1) (2010)). Water was observed in used tires on the site on December 8, 2014. Exh. 1, p. 6, 21, 27-8; Tr. at 11-13. Therefore, Respondent violated Section 55(k)(1) of the Act.

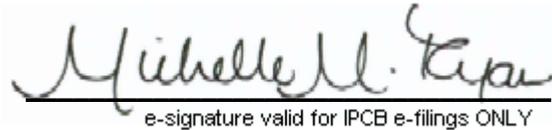
Respondent discussed a lot of work he has since completed at the site, as well as additional work remaining to be done, including “a bunch of garbage that I will get to” (Tr. at 15-17). However, all the work he described took place after the date of the December 8, 2014 inspection. As such, it provides no defense to the violations observed on that date. See *Illinois EPA v. Jack Wright*, AC 89-227 (August 30, 1990) slip op. at 7 (“The Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person

is cooperative or voluntarily cleans-up the site”). 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, the claims raised by Respondent do not provide a defense to the proven violations.

The Illinois EPA photographs, inspection report and the testimony show that Respondent allowed open dumping of waste in a manner resulting in litter in violation of Section 21(p)(1) of the Act. Illinois EPA requests that the Board enter a final order finding that Respondent violated these sections and imposing the statutory penalty of \$1,500 per violation.

Respectfully Submitted,

Dated: September 24, 2015



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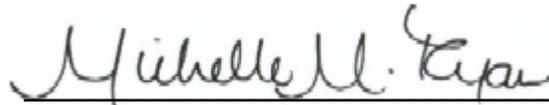
PROOF OF SERVICE

I hereby certify that I did on the 24th day of September 2015, 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: Mark E. Bosecker
7053 E. 350 Road
Mt. Carmel, IL 62863

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



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