

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

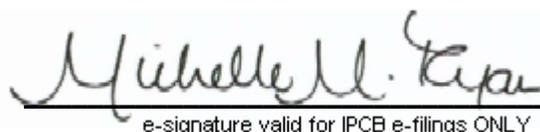
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	AC 16-7
	)	
v.	)	(IEPA No. 344-15-AC)
	)	
JAMES REICHERT LIMITED FAMILY	)	
PARTNERSHIP,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

To: Ronald E. Osman & Associates, Ltd.  
1602 W. Kimmel  
P.O. Box 939  
Marion, Illinois 62959

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: July 6, 2016

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Respondent.	)	

**POST-HEARING BRIEF OF COMPLAINANT**

On December 30, 2014, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to James Reichert Limited Family Partnership (“Respondent”). The citation alleges violations of Section 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1), (p)(3), (p)(7), (2014)), in that Respondent caused or allowed open dumping of waste resulting in litter, open burning, and deposition of construction or demolition debris. The violations occurred at a property located 1406 Cornell Street, Marion, Williamson County, on November 4, 2015. Transcript, p. 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 (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 charred metals, a lot of nails, burned wood materials, and brackets from satellite dish installations. Tr. at 11; Exh. 1, pp. 3-4. These

materials constitute “discarded material” within the meaning of the term “waste.” Respondent owns the site (Tr. at 9, 47) 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 November 5, 2015.

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’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) (2014)). “Open burning” is defined in Section 3.300 of the Act, 415 ILCS 5/3.300 (2014), as “the combustion of any matter in the open or in an open dump.” As described above, the different areas of waste located on the site meet the definition of “open dumping.” Wood in the dump area was charred, and metal fasteners that would normally be attached to wood or other combustible materials were found in the blackened five-foot by six-foot area where the burning took place. Tr. at 11, 39; Exh. 1, pp. 3-4.

Respondent does not deny that burning took place at the site, but only that it was not conducted by him personally. See Tr. at 53. The Act prohibits “open dumping of waste in a manner that results in...open burning” 415 ILCS 5/21(p)(3). Because Respondent was responsible for the

open dumping, it is also responsible for the result of open burning. *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.

Respondent's open dumping of 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) (2014)).

"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) (2014).

Evidence introduced at hearing showed that charred wood, nails, and brackets from satellite dish installation (i.e., "metals incident to any of those materials" previously listed in the statute) were dumped at the site. Tr. at 11; Exh. 1, pp. 3-4. Although the exact origin of these materials is not in the record, it is clear from the photographs that these are the types of materials used in "construction, remodeling, repair, and demolition," as defined in the statute. Further, there is no legal distinction between materials that are intended for construction or that resulted from remodeling or demolition, because all of these sources qualify the waste materials as "general construction or demolition debris." Because the distinction of origin is not relevant to the definition,<sup>1</sup> it is not an element of the

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<sup>1</sup> There was evidence at hearing that the burned wood may have been from pallets. Respondent objected to this testimony as hearsay. Tr. at 44-45. However, all of this testimony was specifically elicited by Respondent's attorney at hearing (Tr. at 20-34), therefore the objection is waived. Respondent's representative denied burning pallets or bringing pallets to the site. Tr. at 53. Therefore, whether the waste observed on November 4, 2015 was from the burning of pallets cannot be shown conclusively, because none of the witnesses at hearing observed the alleged

State's case. The metal and wood waste 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's defense seems to consist of the fact that its manager was not directly involved in the open dumping and burning at the site. The Board previously has held that a landowner can be held liable for "causing or allowing" open dumping even if the landowner allegedly did not actively participate in the dumping. *See Illinois EPA v. Shrum*, AC 05-18, slip op. at 8 (March 16, 2006). 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 093021 ¶33 (citations omitted); *Illinois EPA v. Rawe*, AC 92-5, slip op. at 6 (Oct. 16, 1992) ("passive conduct amounts to acquiescence sufficient to find a violation") (citation omitted).

Respondent presented no evidence that it took steps to prevent potential violations at the site. Rather, Respondent's representative and property manager testified that he manages approximately 100 properties for Respondent (Tr. at 54) and that he had no knowledge of the conditions at the site (Tr. at 53-4), which had been similar<sup>2</sup> for several months (Tr. at 30). No fence was present at the site to restrict access. Tr. at 42. *See Illinois EPA v. Bettis*, AC 10-21, slip op. at 5 (February 16, 2002) (failure to restrict access resulted in owner liability); *Illinois EPA v. Cadwallader*, AC 03-13, slip op. at 5 (February 20, 2004) (failure to take reasonable precautions against fly dumping, such as installing a fence). Respondent's failure to properly manage its property so as to avoid violations of the law do not amount to a defense to said violations.

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pallets. However, pallets can be used in construction and remodeling activities. Illinois EPA takes the position that any dimensional lumber and associated metal fasteners are "general construction or demolition debris" for purposes of evaluating a violation of 21(p)(7) of the Act, particularly where more direct evidence of the nature of the waste has been destroyed by burning.

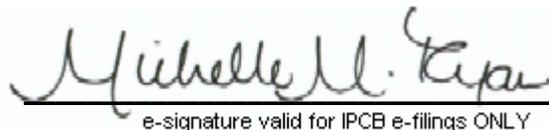
<sup>2</sup> Additional material had been added to the burn pile prior to the inspection on November 4, 2015 (Tr. at 23).

“[K]nowledge or intent is not an element to be proved for a violation of the Act. This interpretation of the Act ... is the established rule in Illinois.” *People v. Fiorini*, 143 Ill.2d 318, 336, 574 N.E.2d 612, 618 (1991), *see also Freeman Coal Mining v. PCB*, 21 Ill. App. 3d 157, 163, 313 N.E.2d 616, 621 (5th Dist. 1974) (the Act is *malum prohibitum* and no proof of guilty knowledge or *mens rea* is necessary to find liability). 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, open burning, and deposition of construction or demolition debris in violation of Sections 21(p)(1), (p)(3), 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 of \$1,500 per violation.

Respectfully Submitted,

Dated: July 6, 2016



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Special Assistant Attorney General

Illinois Environmental Protection Agency  
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**PROOF OF SERVICE**

I hereby certify that I did on the 6<sup>th</sup> day of July 2016, 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: Ronald E. Osman & Associates, Ltd.  
1602 W. Kimmel  
P.O. Box 939  
Marion, Illinois 62959

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

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