

FEB 02 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, ) AC 05-18  
 )  
v. ) (IEPA No. 409-04-AC)  
 )  
WILLIAM, SHRUM, )  
 )  
Respondent. )

**POST-HEARING BRIEF OF RESPONDENT**

The Agency's position in this case is not sustained by the uncontroverted evidence adduced at the Hearing. The Agency has charged the Respondent, William Shrum, with "open dumping," defined as "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 (2004) (emphasis added.) Where there is no evidence in the record that the Respondent consolidated refuse from one or more sources, the open dumping provision of the Act is not violated. People v. Conrail Corp., 245 Ill.App.3rd 167, 613 N.E.2nd 784 (Fifth District 1993). Mr. Shrum testified that he took some of the materials on the property and placed them in a dumpster on his property that was removed by a commercial trash disposal service. (Tr. at 21). As there was no evidence to indicate that the disposal service was operating without a permit, or otherwise improperly, a finding against the Respondent cannot be based up the fact that he placed some refuse into the custody and control of such a service for ultimate disposal.

In light of the testimony and evidence presented at the hearing, the Agency's case against Shrum can only be based on the fact that he moved around materials that were previously present on the property in question, although those materials were, both before and after Mr. Shrum's

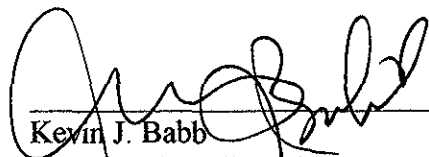
action, located on the same tract of property. To be guilty of open dumping, Mr. Shrum must have engaged in “the consolidation of refuse from or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.” In this case, there is only one “source” of those materials said to constitute “refuse”—the tract of land on which was located the materials which allegedly come within the statutory definitions of “litter” or of “construction or demolition debris.” Thus, for Mr. Shrum to be liable for violation of the open dumping provision, he must have “consolidated” refuse from one source to that same source-- without ever taking the refuse away from that source. This interpretation of the Act strains the plain meaning of the word “from.” Such an interpretation also negates a clear reading of 415 ILCS 5/3.305, which seems to envision a situation in which materials are taken from one or more distinct sites, and then deposited on a single site, different from any of the sites on which any of the refuse was originally located. Under this “common sense” interpretation of the language of the Act, Mr. Shrum cannot be held liable for open dumping, where he simply changed the position of materials that were already on the site, and neither took materials from that site for deposit in an unlicensed dumping site, nor added other material to an existing unlicensed waste disposal site.

. As the Agency admits in its brief, there is no dispute that the materials on the land were present before Mr. Shrum owned the property; and that Mr. Shrum did not place the materials on the property, nor did he request or hire any other person or entity to do so. There is no evidence that any additional materials were placed at the site during the time that Mr. Shrum has owned the land on which it is located. There is no evidence to support the Agency’s assertion that, through his activities, Mr. Shrum in any way “exacerbated” the condition of the land, although undoubtedly the materials were in different positions than they had been before Mr. Shrum took the actions set out in his testimony. Under these circumstances, none of the actions taken by

Mr. Shrum can be said to constitute "open dumping", and Respondent therefore prays that the Board find in his favor on the Agency's charges against him, and that he may obtain any and all such other relief to which this Board finds he is entitled.

Respectfully Submitted,

DATED: January 30, 2006

A handwritten signature in black ink, appearing to read "Kevin J. Babb", is written over a horizontal line.

Kevin J. Babb  
Unsell, Schattnik, Babb & Juen  
309 Hillsboro Avenue  
Edwardsville IL 62025-1967  
(618) 656-7681  
Attorney for Respondent

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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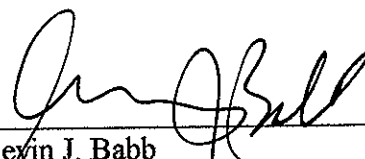
**NOTICE OF FILING**

To: Michelle M. Ryan  
Special Assistant Attorney General  
Illinois Environmental Protection Agency  
1021 North Grand Avenue  
P.O. Box 19276  
Springfield IL 62794-9276

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled: POST-HEARING BRIEF OF RESPONDENT.

Respectfully Submitted,

DATED: January 30, 2006



Kevin J. Babb  
Unsell, Schattnik, Babb & Juen  
309 Hillsboro Avenue  
Edwardsville IL 62025-1967  
(618) 656-7681  
Attorney for Respondent

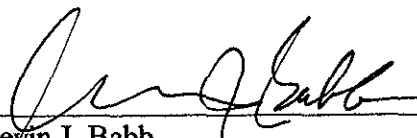
**PROOF OF SERVICE**

I hereby certify that I did on this 30<sup>th</sup> day of January, 2006, send by U.S. Mail with postage fully prepaid thereon, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled POST-HEARING BRIEF OF RESPONDENT

To: Michelle M. Ryan  
Special Assistant Attorney General  
Illinois Environmental Protection Agency  
1021 North Grand Avenue  
P.O. Box 19276  
Springfield IL 62794-9276

and the original and nine (9) true and correct copies of the same foregoing instruments on the same date by U.S. Mail with postage thereon fully prepaid to

To: Dorothy Gunn, Clerk  
Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago IL 60601

  
\_\_\_\_\_  
Kevin J. Babb  
Unsell, Schattnik, Babb & Juen  
309 Hillsboro Avenue  
Edwardsville IL 62025-1967  
(618) 656-7681  
Attorney for Respondent