

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

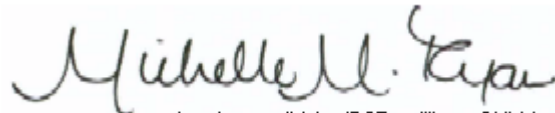
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 04-51
)	
v.)	(IEPA No. 83-04-AC)
)	
MICHAEL MORETON,)	
)	
Respondent.)	

NOTICE OF FILING

To: Michael Moreton
P.O. Box 309
Ashmore, Illinois 61912

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: August 15, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
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POST-HEARING BRIEF OF COMPLAINANT

On February 23, 2004, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Michael Moreton (“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) (2002)), 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 County Road 1380 North and 2330 East, north of Ashmore, Coles County. 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 (2002). “Refuse” means “waste,” (415 ILCS 5/3.385 (2002)), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2002)). The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that tires, dimensional lumber, plastic and metal pallets, wooden ammunition boxes, concrete pit wash, a kitchen stove, an upholstered vehicle seat, plastics, metal, two drums with a black oily discharge, and other unidentifiable items were accumulated throughout the site. Tr. at 11-12; Exh. 1, pp. 3, 9-16. These materials

constitute “discarded material” within the meaning of the term “waste.” Some of the material was placed on the property by Respondent a sufficiently long time ago that it was overgrown by vegetation, including most of the tires, dimensional lumber, concrete pit wash, and the white and yellow material in photograph #1.* Tr. at 11, 23; Exh. 1, pp. 9, 16. Respondent has owned the site for the last 13 years. Tr. at 22; Exh. 1, pp.17-18. Respondent admitted to bringing the materials to his site “for a purpose,” which was not demonstrated at hearing. Tr. at 21. Therefore, Respondent caused or allowed the open dumping of waste observed on January 20, 2004.

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) (2004)). 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 wood, tires, appliances, plastics, metal and other items 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) (2002)). “Construction or demolition debris” is defined in part, as follows:

* Illinois EPA’s inspector identified this material as plastic tubing (Tr. at 23), but Respondent claims it is thin metal rods from baby cribs (Tr. at 24). This is really a distinction without a legal difference, as it is clearly discarded, and therefore waste, and open dumped, and therefore illegal.

“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) (2002).

The dimensional lumber visible in the piles in photographs #4, #6, and #7 is mixed in with tires and other debris. Tr. at 11-12; Exh. 1, pp. 10-12. Respondent implied in questioning Complainant’s witness that this material came from a dismantled mobile home. Tr. at 18. A mobile home is a “structure” under Section 3/160(a), and “[d]imensional lumber qualifies as construction or demolition debris under the Act.” *Illinois EPA v. Yocum, et al.*, PCB Nos. AC 01-29 and AC 01-30 (Consolidated), June 6, 2002, p. 7; *aff’d, Yocum, et al. v. Illinois Pollution Control Board*, (4-02-0709), June 20, 2003 (unpub.). The material in photograph #16 was identified by Respondent as concrete pit wash from a concrete mixing plant in Mattoon. Tr. at 20. The concrete pit wash and dimensional lumber 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 stated that he was doing some work to clean up the site, and works on the tire problem about once a week. Tr. at 26; 32. As previously noted, much of the material had been on site so long that it had vegetation growing on it. Tr. at 11, 23. Although Illinois EPA appreciates Respondent’s good intentions, clearly he had not made reasonable progress in his clean up effort by the time of the inspection in January 2004. Further, 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.

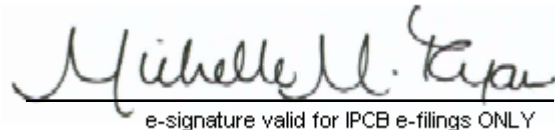
Respondent also appears to argue that because he paid for the materials on his site, they are not waste. *See* Tr. at 21. However, Respondent's own testimony on the concrete pit wash indicates that he paid for the "loading" of the material. *Id.* Nevertheless, "receipts are not the controlling factor in determining whether or not a material is classified as litter. *Yocum, supra*, at 7. Here, as in *Yocum*, the materials are "unsightly and disposed of improperly." *Id.*

Respondent also claims he is recycling the materials on site. Tr. at 28-29. However, several of the photographs show items that have either not been properly recycled, or cannot be recycled. In the latter category is the black oily substance that was released into the environment, as evidenced by the visibly contaminated soils in photograph #10. Exh. 1 at 13. In the former category, the 800 treated wooden ammunition boxes, which Respondent declined to sell to the prospective buyer when the price was insufficient. Tr. at 19, 29. Respondent has perpetually maintained this material on site, without protection from the elements, in an attempt to find a new buyer, who has not yet been located. Tr. at 18. Somewhere between these two categories lie the 225 used tires, some of which are used or given away, but some of which are destined for the landfill. Tr. at 23, 35. As for the concrete pit wash, any intention Respondent had to use the material as a driveway or concrete base is belied by the fact that it remains where it was dumped, overgrown with vegetation. Tr. at 21; Exh. 1, p. 16. In addition, "[p]lans for use of material at some point in the distant future is not dispositive in determining if materials are waste or litter." *Yocum, supra*, at 8.

The Illinois EPA photographs and inspection report and the testimony show that Respondent allowed open dumping of waste in a manner resulting in litter and deposition 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: August 15, 2006



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Michelle M. Ryan
Special Assistant Attorney General

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P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

PROOF OF SERVICE

I hereby certify that I did on the 15th day of August, 2006, 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: Michael Moreton
P.O. Box 309
Ashmore, Illinois 61912

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

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



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