

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 05-47
)	
v.)	(IEPA No. 686-04-AC)
)	
STACY HESS,)	
)	
Respondent.)	

NOTICE OF FILING

To: Stacy Hess
1965 Cruger Road
Washington, Illinois 61571

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
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(217) 782-5544

Dated: December 28, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
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Complainant,)	AC 05-47
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POST-HEARING BRIEF OF COMPLAINANT

On December 21, 2004, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Stacy Hess (“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), (3) & (7) (2002)), in that Respondent caused or allowed open dumping of waste, resulting in litter, open burning, and the deposition of construction or demolition debris. The violations occurred at a property located on old Route 24 outside of Washington, Tazewell County. Transcript, p. 7; 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 (2004). “Refuse” means “waste,” (415 ILCS 5/3.385 (2004)), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2004)). The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that wood, tires, concrete, appliances, storm windows, vehicles and vehicle parts, bedsprings, plastic and metal, as well as ash and remains from burning, were accumulated in various piles on the site. Tr. at 9-13; Exh. 1, pp. 3, 7-12. These materials constitute “discarded material” within the meaning of the term “waste.”

Respondent admitted that the “majority of the metal” was his responsibility, as well as “maybe that one tractor tire.” Tr. at 18. Respondent claimed that Mr. J. Veltman was responsible for the “majority of the plastic, building debris.” Tr. at 16, 18. Mr. Veltman was Respondent’s tenant. Tr. at 17. Respondent further claims that his tenant’s employees admitted to the burning, as well as dumping the couch and exercise bike. Tr. at 19.

In *County of Jackson v. Donald Taylor* (January 10, 1991), AC 89-258, Mr. Taylor admitted to an ownership interest in land and to dumping some of the materials there, but denied the majority of the dumping as well as starting the fire. *Id.* at 3. In finding violations of Section 21(q) [predecessor to the current Section 21(p)], the Board found that the fact that Mr. Taylor didn’t specifically allow the dumping or burning was not dispositive, but noted that he did nothing to prevent these activities, and that “the debris he placed on the property, may in fact have encouraged others to dump there.” *Id.* at 9. The facts in Respondent’s case are analogous to Mr. Taylor’s. 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 Respondent both caused and allowed the open dumping of waste observed on December 21, 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, concrete, appliances, storm windows, vehicles and vehicle parts, bedsprings, plastic and metal, as well as ash and remains from burning 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) (2004)). “Open burning” is defined in Section 3.300 of the Act, 415 ILCS 5/3.300 (2004), as “the combustion of any matter in the open or in an open dump.” As described above, the burn piles located on the site meet the definition of “open dumping.” The waste piles contained ash and charred remains, including tire bead rings from the burning of tires and a melted plastic bucket. Tr. at 10-12. The burning of any or all of this matter in the waste piles constitutes “open dumping of waste in a manner that results in...open burning” under Section 21(p)(3) 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) (2004)). “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) (2004).

Respondent admitted that some of the material on site was from a buildings that fell down. Tr. at 18. The materials from the building, processed lumber, storm windows, and perhaps some of the

appliances 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 for the first time at hearing that he did not own the site on the date of the inspection. Tr. at 17. Unfortunately, Respondent’s interpretation of his legal status with respect to the site runs contrary to his actions throughout the pendency of this case, as well as established law. Respondent entered as Exhibit 2 a “Notice of Sale” for several properties, including the site at issue in this Administrative Citation, Property No. 2. *See* Exh. 2 at 2; Tr. at 21. The Notice indicated that a “Judgment of Foreclosure and Sale” had been entered on June 24, 2004, and amended on January 11, 2006. Exh. 2, p. 1. The Notice further indicated that the sale would take place on February 9, 2006. *Id.*

“A judgment ordering the foreclosure of a mortgage is not final and appealable until the court enters orders approving the sale and directing the distribution.” *In re Marriage of Verdung*, 126 Ill. 2d 542 (1989). A bid at judicial sale is “merely an irrevocable offer to purchase the property” and it is not until after confirmation by the court that “a true sale in the legal sense” takes place. *Mortgage Electronic Registration Sys., Inc. v. Thompson*, 2006 WL 3196517 (Nov. 3, 2006), *citing Citicorp Savings of Illinois v. First Chicago Trust Co. of Illinois*, 269 Ill. App. 3d 293, 300 (1995). A purchaser does not obtain the final right to possession of property purchased at a judicial sale until 30 days after the confirmation of the sale. 735 ILCS 5/15-1701(d) (2004). Therefore, Respondent still “owned” the property in the legal sense until it was sold and the sale was confirmed by the court. None of these events had yet occurred on December 21, 2004, when the violations were observed, but rather occurred some time in 2006.

The mortgage foreclosure provisions of the Civil Procedure code provide that the mortgagor remain in possession of the property during the pendency of foreclosure, unless the mortgage

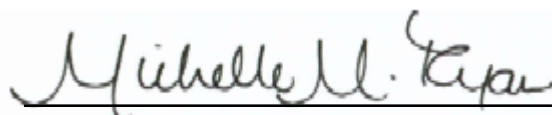
documents allow for the mortgagee to be placed in possession, and upon request to the court. 735 ILCS 5/15-1701(b)-(c). The record in this case is not clear as to whether the mortgagee of the site in this case either had or exercised such a right to possession. However, Respondent's actions and the testimony offered tend to show that Respondent retained possession of the site until some undefined time in the latter half of 2006.

On several occasions during status calls with the Hearing Officer in this matter, Respondent made statements regarding actions he was taking or intended to take at the site. Respondent originally reported that he was "working on cleaning the site" during the June 14, 2005 status call. Hearing Officer Order (June 14, 2005), AC 05-47. A month later, he told the hearing officer that he planned to "finish cleaning the site within 90 days." Hearing Officer Order (July 14, 2005), AC 05-47. In September, Respondent reported additional progress, along with difficulties obtaining dumpsters. Hearing Officer Order (September 1, 2005), AC 05-47. Several months later, Respondent stated that more progress was anticipated with the improving weather, and that he hoped to be finished by May 1, 2006. Hearing Officer Order (March 28, 2006), AC 05-47. Over a year from when he first reported "working" on the site (and more than four months after the sale date noted in Exhibit 2), Respondent told the hearing officer he had "almost finished work." Hearing Officer Order (June 27, 2005), AC 05-47. Respondent admitted during the hearing that he had access to the property until such time as it was purchased in 2006. Tr. at 22. Therefore, all of Respondent's actions through 2005 and into 2006 indicate that he still had possession of the site, long after the December 21, 2004 inspection. Because Respondent was in responsible control of the property when the violations were observed, the arguments presented regarding the foreclosure actions do not provide a defense to the proven violations.

The Illinois EPA photographs and inspection report and the testimony show that Respondent caused or 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.

Respectfully Submitted,

Dated: December 28, 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 28th day of December, 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: Stacy Hess
1965 Cruger Road
Washington, Illinois 61571

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



e-signature valid for IPCB e-filings ONLY

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Special Assistant Attorney General

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