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JUN 22 2007

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

CITY OF CHICAGO DEPARTMENT )  
OF ENVIRONMENT, )  
 )  
Complainant, )  
 )  
v. )  
 )  
1601-1759 EAST 130<sup>TH</sup> STREET, LLC, )  
 )  
Respondent. )

AC 07-025  
(Administrative Citation)

NOTICE OF FILING

TO: Jeffrey J. Levine  
Jeffrey J. Levine, P.C.  
20 N. Clark St., Suite 800  
Chicago, IL 60602

Bradley P. Halloran  
Illinois Pollution Control Board  
100 W. Randolph St., Suite 11-500  
Chicago, IL 60601

PLEASE TAKE NOTICE that on June 22, 2007, Complainant filed with the Clerk of the Illinois Pollution Control Board the attached Post-Hearing Brief, a copy of which is served upon you.

  
Graham G. McCahan

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on June 22, 2007, he caused copies of this notice and the documents referenced therein to be served on the party to whom it is directed by U.S. Mail, first class postage prepaid.

  
Graham G. McCahan



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 Complainant, )  
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 1601-1759 EAST 130<sup>TH</sup> STREET, LLC )  
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 Respondent. )

AC 07-25  
(Administrative Citation)

**CITY OF CHICAGO'S POST-HEARING BRIEF**

**INTRODUCTION**

The City of Chicago Department of Environment ("CDOE," "Complainant," or "Compl.") alleges that 1601-1759 East 130<sup>th</sup> Street, LLC ("Respondent") caused or allowed open dumping of waste resulting in litter and the deposition of general construction or demolition debris in violation of Sections 21(p)(1) and 21(p)(7)(i) of the Illinois Environmental Protection Act (the "Act"). 415 ILCS 5/21(p)(1) and (7)(i). A CDOE inspector observed these violations at 1601 E. 130<sup>th</sup> Street, Chicago, Illinois ("Site") during an inspection on October 3, 2006. Compl. Ex. A at 73, 77-78.

Respondent, an Illinois limited liability company, owned the Site at the time of the inspection. Tr. at 35-36.

**ARGUMENT**

**A. Respondent Caused or Allowed Open Dumping of Waste in Violation of Section 21(a)**

**1. Open Dumping Occurred at the Site**

In order to demonstrate that Respondent violated any of the subsections to Section 21(p) of the Act, it must first be shown that Respondent violated Section 21(a) of the Act.

415 ILCS 5/21(p). *See IEPA v. Shrum*, AC 05-18 (IPCB Mar. 16, 2006). CDOE demonstrated at hearing that Respondent caused or allowed open dumping at the Site in violation of Section 21(a) of the Act. 415 ILCS 5/21(a). "Open dumping" is defined as "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. "Refuse" is "waste," (415 ILCS 5/3.385) and "waste" is defined to include "any garbage . . . or other discarded material" (415 ILCS 5/3.535).

The CDOE inspection report admitted into evidence as Complainant's Exhibit A and the testimony at hearing show that broken concrete, asphalt, wood, metal and other debris were accumulated in various piles on the Site on October 3, 2006. Compl. Ex. A at 73, 77-78; Tr. at 12-13, 30-31, 34, 38-39. Respondent admitted at hearing that in order to fulfill the future development plans for the Site, the "waste" observed during the October 3, 2006 inspection would have to be removed and disposed of. Tr. at 33-34. The fact that Respondent planned to dispose of the materials demonstrates that the materials lacked productive or re-use value and, therefore, constituted "discarded material" within the meaning of the term "waste" and, by extension, "refuse" under Section 21(a) of the Act (415 ILCS 5/21(a)). *See IEPA v. Carrico*, AC 04-27 (IPCB Sept. 2, 2004); *IEPA v. Cadwallader*, AC 03-13 (IPCB May 20, 2004).

The waste observed on the Site on October 3, 2006 came from one or more off-site sources as required under Section 21(a) of the Act (415 ILCS 5/21(a)). Tr. at 14. Respondent admitted that the waste observed on October 3, 2006 had been fly-dumped on the Site. Tr. at 30-32. Because the waste observed on the Site on October 3, 2006

was brought onto the Site from external locations, it was “consolidated” on the Site from “one or more sources” pursuant to Section 21(a) of the Act. 415 ILCS 5/21(a).

The Site does not meet the requirements of a sanitary landfill and is not permitted as such. Respondent admitted that the Illinois Environmental Protection Agency (“IEPA”) has not issued a permit for any operations on the Site. Tr. at 36. Therefore, the Site conditions observed on October 3, 2006 fulfill all of the requirements of “open dumping” as defined under Section 3.305 of the Act. 415 ILCS 5/3.305.

## **2. Respondent Caused or Allowed Open Dumping on the Site**

Respondent caused or allowed the open dumping observed on October 3, 2006 because Respondent was the owner of the Site and was thereby able to exercise control over the Site at that time. Tr. at 35-36. The Board has repeatedly held that a landowner can be held liable for “causing or allowing” open dumping despite the fact that the landowner did not actively participate in the dumping. *See IEPA v. Shrum*, AC 05-18 (IPCB Mar. 16, 2006); *IEPA v. Carrico*, AC 04-27 (IPCB Sep. 2, 2004); *IEPA v. Rawe*, AC 92-5 (IPCB Oct. 16, 1992). Respondent claimed that fly-dumpers dumped materials at the Site without Respondent’s permission. Tr. at 30-32. However, a person can cause or allow open dumping in violation of the Act without knowledge or intent. *See County of Will v. Utilities Unlimited, Inc.*, AC 97-41 (IPCB July 24, 1997), *citing*, *People v. Fiorini*, 143 Ill.2d 318, 574 N.E.2d 612 (1991). In addition, “passive conduct” on the part of a landowner can amount to “acquiescence sufficient to find a violation of Section 21(a) of the Act.” *IEPA v. Shrum*, AC 05-18 (IPCB Mar. 16, 2006).

Respondent is liable for causing or allowing open dumping because Respondent owned the Site and failed to remove waste from the Site. Respondent admitted that some

of the waste observed on the Site on October 3, 2006 had been on the Site since the time of the CDOE inspection six months prior in late March 2006 and that the waste had been there long enough for weeds to have sprouted in and around it. Tr. at 38-40, 45.

Respondent further admitted that additional waste had been dumped on the Site at least three or four weeks prior to the October 3, 2006 inspection and that this waste had not been removed. Tr. at 32-33. The Board has held that a landowner who allows waste to remain on its property is liable for open dumping. *See IEPA v. Shrum*, AC 05-18 (IPCB Mar. 16, 2006); *IEPA v. Cadwallader*, AC 03-13 (IPCB May 20, 2004). Because Respondent was the owner of the Site and allowed waste to remain on the Site, Respondent should be found liable for causing or allowing open dumping under Section 21(a) of the Act. 415 ILCS 5/21(a).

**B. Respondent's Open Dumping Resulted in Litter in Violation of Section 21(p)(1)**

Respondent's causing or allowing open dumping of wastes resulted in "litter" under Section 21(p)(1) of the Act. 415 ILCS 5/21(p)(1). The Act does not define "litter" but it is defined in the Litter Control Act as:

"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).

The Board has previously applied this definition of "litter" to open dumping allegations. *See St. Clair County v. Louis I. Mund*, AC 90-64 (IPCB Aug. 22, 1991). Using this definition, broken concrete, asphalt, wood, metal and other debris found at the Site are discarded materials and constitute "litter" under Section 21(p)(1) of the Act. Compl. Ex.

A at 73, 77-78; Tr. at 12-13, 30-31, 34, 38-39. Accordingly, the Board should find Respondent violated Section 21(p)(1).

**C. Respondent's Open Dumping Resulted in Deposition of General Construction or Demolition Debris in Violation of Section 21(p)(7)**

Respondent's open dumping of these wastes also resulted in deposition of general construction or demolition debris in violation of Section 21(p)(7) of the Act. 415 ILCS 5/21(p)(7). "General construction or demolition debris" is defined in Section 3.160 of the Act as:

[N]on-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.

The CDOE inspection report admitted into evidence as Complainant's Exhibit A and the testimony at hearing show that materials from construction, remodeling, repair or demolition activities - such as broken concrete, soil, and asphalt - were present at the Site on October 3, 2006. Compl. Ex. A at 73, 77-78; Tr. at 12-13, 30-31, 34, 38-39. These materials constituted "open dumping of waste in a manner that results in . . . deposition of general construction or demolition debris" under Section 21(p)(7)(i) of the Act, and therefore, Respondent violated that section of the Act.

**CONCLUSION**

The CDOE inspection report, photographs, and testimony show that Respondent caused or allowed open dumping of waste resulting in litter and the deposition of

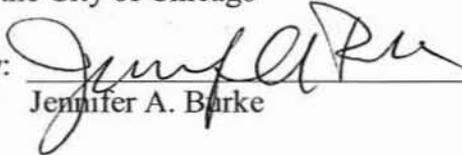
construction or demolition debris in violation of Sections 21(p)(1) and 21(p)(7)(i) of the Illinois Environmental Protection Act. 415 ILCS 5/21(p)(1) and (p)(7)(i). CDOE respectfully requests that the Board enter a final order finding that Respondent violated these sections and imposing the statutory penalty of \$3000 (\$1500 for each violation).

Respectfully submitted,

CITY OF CHICAGO  
DEPARTMENT OF ENVIRONMENT

Mara S. Georges, Corporation Counsel  
of the City of Chicago

By: \_\_\_\_\_

  
Jennifer A. Burke

Dated: June 22, 2007

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