

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 09-56
)	
v.)	(IEPA No. 136-09-AC)
)	
GARY J. SZCZEBLEWSKI and)	
JAMES R. SZCZEBLEWSKI,)	
)	
Respondents.)	

NOTICE OF FILING

To: Michelle M. Ryan
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, IL 62794-9276

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 entitled POST HEARING BRIEF OF RESPONDENTS.

Respectfully Submitted,

Gary J. Szczblewski
Gary J. Szczblewski
Attorney at Law

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Dated February 19, 2010

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PROTECTION AGENCY,)	
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Complainant,)	AC 09-56
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POST HEARING BRIEF OF RESPONDENTS

On the 4th day of November 2009 an administrative hearing was conducted before hearing Officer Carol Webb for the Illinois Pollution Control Board (IPBC). The hearing was a result of an Administrative Citation being filed by the Illinois Environmental Protection Agency (IEPA) with IPBC. The citation violations alleged by the IEPA against the respondents were;

1. That Respondents caused or allowed the open dumping of waste in a manner resulting in litter, a violation of Section 21 (p) of the Act, 415 ILCS 5/21 (p) (1) (2006).
2. That Respondents caused or allowed the open dumping of waste in a manner resulting in Deposition of General Construction or Demolition Debris: or Clean Construction or Demolition Debris, a violation of Section 21 (p) (7) of the Act, 415 ILCS 5/21 (p) (7) (2006).

The Administrative Citation involved was the result of a second complaint having been filed with the IEPA by the complainant Ned Mitchell.

That prior to the filing of the Citation an original complaint had been filed with The IEPA by complainant Ned Mitchell on or about March 2009. The original complaint was investigated by Maggie Stevenson investigator who prepared an inspection report as

to site no.: 0550455034 on or about March 31, 2009. The inspection report for the original complaint found the respondents to be in violation of the following section of the Illinois Environmental Protection Act;

- 9 (a) Cause, Threaten or allow air pollution in Illinois,
- 9 (c) Cause or allow open burning,
- 21(a) Cause or allow open dumping,
- 21(d)(1) Without permit,
- 21(d)(2) In Violation of any regulations or standards adopted by the Board,
- 21(p)(1) Litter,
- 21(p)(3) Open Burning,
- 21(p)(7) Deposition of General Construction or Demolition Debris; or Clean Construction or Demolition debris,
- 55(a)(1) Cause or allow open dumping of any used or Waste Tire,
- 812.101 (a) Failure to submit an application for a permit to develop and operate a landfill,

That after the investigation had been completed; an Open Dump Administrative Citation Warning Notice was forwarded to the respondents by Marion Regional Office Manager Gerald Steele on or about April 17, 2009. As a part of the warning notice Respondents were advised that they had to complete the following corrective actions.

1. Immediately cease all open dumping and open burning.
2. By May 31, 2009, remove all waste to a permitted landfill or transfer station. Scrap metal not disposed at a landfill can be taken to a scrap metal facility or recycling center.
3. By May 31, 2009 remove all used or waste tires to registered tire storage or tire disposal facility. Used or waste tires cannot be taken to a landfill or transfer station for the purpose of disposal. Do not open burn any of the tires. Loads of more than 20 tires must hauled by registered tire transporter.
4. By May 31, 2009, remove all white goods (ie., large appliances) to a facility that can legitimately accept them for recycling. White goods cannot be taken to a landfill or transfer station for the purpose of disposal.
5. By May 31, 2009 remove all lead acid batteries to an approved recycling facility. Lead acid batteries cannot be taken to a landfill or transfer station for the purpose of disposal.

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6. By May 31, 2009, remove all liquid used oil to an approved recycling facility, Liquid used oil cannot be taken to a landfill or transfer station for the purpose of disposal.
7. By June 15, 2009, submit to the Illinois EPA copies of receipts that document the proper disposal or recycling of the wastes.

Within 15 days of the date of the warning notice the Respondents did forward to the Marion Regional Office a response which stated that the property site no.: 0550455034 was enrolled in the Illinois Department of Natural Resources Abandoned Mined Lands Reclamation Program and that the violations should have been directed to the Illinois Department of Natural Resources Abandoned Mined Lands Reclamation Program.

On May 27, 2009 the Regional Manager of the Marion office responded with a letter to the Respondents stating that the Illinois Department of Natural Resources Abandoned Mined Lands Reclamation Program has no relevance to the open dumping and open burning occurring on the property in question. Further the letter said the corrective actions stated in the April 16, 2009 letter will need to be completed by the May 31, 2009 deadline to avoid further action by the Agency. As a result of the May 27, 2009 letter the respondents immediately contacted the Marion Regional Office to ask for additional time to submit a plan. Additional time was granted by the Regional Office of for submission of the said plan (until July 31, 2009). At the time of the contact it was brought to the attention of Tom Edmunson Assistant Director that open dumping was occurring upon mine related refuse located on an abandoned coal mine site no.: 0550455034. At the time of the discussion about the extension time to file a plan, there was further discussion regarding individual trespassing on this abandoned coal mine site

and the need for a meeting between the parties to assist in the resolution of the Complaint. It was the Respondents position that the Illinois Department of Natural Resources was in the process of reclaiming and would eliminate the problem. That prior to the July 31, 2009 date Investigator Maggie Stevenson did complete a second inspection report on the abandoned coal mine site no.: 0500455034, after the submission of the second complaint filed by Ned Mitchell. The second inspection report completed on June 11, 2009 the investigator alleged the following section violations of the IEPA Act;

- 21(a) Cause or allow open dumping,
- 21(d)(1) Without permit,
- 21(d)(2) In violation of any regulations or standard adopted by the Board,
- 219(e) Dispose, treat, store, or abandon any waste, or transport any waste into the state at/to sites not meeting requirements of act,
- 21(p) Cause of allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site,
 - (1) Litter
 - (7) Deposition of General Construction or demolition debris; or clean construction or demolition debris.

The second report added 55(a)(1), 219(e), 722.111 and 808.121 and deleted 9(a), 9(c) and 21 (p)(3)

Also included with the Administrative Citation Package was an Affidavit, dated June 16 2009, signed by field inspector Maggie Stevenson stating that the site code no.: was 0550455034 but not included that the site was an abandoned coal mine of which a prior complaint had been filed. The Administrative Citation found the following violations:

1. That Respondents caused or allowed the open dumping of waste in a manner resulting in litter, a violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1)(2006).

2. That Respondents caused or allowed the open dumping of waste in a manner resulting in Deposition of General Construction or Demolition Debris; or Clean Construction or Demolition Debris, a violation of Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7)(2006).

The above Administrative Citation Package, dealing with the inspection of June 11, 2009, was sent for filing to Mr. John Therriault, Clerk of the Illinois Pollution Control Board, by Ms. Michelle Ryan Assistant Attorney General representing the Illinois Environmental Protection Agency on or around June 25, 2009. The service of the Citation was served upon the Respondents on June 29, 2010.

The Respondents filed a Petition for Review with the Illinois Pollution Control Board on August 3, 2009 asking for the Administrative Citation be dismissed due to the fact that the Respondents did not cause or have any control of the problems. At the time of the filing the Respondents believed that the citation was based upon the original complaint. The Respondents would have objected also to the informal nature of the complaint. Where after a hearing was scheduled with the subsequent hearing being held on 4th day of November 2009.

At the hearing the respondents were confused as to why the Board would not address the original complaint and prevented the original complaint from being submitted into evidence. Michelle M. Ryan being a special Assistant Attorney General it was assumed that she would be an expert as to the procedural requirement of the Act. Why the procedural requirements were not followed by the Marion Office is unknown. It is apparent that the Attorney Generals Office has demonstrated no concern as to the IEPA laws of the State of Illinois. Instead the Assistant Attorney Generals acted as a zealous advocate for the Marion IEPA Office to insure that it “won”. Title VIII Enforcement sets forth the procedure that the IEPA, including the Marion office shall follow in making a

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complaint with the Board Section 31 (a) (2) states that a response shall be made within 45 days of the notice unless the agency agrees to an extension. The response was not made because an extension was granted till July 31, 2009. Prior to the time of the extended period the Respondents was unable to give information to rebuttal or request a meeting due to the fact a complaint had been filed to the Board. The Complaint that was filed pursuant of subsection (b) of this section was filed with the Illinois Attorney Generals Office during the period in which the Respondents were allowed to respond to the violations. No where in the Enforcement provisions is there a requirement that any extension be in writing. Maggie Stevenson, an Investigator, took it upon herself to violate the provision of the Enforcement section of the Act. In her testimony Maggie Stevenson said a verbal extension had been granted based on the fact that a written extension had to filed by June 3, 2009. It is unknown by the Respondents where this magical date of June 3, 2009 came from in that the Enforcement division of the Act does not require the extension to be in writing. At no time did the investigator Maggie Stevenson inform the Respondents that it was of paramount importance for a written continuance with her office. It was unknown to the Respondents that it would result in the Attorney Generals office being contacted prior to the receipt of the Respondents written response of the violations. Apparently the investigator at the Marion Regional Office is not concerned about the remedy of the violation that has allegedly occurred but only interested in paying back political favors. The Illinois Assistant Attorney Generals intent was not carrying out the letter of the law of the Act but instead was to be a “buddy” with the Marion local office and totally disregarding the Act. The goal of both the Illinois Attorney General Office and the Local Marion office was to penalize the Respondents for

non compliance It is extremely disturbing to the Respondents that the Illinois Attorney Generals office is protecting the decision of the Marion Regional Office rather than enforcing the IEPA laws of the State of Illinois. If the Illinois Attorney Generals office is not going to enforce the laws whose reasonability is it to enforce the laws.

It is the request of the Respondents that the informal complaint (second complaint) filed before the board by the Marion Regional Office be remanded back to the Marion Regional Office to be properly consolidated with the original complaint. The Board should require the Marion Office to abide by existing the procedures and laws prior to the resubmission of any complaint before the Board. That the return of the informal complaint should be addressed to the director of the Marion Regional Office with specific instructions that its goal is to resolve the conflict in an amicable manner pursuant to the Act. This matter should be resolved by the proper officials rather than an insubordinate investigator who was out for personal political gains.

Submitted By,

S/ Gary J. Szczeblewski
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PROOF OF SERVICE

I hereby certify that I did on the 19th day of February 2010, send by U.S. Mail with postage thereon fully prepaid, and by depositing in a United State Post Office Box a true and correct copy of the following instrument entitle POST HEARING BRIEF OF RESPONDENT

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

and the original of the same foregoing instrument on the same date by electronic filing.

To: John Therriault, Clerk
Pollution control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

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