

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

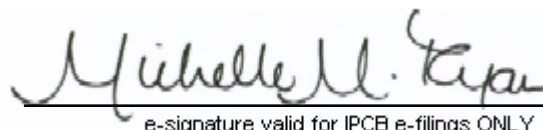
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 12-53
)	
v.)	(IEPA No. 123-12-AC)
)	
THOMAS E. PORTER, BEVERLY J.)	
BIBLE, and TODD AND TABITHA)	
BOOTEN d/b/a C&T RECYCLING,)	
)	
Respondents.)	

NOTICE OF FILING

To: Thomas Porter & Beverly Bible	Tabitha & Todd Booten
13386 Brandyville Road	d/b/a C&T Recycling
Herrin, IL 62948	3900 Alum Cave Road
	Marion, IL 62959-9670

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,



Michelle M. Ryan

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: June 18, 2013

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
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Complainant,)	AC 12-53
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POST-HEARING BRIEF OF COMPLAINANT

On May 15, 2012, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Thomas E. Porter, Beverly J. Bible, and Todd and Tabitha Booten d/b/a C&T Recycling (“Respondents”). The citation alleges violations of Section 21(p)(1) and 21(p)(3) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1) & (3) (2010)), in that Respondents caused or allowed open dumping of waste resulting in litter and open burning. The violations occurred at a property located at 3302 Water Tower Road, Marion, Williamson County, on March 22, 2012. Transcript, pp. 9-10; Exhibit 1.

Illinois EPA has demonstrated that Respondents 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 (2010). “Refuse” means “waste,” (415 ILCS 5/3.385 (2010)), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2010)). The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show cardboard, paper, plastics, metals, pallets, broken equipment, containers, and carpet were present at the site. Tr. at 11-16; Exh. 1,

pp. 6-12. These materials constitute “discarded material” within the meaning of the term “waste.” Respondents Porter and Bible have owned the site since 1996 (Tr. at 19). Respondents Booten d/b/a C&T Recycling have conducted business on the site since 2006 (Tr. at 22), and the property has been in essentially the same condition since then (Tr. at 34). Therefore, Respondents caused or allowed open dumping of waste observed on March 22, 2012.

Respondents’ 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) (2010)). 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 materials noted above at the site constitute “litter” under Section 21(p)(1) of the Act, and therefore Respondents violated that section.

Respondents’ 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) (2010)). “Open burning” is defined in Section 3.300 of the Act, 415 ILCS 5/3.300 (2010), as “the combustion of any matter in the open or in an open dump.” As described above, the different areas of waste located on the site meet the definition of “open dumping.” Waste in the burn barrel and on the ground near the burn barrel included metal, cardboard, and dimensional lumber that was partially burned and charred, as evident from the photos. Exh. 1, pp. 9-10; Tr. at 13, 17. Respondents present at hearing claim no knowledge of the burning activity. See Tr. at 19, 23. However, the Act prohibits “open dumping of waste in a manner that *results in...open burning*” 415 ILCS 5/21(p)(3), *emphasis*

added. Because Respondents were responsible for allowing the open dumping, they are also responsible for the result of open burning, regardless of how the burning occurred. *Illinois EPA v. Alan Smith*, PCB No. AC 01-42 (June 6, 2002), p. 7. Therefore, Respondents violated Section 21(p)(3) of the Act.

Respondents each raise various issues in their defense. With respect to Respondent Bible, her testimony indicates that she had no responsibility or knowledge of any of the problems at the site (Tr. at 19). However, Respondent Bible admitted to having received a prior Administrative Citation for the same property during the time C&T Recycling was operating there (Tr. at 20),¹ which would have given her specific knowledge of the problems at the site. In addition, Respondents Porter and Bible in their Petition for Review claim, among other things, that Respondent Booten failed to keep the premises free and clear of debris and failed to conduct the recycling business in compliance with the law (*See* Petition for Review, filed June 12, 2012). In fact, Respondent Bible testified that she has “taken photos every year” of the mismanaged cardboard waste (Tr. at 33-4). Furthermore, in 2010, Respondent Bible filed a Forcible Entry and Detainer action against Respondent Booten (Tr. at 22). However, she did not evict him from the property because he started paying rent, although the property was still not cleaned up at that time (Tr. at 22). Respondents Porter and Bible made a business decision to continue renting this property to Respondents Booten without a written lease (Tr. at 21) and in spite of having problems with them since they began renting the site in 2006 (Tr. at 22).

Respondent Todd Booten admitted responsibility for the material in and around the rolloff containers (Tr. at 26-7), but denied responsibility for the waste that “people just come by and throw out” (Tr. at 25). However, C&T Recycling does accept waste material from the public

(Tr. at 27), as further evidenced by the overflowing recycling collection bins on site (Exh. 1, pp. 6-7). Respondent Booten claimed that the cardboard shown in the photographs attached to the inspection report would fit inside the building (Tr. at 31), yet it was observed outside on the ground (Exh. 1, pp. 6-8). Respondent Bible testified that the cardboard does not fit in the building, and demonstrated photographs of the metal siding being displaced by cardboard (Tr. at 33). Respondent Bible could not recall specifically when her photographs were taken, but indicated that it was in 2012 (*Id.*). Therefore, either the cardboard could have fit into the building on March 22, 2012, and should have been stored there out of the elements, or C&T Recycling was accepting more waste for recycling than it was able to properly manage.

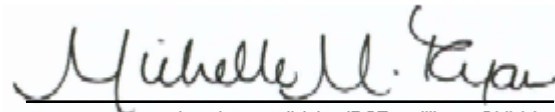
The site has not been managed properly for a period of several years, and any and all of the Respondents had plenty of time to address the problems. Instead, they all made the decision to allow the illegal conditions to continue. Whether they did so with knowledge or with bad intent is irrelevant, because 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, the arguments raised by Respondents do not provide a defense to the proven violations.

¹ See AC 2011-007, which was dismissed at the request of Illinois EPA on October 7, 2010.

The Illinois EPA photographs, inspection report and the testimony show that Respondents allowed open dumping of waste in a manner resulting in litter and open burning in violation of Sections 21(p)(1) and (p)(3) of the Act. Illinois EPA requests that the Board enter a final order finding that Respondents violated these sections and imposing the statutory penalty.

Respectfully Submitted,

Dated: June 18, 2013



e-signature valid for IPCB e-filings ONLY

Michelle M. Ryan
Special Assistant Attorney General

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1021 North Grand Avenue East
P.O. Box 19276
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PROOF OF SERVICE

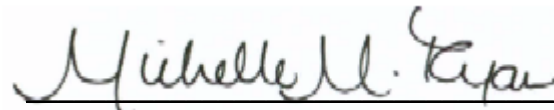
I hereby certify that I did on the 18th day of June, 2013, send by U.S. Mail with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled POST-HEARING BRIEF OF COMPLAINANT

To: Thomas Porter & Beverly Bible
13386 Brandyville Road
Herrin, IL 62948

Tabitha & Todd Booten
d/b/a C&T Recycling
3900 Alum Cave Road
Marion, IL 62959-9670

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

To: John Therriault, 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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