

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 12-48
)	
v.)	(IEPA No. 89-12-AC)
)	
RUTH WHITE,)	
)	
Respondent.)	

NOTICE OF FILING

To: Ruth White
5631 1st Place
Kenosha, WI 53142

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
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: February 4, 2014

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 12-48
)	
v.)	(IEPA No. 89-12-AC)
)	
RUTH WHITE,)	
)	
Respondent.)	

POST-HEARING BRIEF OF COMPLAINANT

On April 12, 2012, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Ruth White (“Respondent”). The citation alleges violations of Section 21(p)(1) and (3) and 55(k)(1) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1) and (3) (2010)), in that Respondent caused or allowed open dumping of waste resulting in litter and open burning and allowed water to accumulate in waste tires. The violations occurred at a property south of 75 on Charles Avenue, Freeport, Stephenson County, on February 22, 2012. Transcript, p. 8; 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 (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 tires, a mattress, tarps, building debris, including wall board, carpeting, and toilets, municipal waste, plastic, metal, and glass were present at the site. Tr. at 10-12; Exh. 1, pp. 3-10. Respondent owned the site at all times

relevant hereto (Tr. at 8). Therefore, Respondent caused or allowed open dumping of waste observed on February 22, 2012.

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) (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 Respondent violated that section.

Respondent's causing or allowing the 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." Burned waste was observed in the burn barrel and on the ground at the site. Exh. 1, pp. 5, 8-9; Tr. at 10-12. Because Respondent was responsible for allowing the open dumping, she is 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, Respondent violated Section 21(p)(3) of the Act.

Respondent also allowed water to accumulate in used or waste tires in violation of Section 55(k)(1) of the Act (415 ILCS 5/55(k)(1) (2010)). Water was observed in used tires on

the site on February 22, 2012. Exh. 1, p. 4-5; Tr. at 11. Therefore, Respondent violated Section 55(k)(1) of the Act.

Respondent failed to appear at hearing and consistently failed to appear during status conferences scheduled with the hearing officer. Tr. at 4-5. The only defense provided in the Petition for Review was that Respondent was unaware of the violations until September 2011, approximately five months prior to the inspection that was the subject of this Administrative Citation. 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 has not provided a defense to the proven violations.

Respondent admits in the Petition for Review that the violations were not addressed during that time. Therefore, Respondent has failed to provide a defense to the violations.

The Illinois EPA photographs, inspection report and the testimony show that Respondent allowed open dumping of waste in a manner resulting in litter and open burning in violation of Sections 21(p)(1) and (3) of the Act and water accumulation in used tires in violation of Section 55(k)(1) 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: February 4, 2014

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

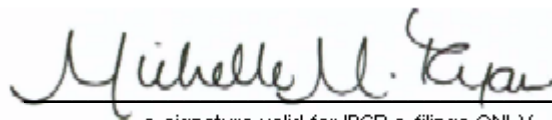
PROOF OF SERVICE

I hereby certify that I did on the 4th day of February, 2014, 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: Ruth White
5631 1st Place
Kenosha, WI 53142

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

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