

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

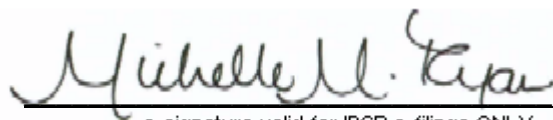
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 12-16
)	
v.)	(IEPA No. 341-11-AC)
)	
JULIE WEBBER,)	
)	
Respondent.)	

NOTICE OF FILING

To: Julie Webber
1013 Beech Street
Chillicothe, Illinois 61523

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
Springfield, Illinois 62794-9276
(217) 782-5544

Dated: October 26, 2016

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
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Complainant,)	AC 12-16
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v.)	(IEPA No. 341-11-AC)
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JULIE WEBBER,)	
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POST-HEARING BRIEF OF COMPLAINANT

On December 30, 2014, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Julie Webber (“Respondent”). The citation alleges violations of Section 21(p)(1), and 21(p)(7) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1), (p)(7), (2010)), in that Respondent caused or allowed open dumping of waste resulting in litter, and deposition of construction or demolition debris. The violations occurred at a property located 404 Willow Street, LaFayette, Stark County, on Sept 26, 2011. Transcript, pp. 8-9; 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 (2014). “Refuse” means “waste,” (415 ILCS 5/3.385 (2014)), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2014)). The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show plastic drums and tank, semi-trailers, vehicles, used tires, pallets, domestic waste, scrap metal, wiring, a boat, wooden poles, landscape waste, and demolition debris. Tr. at 10-13; Exh. 1, pp. 3-17. These materials constitute

“discarded material” within the meaning of the term “waste.” Respondent owns the site (Tr. at 8) and does not deny the presence of these open dumped wastes during the inspection. Therefore, Respondent caused or allowed open dumping of waste observed on September 26, 2011.

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) (2014)). 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 open dumping of 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) (2014)).

“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) (2014).

Evidence introduced at hearing showed that pallets, scrap metal, wiring, wooden poles, and other miscellaneous demolition debris were dumped at the site. Tr. at 10-13; Exh. 1, pp. 3-17. These

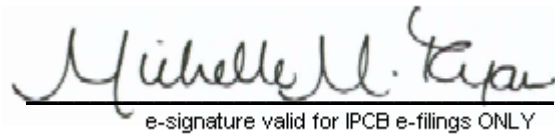
wastes meet the definition of “construction or demolition debris” for purposes of Section 21(p)(7) of the Act, and therefore Respondent violated that section.

The Board previously has held that a landowner can be held liable for “causing or allowing” open dumping even if the landowner allegedly did not actively participate in the dumping. *See Illinois EPA v. Shrum*, AC 05-18, slip op. at 8 (March 16, 2006). Property owners are responsible for environmental violations on their property, unless the facts establish that they have no capability to control the source of the problem or that they have taken ‘extensive precautions’ against such violations. *Gonzalez v. Illinois Pollution Control Board*, 2011 IL App 093021 ¶33 (citations omitted); *Illinois EPA v. Rawe*, AC 92-5, slip op. at 6 (Oct. 16, 1992) (“passive conduct amounts to acquiescence sufficient to find a violation”) (citation omitted). “[K]nowledge or intent is not an element to be proved for a violation of the Act. This interpretation of the Act ... is the established rule in Illinois.” *People v. Fiorini*, 143 Ill.2d 318, 336, 574 N.E.2d 612, 618 (1991), *see also Freeman Coal Mining v. PCB*, 21 Ill. App. 3d 157, 163, 313 N.E.2d 616, 621 (5th Dist. 1974) (the Act is *malum prohibitum* and no proof of guilty knowledge or *mens rea* is necessary to find liability). Respondent refused to present any evidence at hearing. Therefore, Respondent has no defense to the proven 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 deposition of construction or demolition debris in violation of Sections 21(p)(1), 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 of \$1,500 per violation.

Respectfully Submitted,

Dated: October 26, 2016



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Special Assistant Attorney General

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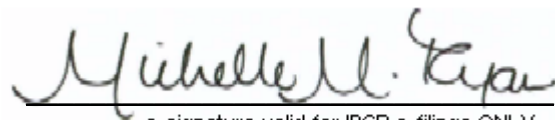
PROOF OF SERVICE

I hereby certify that I did on the 26th day of October 2016, 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: Julie Webber
1013 Beech Street
Chillicothe, Illinois 61523

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



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