

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 27 2005

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
))
Complainant,)
))
v.)
))
FRANK BENCIE,)
))
Respondent.)

AC 04-77

(IEPA No. 265-04-AC)

NOTICE OF FILING

To: Frank Bencie
10220 Bencie Lane
West Frankfort, Illinois 62896

PLEASE TAKE NOTICE that on this date I mailed for filing 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: December 22, 2005

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POST-HEARING BRIEF OF COMPLAINANT

On May 11, 2004, the Illinois Environmental Protection Agency ("Illinois EPA") issued an administrative citation to Frank Bencie ("Respondent"). The citation alleges violations of Section 21(p)(1) and 21(p)(4) and 21(p)(7) of the Environmental Protection Act ("Act") (415 ILCS 5/21(p)(1) & (4) (2002)), in that Respondent caused or allowed open dumping of waste, resulting in litter and the deposition of waste in standing or flowing water. The violations occurred at a property located at 10220 Bencie Lane, south of West Frankfort, Franklin County. 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 (2004). "Refuse" means "waste," (415 ILCS 5/3.385 (2004)), and "waste" includes "any garbage . . . or other discarded material" (415 ILCS 5/3.535 (2004)). The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that wood, tires, insulation, appliances, glass, household waste, plastics, metal and other unidentifiable items were accumulated throughout the site. Tr. at 9-11; Exh. 1, pp. 3, 6-27. These materials constitute "discarded material" within the meaning of the term "waste." Respondent owns the site. Tr. at 8.

Respondent admitted that people dump at his property because they see all the junk there, and that they bring it to him because it's cheaper than proper disposal. Tr. at 16. Some of the material was placed on the property by Respondent "a long time ago," and had vegetation growing on it. Tr. at 17-18. Therefore, Respondent caused or allowed the open dumping of waste observed on March 23, 2004.

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) (2004)). 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 wood, tires, insulation, appliances, glass, household waste, plastics, metal and other items constitute "litter" under Section 21(p)(1) of the Act, and therefore Respondent violated that section.

Respondent's open dumping of these wastes also resulted in the deposition of waste in standing or flowing water in violation of Section 21(p)(4) of the Act (415 ILCS 5/21(p)(4) (2004)). Some of the waste materials were observed in standing water on the site, including some plastic shelving and other materials. Tr. at 10; Exh. 1, p. 14. As argued above, Respondent caused or allowed the open dumping of this waste. Because the open dumping resulted in the waste being in standing water, Respondent also violated Section 21(p)(4).

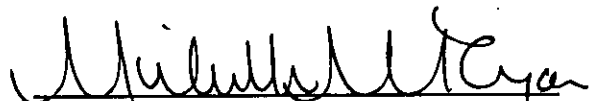
Respondent stated that he was trying to clean up the site. Tr. at 14. As previously noted, at least some of the material was placed on the property so long ago that it had vegetation growing on

it. Tr. at 17-18. Although Illinois EPA appreciates Respondent's good intentions, clearly he was not making reasonable progress in his clean up effort. For example, although it is unknown even to Respondent how long some of the waste has been at the site, Respondent admitted at hearing that only 65-70% of the material had been removed in the year-and-a-half since this Administrative Citation was filed. Further, 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, these arguments by Respondent do not provide a defense to the proven violations.

The Illinois EPA photographs and inspection report and the testimony show that Respondent allowed open dumping of waste in a manner resulting in litter and deposition of waste in standing or flowing water in violation of Sections 21(p)(1) and (p)(4) 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: December 22, 2005


Michelle M. Ryan
Special Assistant Attorney General

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1021 North Grand Avenue East
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(217) 782-5544

PROOF OF SERVICE

I hereby certify that I did on the 22nd day of December, 2005, 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: Frank Bencie
10220 Bencie Lane
West Frankfort, Illinois 62896

and the original and nine (9) true and correct copies of the same foregoing instruments on the same date by U.S. Mail with postage thereon fully prepaid

To: Dorothy Gunn, Clerk
Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601



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