

JAN 03 2006

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
))
Complainant,))
))
v.))
))
WILLIAM SHRUM,))
))
Respondent.))

AC 05-18

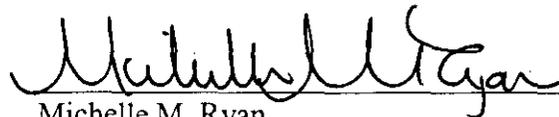
(IEPA No. 409-04-AC)

NOTICE OF FILING

To: Kevin J. Babb
309 Hillsboro Avenue
Edwardsville, IL 62025

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 29, 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Complainant,) AC 05-18
v.) (IEPA No. 409-04-AC)
WILLIAM SHRUM,)
Respondent.)

POST-HEARING BRIEF OF COMPLAINANT

On May 11, 2004, the Illinois Environmental Protection Agency ("Illinois EPA") issued an administrative citation to William Shrum ("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) & (7) (2002)), in that Respondent caused or allowed open dumping of waste resulting in litter and the deposition of construction or demolition debris. The violations occurred at a property located at the intersection of Shamrock and Corgan Road, northwest of Tamaroa, Perry County. Transcript, p. 7; 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 building materials including blocks, as well as burned debris, wood, metal, a mattress, a waste tire and other unidentifiable items were present throughout the site. Tr. at 11-12; Exh. 2, pp. 3, 6-9. Respondent admitted that

construction debris, toilets, shingles and mattresses had been present at the site. Tr. at 20. These materials constitute “discarded material” within the meaning of the term “waste.” Respondent owned the site since early 2004. Tr. at 7, 18. Respondent stated that when he discovered the waste on site, he removed the toiletry, glass, and “anything that [he] didn’t feel was in [his] eyes, a back fill debris” and put it in a ten-yard dumpster to be removed. Tr. at 19-21. It is unclear from the record whether the drywall, plumbing fixtures, and cans and bags of trash that Respondent’s witness observed at the site made it into this dumpster or were considered by Respondent to be “back fill debris.” See Tr. at 24-5. However, Respondent did admit that he took the remaining waste and “leveled it off” with a 655 John Deere high lift: “just pushed it back and forth to make it a level, clean area.” Tr. at 20-1. Therefore, Respondent caused or allowed the consolidation of refuse, and therefore the open dumping of waste observed on July 2, 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 building materials, burned debris, wood, metal, mattress, waste tire 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 construction or demolition debris in violation of Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2004)). "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) (2004).

Respondent's witness testified that debris from the construction and demolition of buildings that were located on site were dumped on the property by the previous owner in 2000-01. Tr. at 23-25. The materials from the buildings meets the definition of "construction or demolition debris" for purposes of Section 21(p)(7) of the Act, and therefore Respondent violated that section.

The evidence is uncontested that Respondent did not originally place the waste the site. In fact, once Respondent discovered the waste on his property, he removed some of it. Tr. at 20-1. Unfortunately, Respondent's methods also involved the burial of an estimated 500 cubic yards of waste on the property. Exh. 2, p.1. Attempting to "dress up" the "eyesore" that he discovered does not give the Respondent a license to illegally dispose of waste in violation of the Act. See Tr. at 21. 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). This Board has held that present inaction of the part of a current landowner to remedy past illegal disposal of waste previously placed on the site constitutes "allowing" open dumping, in that the owner allows the illegal situation to continue. *Sangamon*

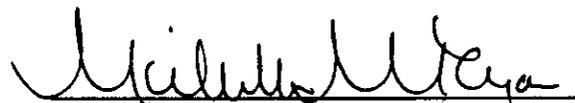
County v. Lee Hsueh, AC 92-79 (July 1, 1993), pp. 4-5. However, Respondent in this case actually exacerbated the illegal situation by burying the waste he discovered. Respondent's improper management of waste materials is impermissible under the law. Therefore, these arguments by Respondent do not provide a defense to the proven violations.

Respondent was the subject of a previous Administrative Citation, in which case the Board found violations of Section 21(p)(1) and 21(p)(3) of the Act. *County of Perry v. William Shrum*, AC 02-1 (September 6, 2001). Therefore, this citation is Respondent's second violation of Section 21(p)(1). Pursuant to Section 42(b)(4-5) of the Act, Respondent is liable for \$3,000 for the violation of Section 21(p)(1), and \$1,500 for the violation of Section 21(p)(7) of the Act.

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.

Respectfully Submitted,

DATED: December 29, 2005



Michelle M. Ryan
Special Assistant Attorney General

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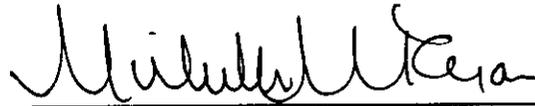
PROOF OF SERVICE

I hereby certify that I did on the 29th 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: Kevin J. Babb
309 Hillsboro Avenue
Edwardsville, IL 62025

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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