

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

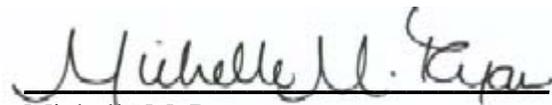
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 05-40
)	
v.)	(IEPA No. 567-04-AC)
)	
NORTHERN ILLINOIS SERVICE)	
COMPANY,)	
)	
Respondent.)	

NOTICE OF FILING

To: Peter DeBruyne
838 North Main Street
Rockford, Illinois 61103

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: May 23, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 05-40
)	
v.)	(IEPA No. 567-04-AC)
)	
NORTHERN ILLINOIS SERVICE)	
COMPANY,)	
)	
Respondent.)	

POST-HEARING BRIEF OF COMPLAINANT

On November 18, 2004, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Northern Illinois Service Company (“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 4960 Rockton Road, Roscoe, Winnebago County. Transcript, p. 10; 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 materials including dead trees, concrete with protruding rebar, and metal conduit were present at the site. Tr. at 12-13; Exh. 1, pp. 3, 5-7. These materials constitute “discarded material” within the meaning of the term

“waste.” Respondent owned the site since early 1996. Tr. at 39. Some of the waste trees had been on the site since Respondent acquired the property. Tr. at 40, 48. In addition, Respondent added to the pile trees cut from the site, as well as “stragglers” from excavating jobs that he performed for others. Tr. at 42, 48. Therefore, Respondent caused or allowed the open dumping of waste observed on October 4, 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) (2004); see *St. Clair County v. Louis I. Mund* (Aug. 22, 1991), AC 90-64, slip op. at 4, 6. Using this definition, the dead trees, concrete with protruding rebar, and metal conduit¹ 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

¹ Respondent’s counsel limited the issue of litter at hearing to the dead trees. Tr. at 15. However, the concrete with protruding rebar and metal conduit also meet the definition of “litter,” as it is “debris...or anything else of an unsightly nature, which has been discarded...or otherwise disposed of improperly.” The language of the statute controls over the opinion of Respondent’s counsel or the characterization of a single field inspector.

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 offered no testimony regarding the concrete and metal conduit. According to the Petition for Review and comments made by Respondent's counsel at the pre-trial status call with the Hearing Officer, Respondent is not contesting the 21(p)(7) count. Therefore, based on the evidence of concrete with protruding rebar and metal conduit, Respondent violated Section 21(p)(7) of the Act.

Some of the waste at the site was present when Respondent bought the property ten years ago. Tr. at 40, 48. This Board has long 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. *Illinois EPA v. William Shrum*, AC 05-18 (March 16, 2006), p. 8 (citations omitted); *Sangamon County v. Lee Hsueh*, AC 92-79 (July 1, 1993), pp. 4-5. Respondent in this case not only allowed the dumping to persist for over ten years, but added up to eighty percent of the dead trees. See Tr. at 48.

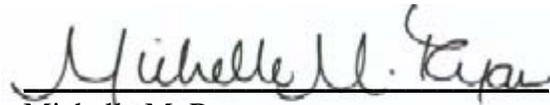
Respondent made a showing at hearing that the wood waste could have been processed into a useable mulch product. Tr. at 30-36. However, it was uncontroverted that the wood waste in its condition on the date of the inspection was not usable as mulch. Tr. at 23, 31-32 (tub grinding necessary prior to use as mulch). In fact, the type of mulch described by the landscaper was identified as "double ground mulch," implying that at least two passes through a grinder were required to render trees into usable product. However, the trees at Respondent's site had been "laid there just to rot." Tr. at 23. There was no evidence of any processing "whatsoever." *Id.* Whether Respondent may have intended to use the wood waste as mulch--which evidence was actually never introduced at hearing--is irrelevant, as it hadn't happened for more than ten years while the tree waste lay dumped on the site. The fact that Respondent later applied for and received an open

burning permit certainly implies the lack of intent to use the tree waste, as burning wood unquestionably precludes its use as mulch. Nevertheless, a plan for use of material at some future date is not dispositive in determining whether a material is waste or litter. *Illinois EPA v. Yocum, et al.*, (June 6, 2002), p. 8. Indeed, 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).

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: May 23, 2006



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

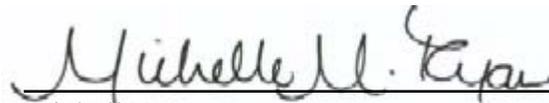
PROOF OF SERVICE

I hereby certify that I did on the 23rd day of May, 2006, 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: Peter DeBruyne
838 North Main Street
Rockford, Illinois 61103

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

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



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