

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, JUNE 7, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

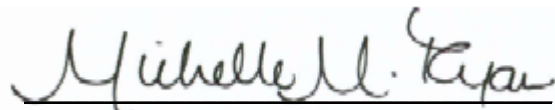
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,) AC 05-70
)
v.) (IEPA No. 145-05-AC)
)
JAMES STUTSMAN,)
)
Respondent.)

NOTICE OF FILING

To: James Stutsman
8443 County Road 1100E
Bath, Illinois 62617

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: June 7, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
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Complainant,)	AC 05-70
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JAMES STUTSMAN,)	
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POST-HEARING BRIEF OF COMPLAINANT

On May 18, 2005, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to James Stutsman (“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) (2004)), 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 8443 County Road 1100E, Bath, Mason 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 approximately 1000 used tires, over 80 abandoned vehicles, other vehicles and motor parts, scrap metal, lead acid batteries, white goods, metal shelving, damaged dimensional lumber, metal siding, cinderblocks, and broken concrete and bricks were present throughout the site. Tr. at 10-11; Exh. 1, pp. 3-51. Respondent

did not contest that these materials were present at the site. These materials constitute “discarded material” within the meaning of the term “waste.” Respondent has owned the site since at least the initial inspection in July 1999 (Tr. at 11), when the property was in generally the same condition as that observed during the inspection on April 1, 2005. Tr. at 13, 26, 28. In fact, the only major change to the conditions on property during those years was when Illinois EPA removed the tires to address a potential West Nile Virus threat. Tr. at 27. Therefore, Respondent caused or allowed open dumping of waste observed on April 1, 2005.

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 tires, vehicles and motor parts, metals, lead acid batteries, white goods, and construction or demolition debris 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).

Evidence introduced at hearing showed that damaged dimensional lumber, metal siding, cinderblocks, and broken concrete and bricks were present throughout the site. Tr. at 10-11; Exh. 1, pp. 3-51. These materials meet the definition of “construction or demolition debris” for purposes of Section 21(p)(7) of the Act, and therefore Respondent violated that section.

Respondent has indicated that he intended to use these waste materials for income following his retirement (Tr. at 13), which occurred in April 2006. Tr. at 17. Respondent does not agree that his site is “a dump,” and asserts that Illinois EPA “keep[s] changing the program it seems like to me.” Tr. at 15. However, Illinois EPA did not agree to allow Respondent to maintain this open dump until his retirement, as evidenced by testimony and written communications with Respondent. Tr. at 13, 18, 24, 26; Exh. 2-4. Furthermore, 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.

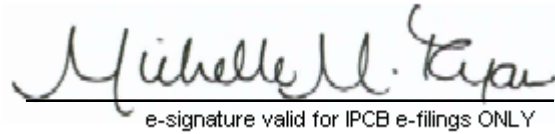
The Illinois EPA photographs, inspection report and the testimony show that Respondent allowed open dumping of waste in a manner resulting in litter and deposition of construction or demolition debris in violation of Sections 21(p)(1) and (p)(7) of the Act. Illinois

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EPA requests that the Board enter a final order finding that Respondent violated these sections and imposing the statutory penalty.

Respectfully Submitted,

Dated: June 7, 2006



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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 7th day of June, 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: James Stutsman
8443 County Road 1100E
Bath, Illinois 62617

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



e-signature valid for IPCB e-filings ONLY

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Special Assistant Attorney General

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