

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

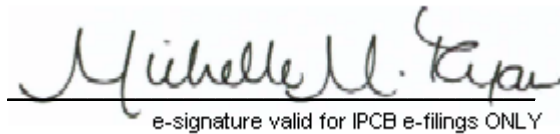
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 06-49
)	
v.)	(IEPA No. 96-06-AC)
)	
MICHAEL GRUEN and JON ERIC)	
GRUEN d/b/a JON'S TREE SERVICE)	
)	
Respondents.)	

NOTICE OF FILING

To: Phillip H. Hamilton
 Farrell, Hunter, Hamilton & Julian, P.C.
 1310 D'Adrian Professional Park
 Godfrey, Illinois 62035-1688

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: April 30, 2007

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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POST-HEARING BRIEF OF COMPLAINANT

On May 29, 2006, the Illinois Environmental Protection Agency ("Illinois EPA") issued an administrative citation to Michael Gruen and John Eric Gruen d/b/a Jon's Tree Service ("Respondents"). The citation alleges a violation of Section 21(p)(1) of the Environmental Protection Act ("Act") (415 ILCS 5/21(p)(1) & (7) (2004)), in that Respondents caused or allowed open dumping of waste resulting in litter. The violations occurred at a property located at the conjunction of Route 66 and Old Route 66 south of Mt. Olive, in Macoupin County. Transcript, p. 11; Exhibit 1.

Illinois EPA has demonstrated that Respondents 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)). On April 20, 2006, Respondent Michael Gruen was the owner of the site, and Respondent John Gruen was the operator. Tr. at 11. The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that materials including cut logs, deteriorated lumber, wood chips, plastic, a rusted metal tank,

vehicles, a truck bed full of wood, metal and other materials, and a boat full of plastic, metal scraps, wood, and a used tire were present at the site. Tr. at 13-16; Exh. 1, pp. 3-10. The inspector estimated that three-quarters of the waste on site was landscape waste. Tr. at 17. Landscape waste is waste. *Illinois EPA v. Northern Illinois Service Corporation*, PCB AC 05-40, (September 21, 2006) p. 8, citing *American Tree Service, Inc. v. Illinois EPA*, PCB 94-43, (Dec. 14, 1994) p. 14. All of the remaining materials observed on site constitute “discarded material” within the meaning of the term “waste.” In addition, landscape waste in the form of trees uprooted, transported to another site, and piled up has recently been held to be “discarded material” within the meaning of “waste.” *Illinois EPA v. Northern Illinois Service Corporation*, *supra* at 9. Therefore, Respondents caused or allowed the open dumping of waste observed on April 20, 2006.

Respondents’ 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* PCB AC 90-64, (Aug. 22, 1991) pp. 4, 6. The Board has previously categorized tree branches as waste. *Illinois EPA v. Northern Illinois Service Corporation*, *supra* at 9, citing *Illinois EPA v. Harvey*, PCB AC 03-27 (April 1, 2004), p. 5. The Illinois EPA inspector determined that the timber, vehicles, scrap metal, plastic strewn on the ground, tarp, and items in the back of the truck were of an “unsightly or unsanitary nature.” Tr. at 34, 39. According to the definition and supporting case law, the wood, plastic, rusted

metal tank, vehicles, truck bed and boat full of wood, metal, plastic, tire and other materials constitute "litter" under Section 21(p)(1) of the Act, and therefore Respondents violated that section.

Respondent Jon Gruen testified that all the vehicles on the property (except the Camaro, *see* Tr. at 69) were used in the business and not "deserted." Tr. at 57-61. However, one vehicle needs "brakes put on it" (Tr. at 57), one needs "a master cylinder" (Tr. at 58), one needs "freeze plugs put in it" (Tr. at 59), and the Camaro needs "a new rear end" (Tr. at 61). Clearly, none of these vehicles are currently roadworthy, and apparently haven't been for at least the last year, since the April 20, 2006 inspection. Respondent Jon Gruen holds title or registration papers for at least some of the vehicles (Resp. Exh. 32-35), and also has "intent to make the repairs" needed. Tr. at 59. He also intended to "convert the large metal tank into a wood-burning stove" (Tr. at 64), but there was no evidence that this ever occurred, even though it was out there for "a year or two." Tr. at 67. In *Illinois EPA v. Yocum, et al.*, PCB AC 01-29 and 01-30 (consolidated) (June 6, 2002), the Board found that vehicles and wood waste was open dumped (slip op. at 6), even though Mr. Yocum had titles and intended to use the wood and also the vehicles, either for parts or to restore. *Yocum, supra*, at 4. Therefore, the inoperable vehicles and other materials in the condition observed at the Gruen property on April 20, 2006 were waste and litter.

Respondent Jon Gruen made a showing at hearing that the wood waste could be used for business purposes, such as firewood or mulch. Tr. at 42-44. Illinois EPA does not dispute that Respondent Jon Gruen intends to make use of most of the wood he brings back to the site, and has, in fact, used some. However, "it's reached a point, though, that there's so much wood on site that it's starting to disintegrate at the bottom of the piles and it would take a long time to get rid of the amount of wood that's there." Tr. at 19-20. The amount of wood in only one measured area of the site was 250 feet long by three feet high. Tr. at 17. Some of the wood waste has been on site since

December 2004, and is “damp, it’s ridden with bugs, that type of thing.” Tr. at 21. Saplings growing between the logs indicated there has been little movement of the material. Tr. at 25. Respondent Jon Gruen plans to use the wood, “but he’s not using it. He’s let the wood site for a number of years.” Tr. at 29. 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.* PCB AC 97-41, (July 24, 1997) p. 5, citing *People v. Fiorini*, 143 Ill.2d 318, 574 N.E.2d 612 (1991).

Respondent Jon Gruen testified that all the material he brings to the site is usable to somebody. Tr. at 43. However, every material on site contains some type of material that is “unusable.” “We give it away, like I said, any wood that’s *not usable*.” Tr. at 50 (emphasis added). “[S]ometimes there’s leftover scraps of firewood *that you can’t use for, you know, anything*, they’re just little scraps, and we throw it in there and burn it off.” Tr. at 56 (emphasis added). “I’ll send him [son] out there to sort all the stuff out, the scrap metal from *the stuff that’s not useable*.” Tr. at 65 (emphasis added). “[A]ll the material that’s thrown into the truck bed is not necessarily scrap metal. It’s just put there until my son can later go through it and decide *what’s valuable and what’s not*.” Tr. at 70 (emphasis added). By his own admissions, Jon Gruen brings wood and other materials to the site that cannot be used. At a minimum, this “unusable” material is waste, and supports this Administrative Citation.

Respondent Michael Gruen did not testify at hearing, but it is undisputed that he is the site owner. 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

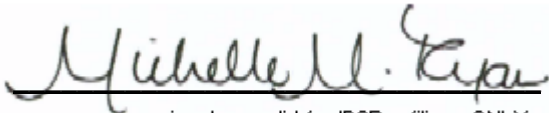
(March 16, 2006), p. 8 (citations omitted); *Sangamon County v. Lee Hsueh*, AC 92-79 (July 1, 1993), pp. 4-5. Therefore, Michael Gruen is equally responsible for the violation of Section 21(p)(1) of the Act as is Jon Gruen.

Respondents' attorney made a lot out of the fact that there is no statutory "time limit" on a material turning into a waste from neglectful non-use. While Illinois EPA agrees that the statute doesn't set a specific time limit, when a person ceases to take care of his materials and allows them to degrade into the environment, then his time has passed.

The Illinois EPA photographs, inspection report and the testimony show that Respondents caused or allowed open dumping of waste in a manner resulting in litter in violation of Section 21(p)(1) of the Act. Illinois EPA requests that the Board enter a final order finding that Respondents violated these sections and imposing the statutory penalty.

Respectfully Submitted,

DATED: April 30, 2007



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Special Assistant Attorney General

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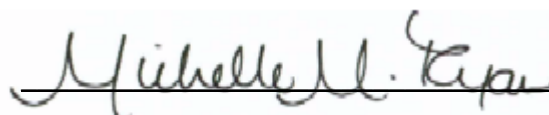
PROOF OF SERVICE

I hereby certify that I did on the 30th day of April, 2007, 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: Phillip H. Hamilton
Farrell, Hunter, Hamilton & Julian, P.C.
1310 D'Adrian Professional Park
Godfrey, Illinois 62035-1688

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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