

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF CHICAGO DEPARTMENT)
OF ENVIRONMENT,)
)
Complainant,)
)
v.)
)
1601-1759 EAST 130TH STREET, LLC,)
)
Respondent.)

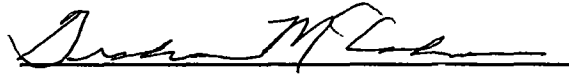
AC 07-025
(Administrative Citation)

NOTICE OF FILING

TO: Jeffrey J. Levine
Jeffrey J. Levine, P.C.
20 N. Clark St., Suite 800
Chicago, IL 60602

Bradley P. Halloran
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

PLEASE TAKE NOTICE that on May 13, 2008 Complainant filed with the Clerk of the Illinois Pollution Control Board the attached CITY OF CHICAGO'S REPLY TO 1601-1759 EAST 130TH STREET, LLC'S POST-HEARING BRIEF, a copy of which is served upon you.


Graham G. McCahan

Graham G. McCahan
Assistant Corporation Counsel
City of Chicago Department of Law
Aviation, Environmental & Regulatory Division
30 N. LaSalle Street, Suite 900
Chicago, IL 60602
(312) 744-1438

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on May 13, 2008, he caused copies of this notice and the documents referenced therein to be served on the persons listed above by U.S. Mail, first class postage prepaid.


Graham G. McCahan

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF CHICAGO DEPARTMENT)	
OF ENVIRONMENT,)	
)	
Complainant,)	
)	
v.)	AC 07-25
)	(Administrative Citation)
)	
1601-1759 EAST 130 TH STREET, LLC,)	
)	
Respondent.)	

**CITY OF CHICAGO'S REPLY TO 1601-1759 EAST 130TH STREET, LLC'S
POST-HEARING BRIEF**

Complainant, the City of Chicago Department of Environment ("CDOE"), hereby submits the following as its Reply to Respondent 1601-1759 East 130th Street, LLC's Post-Hearing Brief. In support thereof, CDOE states as follows:

INTRODUCTION

The narrow issues before this Board are whether CDOE has demonstrated that there existed violations of Sections 21(p)(1) and 21(p)(7)(i) of the Illinois Environmental Protection Act (the "Act") (415 ILCS 5/21) at 1601 E. 130th Street in Chicago, Illinois (the "Site") on October 3, 2006, and whether Respondent is liable for those violations. The evidence and testimony at hearing demonstrated that the above violations existed on the Site on October 3, 2006. Respondent, as owner of the Site, should be held liable for those violations under Illinois law. Not only has Respondent not contradicted this evidence, but Respondent, in its Post-Hearing Brief, also admits to the facts required to establish those violations.

ARGUMENT

A. CDOE Has Established that There Were Violations of Sections 21(p)(1) and 21(p)(7)(i) on the Site on October 3, 2006.

As shown in CDOE's Post-Hearing Brief, the testimony and evidence at hearing demonstrated that there were violations of Sections 21(p)(1) and 21(p)(7)(i) on the Site on October 3, 2006. Respondent, in its Post-Hearing Brief, has not contradicted CDOE's evidence and has admitted to the conditions on which those violations are based. With respect to the charge of open dumping resulting in litter under Section 21(p)(1), for instance, Respondent's counsel made the following admissions: "when [Respondent] acquired the property is [sic] was loaded with junk;" "Mr. Gonzales [sic] further stated that the debris pictured in complainant's report is the same debris from the past violations on March 22, 2006;" and, "Mr. Gonzalez's efforts were directed toward...cleaning the garbage that was placed on the property by others." Resp. Post-Hearing Br. at ¶¶ 1, 4, 7. With respect to the charge of deposition of general construction and demolition debris under Section 21(p)(7), Respondent's counsel incorporated the arguments made in the Post-Hearing Briefs in cases 2006-39, 2006-40, and 2006-41. *Id.* at ¶ 5. In the Post-Hearing Briefs for cases 2006-40 and 2006-41, Respondent's counsel admits that E. King [Construction] was renting the Site and that E. King dumped what he described as "CTA construction debris" on the Site. Resp. Post-Hearing Br. for case 2006-40 at ¶¶ 9-15; Resp. Post-Hearing Br. for case 2006-41 at ¶¶ 9-15.

B. Respondent, As Owner of the Site, Is Liable for the Open Dumping and Resulting Violations Observed on the Site on October 3, 2006.

It is uncontested that Respondent owned the Site on October 3, 2006. Compl. Post-Hearing Br. at 1; *see also* Resp. Post-Hearing Br. at ¶ 1. The Board has repeatedly

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held that a landowner can be held liable for “causing or allowing” open dumping even if the landowner did not actively participate in the dumping. *See IEPA v. Shrum*, AC 05-18 (IPCB Mar. 16, 2006); *IEPA v. Carrico*, AC 04-27 (IPCB Sep. 2, 2004); *IEPA v. Rawe*, AC 92-5 (IPCB Oct. 16, 1992). Respondent claims that fly-dumpers dumped waste at the Site without Respondent’s permission and that there was waste on the Site when Respondent purchased it. Resp. Post-Hearing Br. at ¶ 1, 7. However, a person can cause or allow open dumping in violation of the Act without knowledge or intent. *See County of Will v. Utilities Unlimited, Inc.*, AC 97-41 (IPCB July 24, 1997), *citing, People v. Fiorini*, 143 Ill.2d 318, 574 N.E.2d 612 (1991). In addition, “passive conduct” on the part of a landowner can amount to “acquiescence sufficient to find a violation of Section 21(a) of the Act.” *IEPA v. Shrum*, AC 05-18 (IPCB Mar. 16, 2006). Therefore, Respondent, as owner of the Site, is liable for the violations observed on October 3, 2006 because Respondent failed to prevent others from dumping waste on the Site and Respondent let waste remain on the property.

C. Waste Remained On the Site While it was Under Respondent’s Ownership.

In his Post-Hearing Brief, Respondent’s counsel states that “Respondent secured the property and rather than causing or allowing open dumping, was cleaning refuse when ticketed. Mr. Gonzalez [owner of Respondent] did not allow waste to remain on his property.” Resp. Post-Hearing Br. at ¶ 6. Respondent’s counsel also distinguishes between Respondent’s alleged clean up activities and the respondent in *IEPA v. Cadwallader*, who “did not remove debris over a two year period” and was found liable for violations of the Act. *Id.* Respondent’s counsel admits, however, that “[w]hen [Respondent] acquired the property is [sic] was loaded with junk.” *Id.* at ¶ 1. In the Post-

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Hearing Briefs for cases 2006-40 and 2006-41 (which were incorporated into Respondent's Post-Hearing Brief in the instant case), Respondent's counsel also admits that there was "trash that was constantly being fly-dumped" on the Site. Resp. Post-Hearing Br. for case 2006-40 at ¶ 9; Resp. Post-Hearing Br. for case 2006-41 at ¶ 9. In its Post-Hearing Brief, Respondent acknowledged that "the debris pictured in complainant's report is the same debris from the past violations on March 22, 2006." Resp. Post-Hearing Br. at ¶ 4. Even if clean up activities were a defense to violations of the Act¹, Respondent has failed to show why leaving waste on a site for two years, as in *Cadwallader*, is legally distinguishable from allowing waste to remain on this Site for at least seven months. Respondent has admitted that there was waste both on the Site and added to the Site during the period that Respondent owned the Site. This is clearly sufficient to find Respondent liable for causing or allowing open dumping and the resulting violations of Sections 21(p)(1), 21(p)(2), 21(p)(3), 21(p)(4), and 21(p)(7)(i) of the Act.

CONCLUSION

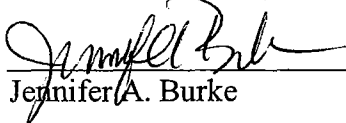
Respondent is liable for violating Sections 21(p)(1) and 21(p)(7)(i) of the Act due to Respondent's ownership of the Site where these violations were observed on October 3, 2006. Therefore, CDOE respectfully requests that the Board enter a final order finding that Respondent violated these sections and imposing the statutory penalty of \$3000 (\$1500 for each violation).

¹ As stated in CDOE's Post-Hearing Brief, the Board has repeatedly held that clean up efforts are not a defense to violations of the Act. See *City of Chicago v. City Wide Disposal, Inc.*, AC 03-11 (IPCB Sept. 4, 2003); *County of Jackson v. Easton*, AC 96-58 (IPCB Dec. 19, 1996).

Respectfully submitted,

CITY OF CHICAGO
DEPARTMENT OF ENVIRONMENT

Mara S. Georges, Corporation Counsel
of the City of Chicago

By: 
Jennifer A. Burke

Dated: May 13, 2008

Jennifer A. Burke
Graham G. McCahan
City of Chicago Department of Law
Aviation, Environmental & Regulatory Division
30 N. LaSalle Street, Suite 900
Chicago, IL 60602
(312) 742-3990 / 744-1438