

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

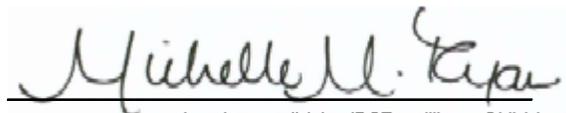
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	AC 07-30
	)	
v.	)	(IEPA No. 375-06-AC)
	)	
BOBBY G. MYERS and DONALD D.	)	
MYERS,	)	
	)	
Respondents.	)	

**NOTICE OF FILING**

To: H. Wesley Wilkins, Esq.  
602 S. Main St.  
Anna, IL 62906

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

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Illinois Environmental Protection Agency  
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Dated: January 5, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL	)	
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**POST-HEARING BRIEF OF COMPLAINANT**

On January 3, 2007, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Bobby Myers and Donald Myers (“Respondents”). The citation alleges violations of Section 21(p)(1) and (3) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1) & (3) (2006)), in that Respondents caused or allowed open dumping of waste resulting in litter and open burning. The violations occurred at a property located at 3050 Mount Glen Road, west of Cobden, in Union County. Transcript, p. 6-7; 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 (2006). “Refuse” means “waste,” (415 ILCS 5/3.385 (2006)), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2006)). Respondents have been legal owners of the property since 1989. Respondent’s Exh. 1; Tr. at 7, 30. Respondent Donald Myers has also been an operator of the site for 40 years. Tr. at 35. The inspection report admitted into evidence

as Exhibit 1 and the testimony at hearing show that materials including an abandoned mobile home, waste vehicles (some with missing parts and open or missing windows), construction and demolition waste, used tires, furniture, paper, plastic bags, plastic buckets, wood, plastic pipe, a spray tank, a white appliance, and other unidentifiable “blue” items were present at the site. Tr. at 9-13, 19; Exh. 1, pp. 3-18. These materials had been exposed to the weather, and many of the vehicles and tires were overgrown with weeds (Tr. at 11-13; Exh. 1, pp. 3, 5, 8-16), indicating that they had been present in their current location for a significant period of time. Therefore, Respondents caused or allowed the open dumping of waste observed on December 5, 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) (2006)). 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) (2006); see *St. Clair County v. Louis I. Mund* PCB AC 90-64, (Aug. 22, 1991) pp. 4, 6. According to the definition and supporting case law, the mobile home, waste vehicles, construction and demolition waste, used tires, furniture, paper, plastic bags, plastic buckets, wood, plastic pipe, a spray tank, a white appliance, and other unidentifiable items constitute “litter” under Section 21(p)(1) of the Act, and therefore Respondents violated that section.

Respondents’ open dumping of these wastes also resulted in open burning in violation of Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2006)). “Open burning” is defined in Section 3.300 of the Act, 415 ILCS 5/3.300 (2006), as “the combustion of any matter in the open or in an open dump.” As described above, the burn piles located on the site meet the definition of “open

dumping.” Testimony at hearing and photographs from the site taken December 5, 2006, demonstrate that landscape waste and over 100 used tires were burned, Tr. at 10; Exh. 1, pp. 6-7. Tire beads and carcasses are visible in photographs 4-5, and the charred tree trunks in Photograph 6 is clear evidence that landscape waste mixed with the tires had been “pushed up into a pile and set on fire.” *Id.* Respondents did not contradict any of this testimony at hearing. *See* Tr. at 28-41. This burning constitutes “open dumping of waste in a manner that results in...open burning” under Section 21(p)(3) of the Act, and therefore Respondents violated that section.

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. Although Respondent Bobby Myers testified that he had no involvement in Respondent Donald Myers’s salvage operation, he was aware of the operation since before he became an owner of property in 1989. Tr. at 30. And although he visits the site “very seldom” (Tr. at 33), Respondent Bobby Myers was also aware that the “tires and junk” were in violation of the Act, at least as of June 28, 2005, the date that he and Respondent Donald Myers wrote to Illinois EPA to assure that “this situation will be corrected.” Exh. 2. More than seventeen months later, Respondent Bobby Myers had not helped to remove any of the waste on the property, nor had he contracted with anyone to do so. Tr. at 32. On December 5, 2006, the problems at the site remained. Exh. 1.

Respondents appear to be claiming through testimony that Respondent Donald Myers was conducting a salvage operation, and intended to use some of the waste materials open dumped on the

site. *See, generally*, Tr. at 19-20, 22-23, 35. However, Respondent Donald Myers testified that the waste vehicles from the December 5, 2006 inspection were “disposed of and a lot of them...done been junked out, hauled off, sold for scrap.” Tr. at 36. Although Respondent Donald Myers received compensation for these waste vehicles (*id.*), the fact that they had value does not prevent them from being legally defined as waste. *See* Tr. at 20. Indeed, the fact that they ended up being “disposed” following the issuance of the Administrative Citation supports Illinois EPA’s determination that they were waste. 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.*, PCB AC 01-29 and 01-30 (consolidated) (June 6, 2002), slip op. at 8.

Respondents’ main argument appears to be that the other two owners of the property, Respondents’ siblings, Harold Myers and Barbara Cerney, were not named as Respondents in this matter. Tr. at 32. These two parties admittedly have taken no responsibility for the site (*id.*), but Illinois EPA concedes that they are also liable for the violations at the site, because 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). However, the fact of their liability does not diminish or extinguish the liability of Respondents Bobby and Donald Myers. In addition, at hearing Respondent Donald Myers identified “Junior” as another operator of the site when he testified that he “pretty well let him do anything” since 1999. Tr. at 36. Although “Junior” now appears to be a liable party as well, he was not named as a Respondent, either. At the time of the December 5, 2006 inspection, these three parties were not known to Illinois EPA in relation to this site. The Act requires, without exception, that Administrative Citations be served on Respondents “within not more than 60 days after the date of the observed violation.” 415 ILCS 5/31.1 (2006). This strict timeframe explains

why Illinois EPA does not conduct title searches to determine property ownership before issuing Administrative Citations. *See* Tr. at 18. Respondents Bobby and Donald Myers were aware of the violations and promised to have them remedied well in advance of the inspection that resulted in this Administrative Citation, and they were therefore named as Respondents. Equity does not require the inclusion of Harold Myers and Barbara Cerney at this date, but even if it did, the Board possesses only those powers conferred upon it by the Act (*Village of Lombard v. Pollution Control Bd.*, 66 Ill.2d 503, 506, 363 N.E.2d 814, 815, 6 Ill. Dec. 867, 868 (Ill. 1977) (citations omitted)). Equity powers are not among those. *See* 415 ILCS 5/5 (2006). Therefore, Respondents' argument on this point falls flat.

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 and open burning in violation of Sections 21(p)(1) and (3) 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: January 5, 2009



e-signature valid for IPCB e-filings ONLY

Michelle M. Ryan  
Special Assistant Attorney General

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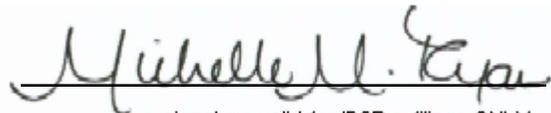
**PROOF OF SERVICE**

I hereby certify that I did on the 5<sup>th</sup> day of January, 2009, 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: H. Wesley Wilkins, Esq.  
602 S. Main St.  
Anna, IL 62906

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

To: John Therriault, Acting 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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