

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

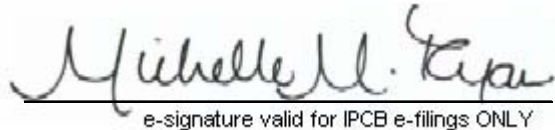
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 11-28
)	
v.)	(IEPA No. 125-11-AC)
)	
THAD SHAFER,)	
)	
Respondent.)	

NOTICE OF FILING

To: Thad Shafer
984 US Route 40
Jewett, IL 62436

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 16, 2012

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 11-28
)	
v.)	(IEPA No. 125-11-AC)
)	
THAD SHAFER,)	
)	
Respondent.)	

POST-HEARING BRIEF OF COMPLAINANT

On May 31, 2011, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Thad Shafer (“Respondent”)¹. 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) (2008)), 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 984 US Route 40, a couple of miles west of Jewett, Cumberland County, on April 7, 2011. Transcript, p. 7; 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 (2010). “Refuse” means “waste,” (415 ILCS 5/3.385 (2010)), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2010)). The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that a household waste, including plastic

¹ “Linda Shafer,” one of the originally named Respondents, was dismissed from this action on September 22, 2011.

bags, other plastic, cardboard, cans, lumber, carpet, roofing material, soda bottles, and other common household items were present at the site. Tr. at 9-10; Exh. 1, pp. 3-8. These materials constitute “discarded material” within the meaning of the term “waste.” Respondent has owned the site for two or three years. Tr. at 25. Therefore, Respondent caused or allowed open dumping of waste observed on April 7, 2011.

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) (2010)). 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 materials noted above at the site 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) (2008)). “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) (2010).

Evidence introduced at hearing showed that wood, roofing material, and carpet were present at the site. Tr. at 10-13; Exh. 1, pp. 3-17. 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 repeatedly claimed at hearing that Illinois EPA exceeded the “60 days” (*see* Tr. At 17), presumably referring to the requirement found in 415 ILCS 5/31.1(b), which allows Illinois EPA to “issue and serve an administrative citation upon such person within not more than 60 days after the date of the observed violation.” The violations at issue in this administrative citation were observed on April 7, 2011. *See*, Administrative Citation; Exh. 1, p.1. The administrative citation was issued on May 31, 2011 (54 days) and served on Respondent on June 3, 2011 (57 days), although it was not filed with the Board until June 7, 2011. Therefore, Illinois EPA met the 60-day requirement of 415 ILCS 5/31.1(b).

Respondent also expressed concern that Illinois EPA did not obtain a search warrant to inspect the site. *See* Tr. at 25. Section 4(d) of the Act authorizes Illinois EPA to enter private property at all reasonable times to conduct inspections to determine potential violations of the Act. 415 ILCS 5/4(d). As indicated by the evidence, Respondent had not met the Illinois EPA inspector prior to the hearing in this matter (Tr. at 12), and there was no indication on his property that Respondent intended to restrict access (Tr. at 20). Nor was any evidence introduced that indicated that Respondent had ever denied access to the inspector or that the inspection was conducted at an unreasonable time. Therefore, the inspection was properly within the scope of authority granted to Illinois EPA pursuant to 415 ILCS 5/4(d).

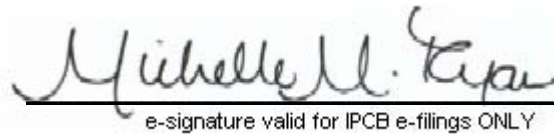
Respondent indicated that some of the waste at the site had been there for 80 years. Tr. at 25. However, the fact that he owned the property for two or three years following that gave him plenty

of time to address those violations. 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 EPA requests that the Board enter a final order finding that Respondent violated these sections and imposing the statutory penalty.

Respectfully Submitted,

Dated: April 16, 2012



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

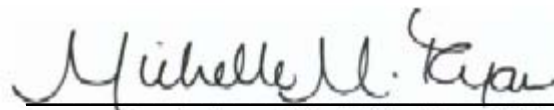
PROOF OF SERVICE

I hereby certify that I did on the 16th day of April, 2012, 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: Thad Shafer
984 US Route 40
Jewett, IL 62436

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

To: John Therriault, 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

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