

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY 04 2012

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
)  
Complainant, )  
)  
v. )  
)  
THAD SHAFER )  
)  
Respondent. )

AC 11-28

(IEPA No.125-11-AC)

ORIGINAL  
RETURN TO CLERK'S OFFICE

**POST-HEARING BRIEF OF RESPONDENT**

On May 31, 2011 the Illinois Environmental Protection Agency (“Illinois EPA“) issued an administrative citation to Thad Shafer, 245 days after the “observed violation”. The facts stated in testimony and the Illinois EPA’s own Exhibits 1 and Exhibits 2 will clearly show the Illinois EPA represented by Dustin Burger and Michelle Ryan failed to meet IEPA required guidelines.

Dustin Burger testified at hearing on March 21, 2012 that he was on my property 4 different times, (Sept. 29, 2010, Dec. 30, 2010, April 7, 2011, Oct. 5, 2011). He testified he never once obtained a search warrant and never had talked or met me before the hearing on March 21, 2012.

Michelle Ryan in her Post Hearing Brief states “ Respondent repeatedly claimed at hearing that the IEPA 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 an administrative citation upon such person within not more than 60 days after the date of the observed violation.”

I want to repeat this, “not more than 60 days after the date of the observed violation” Dustin Burger testified he “observed” the alleged burn pile on Sept. 29, 2010 (245 days) and on Dec. 30, 2010 (154 days) and yet never called me or contacted me in any way.

Michelle Ryan and the IEPA have decided to go with the April 7 inspection date because that would fit in to their 60 day requirement. However, it is clearly not the correct date of the “observed violation”.

The IEPA “Aug. 18, 2011 ordered by the board (by C.K. Zalewski) was to “proceed expeditiously to hearing”. This did not happen. Michelle Ryan ordered me to have 4 phone hearings (Sept. 28, 2011, Oct, 26, 2011, Nov. 30, 2011 and Jan. 18, 2012) On the Nov. 30, 2011 phone conference she couldn’t even remember what we had discussed on the Oct. 26, 2011 phone hearing and kept stringing it out a month at a time with the Illinois Pollution Control Board. The fact is the IEPA was no where close to the “60 days after the observed violation”, which was on Sept. 29, 2010.

**Search Warrant**

According to Michelle Ryan and Dustin Burger the IEPA is above the US Constitution. Dustin Burger drove past “No Trespassing” signs 4 times, took pictures to use against me in

court and not once had a search warrant. Michelle Ryan states in her brief that since he wasn't denied access he could do what ever he wanted. I testified in court that even the FBI and the Illinois State Police must obtain a search warrant before they search persons or property but apparently the U.S. Constitution doesn't include Dustin Burger, an employee from the IEPA. He testified he was at my house during the day and I wasn't home. I was not at home, I was at work. If I went to Dustin Burger's home in Monticello and trespassed on his private property 4 times he would have me arrested for trespassing, and rightfully so. If the door to my house was unlocked, can Dustin Burger come in and search it in the name of the IEPA? That's what Michelle Ryan is saying in her brief. Wilmer Mathews dumped debris on my property without me knowing anything about it. Even Dustin Burger "observed it" on Sept. 29, 2010 (Exhibit 1) and didn't bother telling me about it. Wilmer Mathews will be arrested for dumping and trespassing.

#### **Wilmer Mathews**

In the IEPA exhibit 2 "Warning Notice" dated Jan. 19, 2011 there is a Narrative Inspection Report. There is little doubt that Wilmer Mathews was nervous and lying to Dustin Burger. In the report Wilmer Mathews tells about "storing the debris" and when Dustin Burger asked him why he was storing it in such a difficult location, he "didn't have an answer". I was working for the railroad in Chicago at the time and didn't know any of this was going on. Wilmer Mathews came to my farm in the 2007/2008 winter and asked if I had any scrap steel that he could have. I told him there was an old burn pile across the tracks and he could look at it. I have not seen him since. I had no idea he had slipped in on me and dumped paneling and carpet until I got IEPA's Warning Notice (exhibit 2.) Again, Dustin Burger had been to my farm twice by then (Sept. 29, 2010 and Dec, 30, 2010) and never bothered contacting me. Wilmer Mathews lied to the IEPA several times. He knew I owned the property, Linda Shafer/Linda Shafer McGinnis doesn't exist and nobody gave him permission to dump anything on me. I am not running a landfill without a permit.

#### **Linda Shafer/Linda Shafer McGinnis**

Again, in the Narrative Inspection Report in exhibit 2, Dustin Burger refers to a Linda Shafer McGinnis. Dustin Burger testified on Mar. 21, 2012 that he has done over 2,000 inspections in his career. You would think that someone with his experience would know who he was trespassing on and would know who to write warning notices and citations to. I told Michelle Ryan from the start that this person, Linda Shafer/Linda Shafer McGinnis doesn't exist. On Sept. 8, 2011, the IEPA filed a motion to voluntarily dismiss the respondent Linda Shafer from this administrative citation action. And since the "60 days after the date of the observed violation" had passed, they decided she didn't exist. Still Linda Shafer's name appeared in letterheads and Hearing Officer's Orders (Nov. 30, 2011). I was also made to file an amended petition at the beginning of this to correct mistakes but on Aug. 18, 2011 C.K. Zalewski spelled my last name 3 different ways in the same Order of the Board.

#### **Alleged Landfill**

In the IEPA Post Hearing Brief, Michelle Ryan states that I said some of the waste had been there for 80 years. I never said that. I said that the burn pile had been there for 80 years. She also states that since I owned the property for 2 or 3 years I had plenty of time to clean it up. Why would I want to do that? It was my burn pile. The times Dustin Burger trespassed on me, he always stated in his reports that no hazardous materials were there (Exhibits 1 & 2). Despite Dustin Burgers testimony on Mar. 21, 2012, every farm in this country does have a place where the farmer burns pallets, feed sack, seed sacks and such. Dustin Burger's exhibit 2, he states the burn pile was 20 square yards and 1. Sec 9a Cause, Threaten or Allow Air Pollution in Illinois was not checked. And he was right by not checking it. Then in exhibit 1, he states that the burn pile was 40 square yards and 1. Sec 9a Cause, Threaten or Allow Air Pollution in Illinois was checked. This was an outright lie. When I asked Dustin Burger at the hearing why residents in Jewett can burn their trash and he demanded I couldn't (Exhibit 2) he said he didn't know

Jewett's burn policy. He knows that no hazardous material, no air pollution and no water ways were being contaminated (exhibits 1 & 2).

Also note that Michelle Ryan conveniently only included the first two pages of the Open Dump Administrative Citation Warning Notice (Exhibit 2) because the rest of the report would contradict a lot of what their Exhibit 1 report says.

In closing, the burn pile was located on my farm in a place where I would rarely observe it (Exhibit 2). I had no idea Wilmer Mathews had dumped anything on me. Even Dustin Burger states in Exhibit 1 and at the hearing, that carpet and paneling remained in my burn pile after Wilmer Mathews claimed he had cleaned his part up. In Dustin Burger's narrative (Exhibit 1) he states that there were "several calls" between him and Wilmer Mathews. Don't you think the property owner should have been notified when this started - perhaps on Sept. 29, 2010 instead of Jan. 19, 2011 (Exhibit2)? The IEPA was no where close to their 60 days of the "observed violation". The first "observed violation" was Sept. 29, 2010, (245 days) and the second "observed violations" was Dec. 30, 2010, (154 days).

Why was the IEPA working with Wilmer Mathews? It was my property and I was never notified! (Dustin Berger's testimony Mar. 21, 2012, Exhibits 1 & 2).

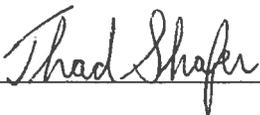
Dustin Burger came on my posted "No Trespassing" property 4 times and never had a search warrant, even though he searched and took pictures to use against me in court. A clear violation of the 4<sup>th</sup> Amendment of the U.S. Constitution.

As soon as the weather allowed I did have my burn pile cleaned up. Even though it could not be done by the IEPA Mar. 15, 2011 deadline (Exhibit 2). On Oct. 5, 2011 Dustin Burger returned to my farm and on Oct. 19, 2011 I received a Return to Compliance Letter. The IEPA should have worked with me more and fined Wilmer Mathews \$3,000. It was a terribly wet spring and I had it cleaned as soon as I could (Exhibit 1).

This case has been blown all out of proportion from the start. The IEPA didn't even know who they were trespassing on and who they were writing citation warnings to, (AKA Linda Shafer/Linda Shafer McGinnis). To this day, I don't know where the IEPA got this make believe person's name, except from a lying Wilmer Mathews.

For the many facts stated in testimony and the narrative and inspection reports (Exhibits 1 & 2) show the Illinois EPA did not meet their required regulations and that the board enter a final order dismissing the Respondent of all statutory penalty.

Respectfully Submitted,



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Thad Shafer