

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

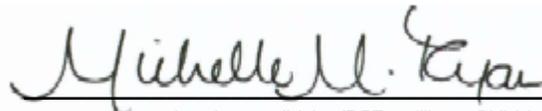
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 09-41
)	
v.)	(IEPA No. 65-09-AC)
)	
MARK A. LEWIS,)	
)	
Respondent.)	

NOTICE OF FILING

To: Mark A. Lewis
1835 Bunnyville Drive
Clay City, IL 62824

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: November 13, 2013

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
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Complainant,)	AC 09-41
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POST-HEARING BRIEF OF COMPLAINANT

On April 29, 2009, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Mark A. Lewis (“Respondent”). The citation alleges a second or subsequent violation of Section 21(p)(1) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1) (2008)), in that Respondent caused or allowed open dumping of waste resulting in litter. The violation occurred at a property located a few miles southeast of Clay City, on the east end of Bunnyville Drive, Clay County, on April 1, 2009. 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 (2008). “Refuse” means “waste,” (415 ILCS 5/3.385 (2008)), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2008)). The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show waste vehicles and household waste, including white goods, appliances, and clothing were present at the site. Tr. at 8-11, 15; Exh. 1, pp. 3-11. Vehicles on site were bogged down in the mud and had broken and/or missing parts (Tr. at 8-10). They did not appear to be in use or useful in their current condition (Tr. at 11), and many of the vehicles present on April 1, 2009 had been observed in essentially the same

condition in 2006 (Tr. at 9-12). The household waste was discarded items from an evicted tenant, which were present for an unknown amount of time (Tr. at 15, 22). All of these materials constitute “discarded material” within the meaning of the term “waste.” Respondent owned the site at all times relevant hereto (Tr. at 7). Therefore, Respondent caused or allowed open dumping of waste observed on April 1, 2009.

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) (2008)). 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.

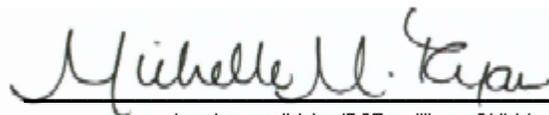
Respondent raises in his defense that the vehicles have value as parts (Tr. at 14-21). He admits that the vehicles don’t have licenses (Tr. at 18), but sees them as anything from “a future project” (Tr. at 16) to something he’s “not real sure what” he’s going to do with (Tr. at 18). He repeatedly testified that he hasn’t had the “opportunity” to fix or sell many of these vehicles (Tr. at 15-16, 19), even though people come by two or three times per week looking to purchase items (Tr. at 24). He can’t think of any better place to store the car parts (Tr. at 16), even though he is able to store his “personal vehicles” and restaurant equipment inside buildings on site (Tr. at 24). It is clear from the evidence the low value Respondent places on the vehicles left outside.

The site has not been managed properly for a period of several years, and Respondent has been given ample time to address the problems. He was explicitly made aware of the problems two years prior, when on March 15, 2007, this Board issued a final order on AC 07-31, finding Respondent in violation of 415 ILCS 5/21(p)(1) (2006). Nevertheless, he decided to allow illegal conditions to continue. Whether Respondent eventually intends to do something with the vehicles is irrelevant, 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.* (July 24, 1997), AC 97-41, slip op. at 5, citing *People v. Fiorini*, 143 Ill.2d 318, 574 N.E.2d 612 (1991). Further, this Board has previously held that a consolidation of vehicles, even in light of an intention to use them in the future, constitutes open dumping resulting in litter. *Illinois EPA v. Yocum, et al.*, (June 6, 2002), AC 01-29/AC 01-30, *consolidated*. Therefore, the arguments raised 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 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 for a second or subsequent violation.

Respectfully Submitted,

Dated: November 13, 2013



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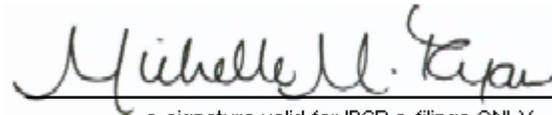
PROOF OF SERVICE

I hereby certify that I did on the 13th day of November, 2013, 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: Mark A. Lewis
1835 Bunnyville Drive
Clay City, IL 62824

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



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