

DEC 05 2005

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. )  
 )  
JOHN R. MALLOCH, )  
 )  
Respondent. )

AC 05-63

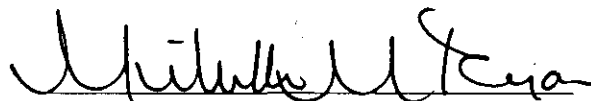
(IEPA No. 78-05-AC)

**NOTICE OF FILING**

To: John R. Malloch  
2572 County Road 600E  
Dewey, IL 61840

PLEASE TAKE NOTICE that on this date I presented to the hearing officer for filing 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,



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 30, 2005

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 DEC 05 2005  
 STATE OF ILLINOIS  
 Pollution Control Board

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	AC 05-63
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v.	)	(IEPA No. 78-05-AC)
	)	
JOHN R. MALLOCH,	)	
	)	
Respondent.	)	

**POST-HEARING BRIEF OF COMPLAINANT**

On April 4, 2005, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to John R. Malloch (“Respondent”). The citation alleges violations of Section 21(p)(1), 21(p)(3) and 21(p)(7) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1), (3) & (7) (2002)), in that Respondent caused or allowed open dumping of waste, resulting in litter, open burning, and the deposition of construction or demolition debris. The violations occurred at a property located at 2572N and 600E, south of Fisher, Champaign County. 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 (2004). “Refuse” means “waste,” (415 ILCS 5/3.385 (2004)), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2004)). The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that wood, tires, insulation or fibrous material, furniture springs, part of a composite pallet, plastic and metal, as well as ash and remains from burning, were accumulated in various piles on the site. Tr. at 9-12; Exh. 1, pp. 4,

10-11. These materials constitute “discarded material” within the meaning of the term “waste.” Respondent admitted that the materials were from buildings on site when he purchased the property in 1970. Tr. at 14. As the person with control over the property for the last 35 years, Respondent caused or allowed the open dumping of waste observed on March 2, 2005.

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) (2004)). 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 wood, tires, insulation or fibrous material, furniture springs, part of a composite pallet, plastic, metal, ash and remains from burning 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 open burning in violation of Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2004)). “Open burning” is defined in Section 3.300 of the Act, 415 ILCS 5/3.300 (2004), 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.” The waste piles were smoldering when the inspector visited the site. Tr. at 9-10. The burning of any or all of this matter in the waste piles constitutes “open dumping of waste in a manner that results in...open burning” under Section 21(p)(3) 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) (2004)). "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) (2004).

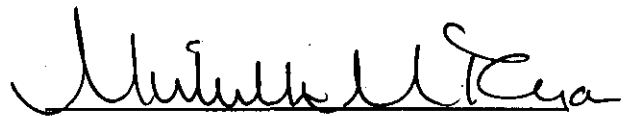
Respondent admitted that all of the material on site was from buildings that were located on site. Tr. at 14. The materials from the buildings meets the definition of "construction or demolition debris" for purposes of Section 21(p)(7) of the Act, and therefore Respondent violated that section.

Respondent stated that he was trying to clean up the site. Tr. at 14. Unfortunately, Respondent's methods involved illegal open dumping and open burning on the property. Attempting to "clean up" a site does not give the Respondent a license to illegally dispose of waste by open burning in violation of the Act. This is a situation where the ends do not justify the means. It is not Respondent's intentions that are objectionable, but rather his improper management of waste materials that meets the definition of impermissible activity under the law. Further, 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 and inspection report and the testimony show that Respondent allowed open dumping of waste in a manner resulting in litter, open burning, and deposition of construction or demolition debris in violation of Sections 21(p)(1), (p)(3), 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: November 30, 2005

A handwritten signature in black ink, appearing to read "Michelle M. Ryan", written over a horizontal line.

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 30<sup>th</sup> day of November, 2005, 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: John R. Malloch  
2572 County Road 600E  
Dewey, IL 61840

and the original and nine (9) true and correct copies of the same foregoing instruments

To: Dorothy Gunn, Clerk  
Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601



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