

RECEIVED

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAN - 7 2004

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

STATE OF ILLINOIS
POLLUTION CONTROL BOARD

Complainant,

AC 03-27

v.

(IEPA No. 144-03-AC)

VINCE HARVEY,

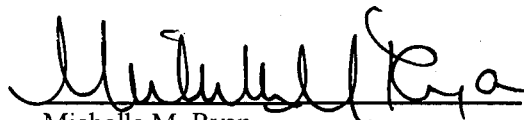
Respondent.

NOTICE OF FILING

To: Vince Harvey
1456 North East Street
Kewanee, Illinois 61443

PLEASE TAKE NOTICE that on this date I mailed 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: January 5, 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED

JAN - 7 2004

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

STATE OF ILLINOIS
POLLUTION CONTROL BOARD

Complainant,

AC 03-27

v.

(IEPA No. 144-03-AC)

VINCE HARVEY,

Respondent.

POST-HEARING BRIEF OF COMPLAINANT

On March 24, 2003, the Illinois Environmental Protection Agency ("Illinois EPA") issued an administrative citation to Vince Harvey ("Respondent"). 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) and (p)(7) (2002)), in that Respondent caused or allowed open dumping of waste, resulting in litter and the deposition of demolition debris. The violations occurred on January 31, 2003 at a property located at 1456 North East Street, Henry County. Transcript, p. 8; 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 (2002). "Refuse" means "waste," (415 ILCS 5/3.385 (2002)), and "waste" includes "any garbage . . . or other discarded material" (415 ILCS 5/3.535 (2002)). The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that on January 31, 2003, dirt and debris, brick, scrap metal, wood, plastic, slag and various other items such as a window and a cabinet were accumulated on the site. Tr. at 9-11, 17-18; Exh. 1, pp.3-14. These materials

constitute “discarded material” within the meaning of the term “waste.” The piles of dirt, debris, metal, wood plastic, and other waste visible in the photographs in Exhibit 1 constitute the “consolidation of refuse from one or more sources” within the meaning of the term “open dumping.” Exh. 1 at 7-14.

Respondent is the owner of the property (Tr. at 8), and has admitted that he brought the majority of the materials to the site. Tr. at 17; *see also* Tr. at 12 (eleven of the twelve piles were materials brought to the site). As such, Respondent caused or allowed the open dumping of waste observed on January 31, 2003.

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) (2002)). 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 piles containing dirt and debris, brick, scrap metal, wood, plastic, slag and various other items 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 “general construction or demolition debris” in violation of Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2002)). “General construction or demolition debris” is defined in Section 3.160 of the Act, 415 ILCS 5/3.160 (2002), as follows:

[N]on-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.

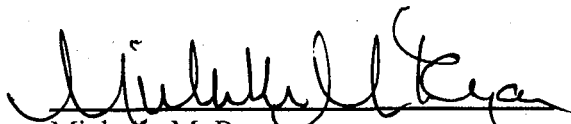
The dirt, debris, brick, and wood at the site constitute "general construction or demolition debris" under Section 21(p)(7) of the Act, and therefore Respondent violated that section.

Respondent's defense appears to be that he didn't think he was doing anything wrong. Tr. at 16-17. However, Respondent's state of mind is not a relevant inquiry in this action. 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). There is no question that Respondent consolidated the waste materials on his site, and his lack of intent does not create a defense. Likewise, the fact that some remedial work has been done since the inspection date is not a defense.

The Illinois EPA photographs and inspection report and the eyewitness testimony show that Respondent allowed open dumping of waste in a manner resulting in litter in violation of Section 21(p)(1) and 21(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: January 5, 2004



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

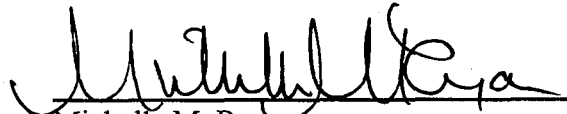
PROOF OF SERVICE

I hereby certify that I did on the 5th day of January, 2004, 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: Vince Harvey	Carol Sudman
1456 North East Street	Hearing Officer
Kewanee, Illinois 61443	Illinois Pollution Control Board
	1021 North Grand Avenue East
	Springfield, IL 62702

and the original and nine (9) true and correct copies of the same foregoing instruments on the same date by U.S. Mail with postage thereon fully prepaid

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


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