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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,)

Complainant,)

v.)

LUTHER COLEMAN,)

Respondent.)

AC 04-18

(IEPA No. 514-03-AC)

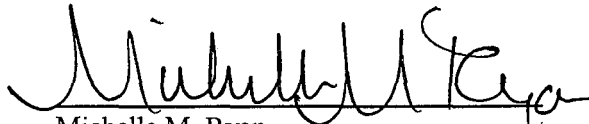
NOTICE OF FILING

To: Luther Coleman
624 W. Logan
Harrisburg, Illinois 62946

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62702

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: April 5, 2004

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POST-HEARING BRIEF OF COMPLAINANT

On October 6, 2003, the Illinois Environmental Protection Agency ("Illinois EPA") issued an administrative citation to Luther Coleman ("Respondent"). The citation alleges violations of Section 21(p)(1) and 21(p)(3) of the Environmental Protection Act ("Act") (415 ILCS 5/21(p)(1) & (3) (2002)), in that Respondent caused or allowed open dumping of waste, resulting in litter and open burning on September 10, 2003. The violations occurred at adjoining properties located at 624 and 700 W. Logan, Harrisburg, Saline County, Illinois. Transcript, pp. 5, 9-10; 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 various materials including household garbage and demolition debris were accumulated on the site. Tr. at 6-7; Exh. 1, pp. 3-

4, 7-9. These materials constitute “garbage” and “discarded material” within the meaning of the term “waste.” Most of the waste was arranged in piles, some of which were tarped, and some of which was still in open bed trucks. *Id.* The waste piles 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 7-9.

Respondent told the Illinois EPA inspector on the date of the inspection that he owned the property up to the ditch. Exh. 1 at 4, *see also*, Tr. at 9. Respondent also admitted at hearing (although not under oath) that he is the owner of both of the properties in question. Tr. at 9. Respondent appears to be concerned about the distinction between the two properties, but the testimony shows that the dividing line is not well marked. *See* Tr. at 9, 13. Respondent may be attempting to argue that he does not own the property to the west of his house, but he introduced no evidence to support such an argument. In fact, all of the evidence introduced indicates that he is the owner, from his admissions to the tax assessor’s records which still listed Respondent as the recipient of the tax bill as of the hearing date of March 3, 2004. Tr. at 9-10. In any case, Respondent admitted that waste was present on both properties on September 10, 2003. Tr. at 12-13, Exh. 1 at 7-9. As the apparent owner of and person exerting control over said properties, Respondent caused or allowed the open dumping of waste observed on September 10, 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:

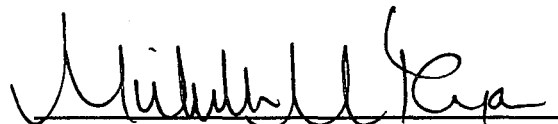
“Litter” means any discarded, used or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, refuse, debris, rubbish...or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

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 garbage and demolition debris constitute "litter" under Section 21(p)(1) of the Act, and therefore Respondent violated that section. In addition, the demolition debris, including wood, metal, fencing, and various other waste, which is visible in photographs 1, 3, 4, and 5 of Exhibit 1 demonstrates that Respondent also violated Section 21(p)(7) of the Act. Exh. 1, pp. 7-9.

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 and deposition of demolition debris in violation of Sections 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: April 5, 2004



Michelle M. Ryan
Special Assistant Attorney General

Illinois Environmental Protection Agency
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PROOF OF SERVICE

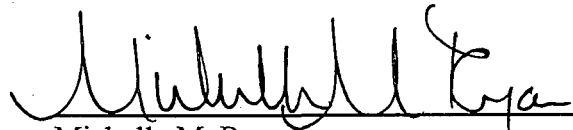
I hereby certify that I did on the 5th day of April, 2004, send by U.S. Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled POST-HEARING BRIEF OF COMPLAINANT

To: Luther Coleman
624 W. Logan
Harrisburg, Illinois 62946

Carol Sudman
Hearing Officer
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



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