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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAN - 5 2004

STATE OF ILLINOIS
POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Complainant,)
)
 v.)
)
 DAN CADWALLADER,)
)
 Respondent.)

AC 03-13

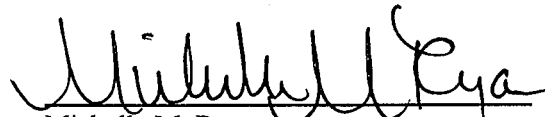
(IEPA No. 565-02-AC)

NOTICE OF FILING

To: John Grivetti, Esq.
 Box 251
 Wenona, Illinois 61377

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: December 23, 2003

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POST-HEARING BRIEF OF COMPLAINANT

On November 13, 2002, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Dan Cadwallader (“Respondent”). The citation alleges violations of Section 21(p)(1) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1) (2000)), in that Respondent caused or allowed open dumping of waste, resulting in litter. The violations occurred on September 24, 2002 at a property located at 610 North School Street in Granville, Putnam County. Transcript, pp. 8-12; 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 September 24, 2002, used tires, metal, wires, and some burned debris were accumulated on the site. Tr. at 10-12; Exh. 1, pp.3-13. These materials constitute “discarded material” within the meaning of the term “waste.” The

piles of tires, metal, wire, burned debris, 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 5-13.

Respondent admitted that although he is not the owner of the property, he has been attempting to purchase it (Tr. at 19), and has been operating it since 2002. Tr. at 20, *see also* Tr. at 8, 15, 16. Respondent maintained the premises in a condition that allowed open access to other parties (Tr. at 14, 19). The Illinois EPA inspector noted that during the course of four or five inspections of this site, the general amount of waste remained constant, although some material had been removed and new material brought in. Tr. at 15-6. The condition of the property remained essentially the same as when the previous owners operated the site. Tr. at 13-4. This Board has previously held that “present inaction on the part of the landowner to remedy the disposal of waste that was previously placed on the site, constitutes ‘allowing’ litter in that the owner allows the illegal situation to continue.” *Illinois EPA v. Ronald D. Rawe, et al.*, AC 92-5 (January 21, 1993), p. 6. Respondent controlled the property at the time the inspection resulting in this Administrative Citation was conducted, and he should be held responsible for allowing the illegal dump to continue to the date of the inspection. As such, Respondent caused or allowed the open dumping of waste observed on September 24, 2002.

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 used tires, wires, metals, and burned debris constitute "litter" under Section 21(p)(1) of the Act, and therefore Respondent violated that section.

Respondent's defense appears to be that he didn't intend to violate the law, but he is unable to control the daily dumping that occurs on the property he is managing. Tr. at 19. 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 evidence that Respondent has made any attempt to control fly dumping on this property by fencing, erecting signs, or removing waste to discourage additional dumping. Respondent's inability to prevent fly dumping and failure to remedy existing violations does not raise a defense to the violation of Section 21(p)(1) of the Act that he has committed.

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) of the Act. Illinois EPA requests that the Board enter a final order finding that Respondent violated this section and imposing the statutory penalty.

Respectfully Submitted,

DATED: December 23, 2003



Michelle M. Ryan
Special Assistant Attorney General

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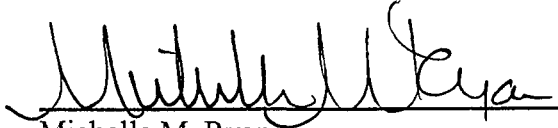
PROOF OF SERVICE

I hereby certify that I did on the 23rd day of December , 2003, 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 Grivetti, Esq.
Box 251
Wenona, Illinois 61377

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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Special Assistant Attorney General

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