

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
JOHN GROFF,)
)
Respondent.)

AC 05-20

(IEPA No. 412-04-AC)

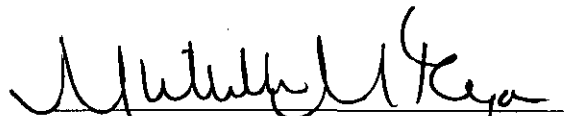
RECEIVED
CLERK'S OFFICE
AUG 15 2005
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: John Groff
P.O. Box 966
Centralia, IL 62801

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: August 11, 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.)
)
JOHN GROFF,)
)
Respondent.)

AC 05-20
(IEPA No. 412-04-AC)

RECEIVED
CLERK'S OFFICE
AUG 12 2005
STATE OF ILLINOIS
Pollution Control Board

POST-HEARING BRIEF OF COMPLAINANT

On August 25, 2004, the Illinois Environmental Protection Agency ("Illinois EPA") issued an administrative citation to John Groff ("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 2503 Barton Road, south of Junction City, Marion County. Transcript, pp. 3, 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 (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 wood, painted wood, tires, landscape waste, Styrofoam, tarpaper, plastic and metal, as well as ash and remains from burning, were accumulated on the site. Tr. at 11-13; Exh. 1, pp. 3, 6-10. These materials

constitute “discarded material” within the meaning of the term “waste.” Respondent admitted that he placed landscape waste, tires and debris from a shed on the site and later burned them. Tr. at 19-21. As such, Respondent caused or allowed the open dumping of waste observed on April 7, 2004.

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 wood, tires, landscape waste, Styrofoam, tarpaper, 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) (2002)). “Open burning” is defined in Section 3.300 of the Act, 415 ILCS 5/3.300 (2002), 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.” Respondent admitted that he burned tires and wood from a shed at the site. Tr. at 19-21. 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) (2002)). "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) (2002).

As described above, some of the waste material located on the site was from a shed. The material from the shed meets the definition of "construction or demolition debris" for purposes of Section 21(p)(7) of the Act, and therefore Respondent violated that section.

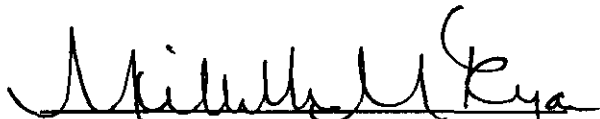
Respondent argued at hearing that he received "papers" indicating that if he "made the corrections to the property" that "everything would have been taken care of." Tr. At 15. Illinois EPA presumes Respondent is referring to the Administrative Citation Warning Notice ("ACWN"), which was entered as Exhibit 2. The ACWN clearly states that all waste must be removed to a permitted facility by July 5, 2005. Exh. 2 at 1-2. As evidenced by the July 29, 2005 inspection report, Respondent failed to comply with this portion of the required corrective action. Exh. 1. In addition, the ACWN states under the heading, "Potential Sanctions" that "the Agency may, without further notice and regardless of any future activities to achieve compliance, file an Administrative Citation" and gives the statutory penalties therefore. Exh. 2 at 3. It further states that Illinois EPA will conduct a reinspection to verify compliance. *Id.* Therefore, Respondent was clearly informed of the possibility of enforcement and the compliance measures needed at the site.

Respondent also stated that all of the burning took place before he received any papers from Illinois EPA, implying that he was not aware of the requirements of the Act. Tr. at 21. 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, any lack of knowledge of the law on the part of Respondent is not 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: August 11, 2005


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

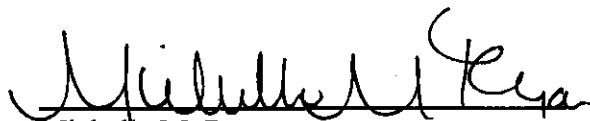
PROOF OF SERVICE

I hereby certify that I did on the 11th day of August, 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 Groff
P.O. Box 966
Centralia, IL 62801

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