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AC 04-75

(IEPA No. 221-04-AC)

STATE OF ILLINOIS  
Pollution Control Board

## **POST-HEARING BRIEF OF COMPLAINANT**

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 vehicles, furniture, wood, tires, appliances, and metal items were accumulated throughout the site. Tr. at 7-10; Exh. 1, pp. 3-4,

6-13. These materials constitute “discarded material” within the meaning of the term “waste.”

Respondent owns the site. Tr. at 6. Therefore, Respondent caused or allowed the open dumping of waste observed on March 25, 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 vehicles, furniture, wood, tires, appliances, and metal 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 open burning in violation of Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2002)). Burned waste and a smoldering burn pile were observed at the site. Tr. at 8-9; Exh. 1, pp. 8-11. As argued above, Respondent caused or allowed the open dumping of this waste. Because the open dumping resulted in the open burning of waste, Respondent also violated Section 21(p)(3) of the Act.

Respondent’s open dumping also resulted in the deposition of general construction or demolition debris and/or clean 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.

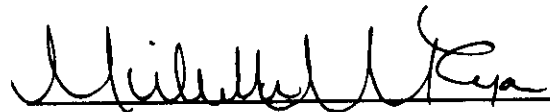
415 ILCS 5/3.160(a) (2002).

The evidence at hearing showed that debris from the demolition and renovation of gas station buildings where Respondent previously was employed. Tr. at 10. 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.

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: January 12, 2006

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

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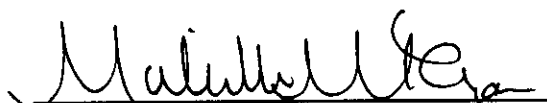
## PROOF OF SERVICE

I hereby certify that I did on the 12<sup>th</sup> day of January, 2006, send by U.S. Mail postage prepaid a true and correct copy of the following instrument(s) entitled POST-HEARING BRIEF OF COMPLAINANT

To: Charles L. Parker  
217 ½ S. Sangamon  
Lincoln, Illinois 62656

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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