

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUN 22 2007

STATE OF ILLINOIS  
Pollution Control Board

CITY OF CHICAGO DEPARTMENT )  
OF ENVIRONMENT, )

Complainant, )

v. )

SPEEDY GONZALEZ )  
LANDSCAPING, INC., )

Respondent. )

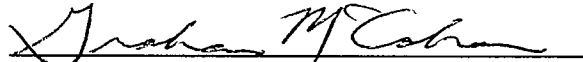
AC 06-039  
(Administrative Citation)

NOTICE OF FILING

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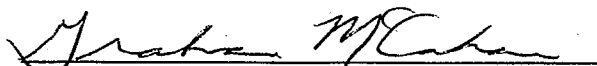
PLEASE TAKE NOTICE that on June 22, 2007, Complainant filed with the Clerk of the Illinois Pollution Control Board the attached Post-Hearing Brief, a copy of which is served upon you.

  
Graham G. McCahan

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on June 22, 2007, he caused copies of this notice and the documents referenced therein to be served on the party to whom it is directed by U.S. Mail, first class postage prepaid.

  
Graham G. McCahan



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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CITY OF CHICAGO DEPARTMENT OF ENVIRONMENT,  
Complainant,  
v.  
SPEEDY GONZALEZ LANDSCAPING, INC.  
Respondent.

AC 06-39  
(Administrative Citation)

**CITY OF CHICAGO'S POST-HEARING BRIEF**

**INTRODUCTION**

The City of Chicago Department of Environment ("CDOE," "Complainant," or "Compl.") alleges that Speedy Gonzalez Landscaping, Inc. ("Respondent") caused or allowed open dumping of waste resulting in litter, scavenging, open burning, deposition of waste in standing water, and the deposition of general construction or demolition debris in violation of Sections 21(p)(1), 21(p)(2), 21(p)(3), 21(p)(4), and 21(p)(7)(i) of the Illinois Environmental Protection Act (the "Act"). 415 ILCS 5/21(p)(1), (2), (3), (4), and (7)(i). CDOE inspectors observed these violations at 1601 E. 130<sup>th</sup> Street, Chicago, Illinois ("Site") during an inspection on March 22, 2006.

**ARGUMENT**

**A. Respondent Caused or Allowed Open Dumping of Waste in Violation of Section 21(a)**

**1. Open Dumping Occurred at the Site**

In order to demonstrate that Respondent violated any of the subsections to Section 21(p) of the Act, it must first be shown that Respondent violated Section 21(a) of the Act.

415 ILCS 5/21(p). *See IEPA v. Shrum*, AC 05-18 (IPCB Mar. 16, 2006). CDOE demonstrated at hearing that Respondent caused or allowed open dumping at the Site in violation of Section 21(a) of the Act. 415 ILCS 5/21(a). “Open dumping” is defined as “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. “Refuse” is “waste,” (415 ILCS 5/3.385) and “waste” is defined to include “any garbage . . . or other discarded material” (415 ILCS 5/3.535).

The CDOE inspection report admitted into evidence as Complainant’s Exhibit A and the testimony at hearing show that broken concrete, rebar, cinder blocks, landscaping waste, PVC piping, scrap metal, compost materials, railroad ties, frayed wire, street signs, wood, construction and demolition debris, used tires, plastic, an old water tanker (with the words “Speedy Gonzalez” painted on it), and other garbage were accumulated in various piles on the Site on March 22, 2006. Compl. Ex. A at 6 and 9-22; Tr. at 17-20, 26, 103, 173, 190, and 201-02. At hearing, Respondent referred to the materials on the Site as “garbage” and admitted that, at the time of the inspection, he was arranging to have some of the materials disposed of at a landfill. Tr. at 173-74, 189-90, 202-03, and 209-10. The fact that the materials were taken to a landfill demonstrates that the materials lacked productive or re-use value and, therefore, constituted “discarded material” within the meaning of the term “waste” and, by extension, “refuse” under Section 21(a) of the Act. 415 ILCS 5/21(a). *See IEPA v. Carrico*, AC 04-27 (IPCB Sep. 2, 2004); *IEPA v. Cadwallader*, AC 03-13 (IPCB May 20, 2004).

The waste observed on the Site on March 22, 2006 came from one or more off-site sources as required under Section 21(a) of the Act. 415 ILCS 5/21(a). Respondent

admitted that the waste observed on the Site on March 22, 2006 fell into three broad categories: 1) waste that was on the Site when the Site was purchased by 1601-1759 East 130<sup>th</sup> Street, LLC; 2) waste that was brought onto the Site by “fly-dumpers” after the Site was acquired by 1601-1759 East 130<sup>th</sup> Street, LLC; and, 3) waste that was brought onto the property by E. King [Construction] as part of an agreement with Mr. Gonzalez. Tr. at 173-74, 177-78, and 186. Because the waste observed on the Site on March 22, 2006 was brought onto the Site from external locations, it was “consolidated” on the Site from “one or more sources” pursuant to Section 21(a) of the Act. 415 ILCS 5/21(a). Therefore, the Site conditions observed on March 22, 2006 fulfill all of the requirements of “open dumping” as defined under Section 3.305 of the Act. 415 ILCS 5/3.305.

## **2. Respondent Caused or Allowed Open Dumping on the Site**

Respondent is liable for causing or allowing open dumping on the Site because Respondent caused the dumping of certain materials. At hearing, Respondent admitted that it had discarded the old “Speedy Gonzalez” water tanker on the Site and that this tanker had no productive or re-use value. Tr. at 201. Specifically, Respondent admitted that the tanker “used to belong to the landscaping company, but it’s just an old tanker. It’s not – It didn’t pass the DOT inspection, so we basically have to cut it up and throw it away.” *Id.* Respondent’s statement reveals that the tanker lacked productive or re-use value and, therefore, constituted “discarded material” within the meaning of the term “waste” under Section 21(a) of the Act. 415 ILCS 5/21(a). *See IEPA v. Carrico*, AC 04-27 (IPCB Sep. 2, 2004); *IEPA v. Cadwallader*, AC 03-13 (IPCB May 20, 2004). The CDOE inspection report and the testimony at hearing demonstrate that other landscaping waste and debris - such as compost material, wood, fencing material, cinder blocks, and

mesh netting commonly used in landscaping - had also been discarded on the Site.

Compl. Ex. A at 6-11; Tr. at 19, 25-28, and 109-10.

Under Illinois law, a waste generator can be held liable for “causing or allowing” open dumping under Sections 21(a) and 21(p) of the Act. *See People v. McFalls*, 313 Ill.App.3d 223, 227 (3<sup>rd</sup> Dist. 2000); *People v. Poland*, PCB 98-148 (IPCB Sep. 6, 2001); *IEPA v. Cadwallader*, AC 03-13 (IPCB May 20, 2004). The court in *People v. McFalls* stated:

[N]either ownership, nor control, of an allegedly illegal disposal site is necessary to effect the consolidation of refuse there. Therefore, an off-site generator, as a “person,” may “cause” “open dumping” within the plain meaning of subsections 21(a) and 21(p)(1). Accordingly, we hold that off-site generators fall within the class of persons who may violate these subsections. 313 Ill.App.3d at 227.

Respondent disposed of waste on the Site, and therefore, is liable for causing and allowing the open dumping observed at the Site on March 22, 2006 in violation of Section 21(a) of the Act. 415 ILCS 5/21(a).

Respondent is also liable for causing and allowing open dumping on the Site because of Respondent’s “capability to control the...site of pollution.” *See IEPA v. Cadwallader*, AC 03-13 (IPCB May 20, 2004). For example, Respondent admitted to having a flatbed on the Site, which was used for storing playground equipment at off-site projects. Tr. at 201. Although the flatbed does not qualify as “waste” if it is being used for Respondent’s landscaping business, the presence of the Respondent’s flatbed, as well as the discarded “Speedy Gonzalez” water tanker and other landscaping waste and materials, reveals the degree to which Respondent had access to and control over the Site. In order to utilize the flatbed or other property for off-site projects, Respondent would need to have access to the Site in order to retrieve its property. In addition, Respondent

would need to exercise control over the Site to ensure that its property was secure.

Because Respondent had the capability to control the site of the pollution observed on the Site on March 22, 2006, Respondent violated Section 21(a) of the Act. 415 ILCS 5/21(a).

**B. Respondent's Open Dumping Resulted in Litter in Violation of Section 21(p)(1)**

Respondent's causing or allowing open dumping of wastes resulted in "litter" under Section 21(p)(1) of the Act. 415 ILCS 5/21(p)(1). The Act does not define "litter" but it is defined in the Litter Control Act as:

"Litter" means any discarded, used or unconsumed substance or waste. "Litter" may include, but is not limited to, any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, . . . metal, . . . motor vehicle parts, . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly. 415 ILCS 105/3(a).

The Board has previously applied this definition of "litter" to open dumping allegations. *See St. Clair County v. Louis I. Mund*, AC 90-64 (IPCB Aug. 22, 1991). Using this definition, the old "Speedy Gonzalez" water tanker, compost materials, landscaping debris, mesh netting and railroad ties found at the Site are discarded materials and constitute "litter" under Section 21(p)(1) of the Act. Tr. at 17, 20-21, 25-28, 103, 109-10, 173, 190, and 201-02; Compl. Ex. A. at 6-7, 9-12, and 14-16. Accordingly, the Board should find Respondent violated Section 21(p)(1).

**C. Respondent's Open Dumping Resulted in Scavenging in Violation of Section 21(p)(2)**

Respondent's open dumping of these wastes also resulted in scavenging in violation of Section 21(p)(2) of the Act. 415 ILCS 5/21(p)(2). "Scavenging" is not defined in the Act, but under the Illinois Administrative Code, "scavenging" is defined as

“the removal of materials from a solid waste management facility or unit which is not salvaging.” 35 Ill. Adm. Code 810.103. “Salvaging” is in turn defined as:

[T]he return of waste materials to use, under the supervision of the landfill operator, so long as the activity is confined to an area remote from the operating face of the landfill, it does not interfere with or otherwise delay the operations of the landfill, and it results in the removal of all materials for salvaging from the landfill site daily or separates them by type and stores them in a manner that does not create a nuisance, harbor vectors or cause an unsightly appearance. 35 Ill. Adm. Code 810.103.

The Board has used these administrative definitions of “scavenging” and “salvaging” in determining a respondent’s liability under Section 21(p)(2) of the Act. *See County of Jackson v. Easton*, AC 96-58 (IPCB Dec. 19, 1996).

The CDOE inspection report admitted into evidence as Complainant’s Exhibit A and the testimony at hearing show that people were sorting and segregating materials on the Site for the purpose of returning some of the materials to productive use. Compl. Ex. A at 6; Tr. at 21, 29, and 203. Respondent admitted that steel was being taken out of the waste materials on the Site in order to be recycled in exchange for money. Tr. at 203. Because the Site was not permitted as a landfill, the return of any waste materials on the Site to productive use could not conform to the definition of “salvaging” contained in the Illinois Administrative Code. This definition of “salvaging” requires that “salvaging” activities take place at a “landfill” and under the supervision of a “landfill operator.” 35 Ill. Adm. Code 810.103. This Site constituted an unpermitted “open dump,” not a permitted “landfill.” Therefore, any removal of materials from the Site for the purpose of returning them to productive use must constitute “scavenging” and not “salvaging.” In addition, the materials that were to be returned to productive use were stored on the Site in such a manner as to cause an “unsightly appearance.” Compl. Ex. A at 9 and 11-17.



The segregation of metal materials at the Site and their improper storage constituted “open dumping of waste in a manner that results in . . . scavenging” under Section 21(p)(2) of the Act, and therefore, Respondent violated that section.

**D. Respondent’s Open Dumping Resulted in Open Burning in Violation of Section 21(p)(3)**

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). “Open burning” is defined in Section 3.300 of the Act, as “the combustion of any matter in the open or in an open dump.” 415 ILCS 5/3.300. The CDOE inspection report admitted into evidence as Complainant’s Exhibit A and the testimony at hearing show that wood or landscaping debris was being burned in the open at the Site on March 22, 2006. Compl. Ex. A at 6 and 18-19; Tr. at 9, 17-18, 195-96. Respondent admitted that people were burning wood on the Site on March 22, 2006. Tr. at 195-96. As discussed above, the Site constituted an open dump. The burning of waste at the Site constituted “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.

**E. Respondent’s Open Dumping Resulted in Waste Standing in Water in Violation of Section 21(p)(4)**

Respondent’s open dumping of these wastes also resulted in deposition of waste in standing water in violation of Section 21(p)(4) of the Act. 415 ILCS 5/21(p)(4). The CDOE inspection report admitted into evidence as Complainant’s Exhibit A and the testimony at hearing show that piles of waste, including cinder blocks (which are often used in landscaping), were standing in water on the Site. Compl. Ex. A at 15 and 18-19; Tr. at 19-20. As discussed above, the Site constituted an open dump. The waste found

sitting in water at the Site constituted “open dumping of waste in a manner that results in . . . waste standing in water” under Section 21(p)(4) of the Act, and therefore, Respondent violated that section.

**F. Respondent’s Open Dumping Resulted in Deposition of General Construction or Demolition Debris in Violation of Section 21(p)(7)**

Respondent’s open dumping of these wastes also resulted in deposition of general construction or demolition debris in violation of Section 21(p)(7) of the Act. 415 ILCS 5/21(p)(7). “General construction or demolition debris” is defined in Section 3.160 of the Act as:

[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. 415 ILCS 5/3.160.

The CDOE inspection report admitted into evidence as Complainant’s Exhibit A and the testimony at hearing show that materials from construction, remodeling, repair or demolition activities - such as bricks, rebar, asphalt, broken concrete, PVC piping, soil, scrap metal and wood - were present at the Site on March 22, 2006. Compl. Ex. A at 6, 12-17, and 21-22; Tr. at 19, 25, 29, 161 and 202. Respondent admitted that construction and demolition debris observed on the Site on March 22, 2006 had been dumped by E. King. Tr. at 177-79, and 202. These materials constituted “open dumping of waste in a manner that results in . . . deposition of general construction or demolition debris” under Section 21(p)(7)(i) of the Act, and therefore, Respondent violated that section of the Act.

## CONCLUSION

The CDOE inspection report, photographs, and testimony show that Respondent caused or allowed open dumping of waste resulting in litter, scavenging, open burning, deposition of waste in standing water, and the deposition of construction or demolition debris in violation of Sections 21(p)(1), 21(p)(2), 21(p)(3), 21(p)(4), and 21(p)(7) of the Illinois Environmental Protection Act. 415 ILCS 5/21(p)(1), (2), (3), (4), and (7). CDOE respectfully requests that the Board enter a final order finding that Respondent violated these sections and imposing the statutory penalty of \$7500 (\$1500 for each violation).

Respectfully submitted,

CITY OF CHICAGO  
DEPARTMENT OF ENVIRONMENT

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By: 

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Dated: June 22, 2007

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