

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

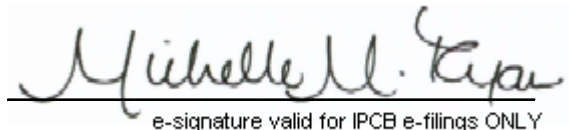
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 06-50
)	
v.)	(IEPA No. 98-06-AC)
)	
MARK GATES,)	
)	
Respondent.)	

NOTICE OF FILING

To: Mark Gates
P.O. Box 161
Lincoln, IL 62656

PLEASE TAKE NOTICE that on this date I electronically filed 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,



e-signature valid for IPCB e-filings ONLY

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: February 19, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 06-50
)	
v.)	(IEPA No. 98-06-AC)
)	
MARK GATES,)	
)	
Respondent.)	

POST-HEARING BRIEF OF COMPLAINANT

On May 29, 2006, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Mark Gates (“Respondent”)¹. The citation alleges violations of Section 21(p)(1) and (7) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1) & (7) (2004)), in that Respondent caused or allowed open dumping of waste resulting in litter and the deposition of clean or general construction or demolition debris. The violations occurred at a property located one half mile east of Union, Illinois, off County Road 2550 North in Logan County. Transcript, p. 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 (2004). “Refuse” means “waste,” (415 ILCS 5/3.385 (2004)), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2004)). Respondent was in operational control of the site on April 26, 2006. Tr. at 8; *see generally* Amended Response to Administrative Citation,

¹ Marla Lewis Gates and Mark Kingsley Lewis were dismissed from this action on October 19, 2006, for failure of service.

filed May 29, 2007 (indicating future intentions with respect to site; concerns about Respondent's lack of presence during April 26, 2006 inspection; admissions to placing some of the materials at the site). Throughout the six inspections of this site by Illinois EPA from 1998 through 2006, Respondent was the only person with whom the inspector had any communication regarding the site. *Id.* The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that materials including abandoned mobile homes, a large storage box, vinyl siding, a metal table, bricks, telephone poles, drywall, dimensional lumber, shingles, scrap metal, a metal bathtub, used tires, wood pallets and rebar were present at the site. Tr. at 9-11; Exh. 1, pp. 3-12. These materials had been exposed to the weather for several years, and at least some of them had been in an unchanged condition since the original 1998 inspection. Therefore, Respondent caused or allowed the open dumping of waste observed on April 26, 2006.

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) (2004)). 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) (2004); see *St. Clair County v. Louis I. Mund* PCB AC 90-64, (Aug. 22, 1991) pp. 4, 6. According to the definition and supporting case law, the mobile homes, vinyl siding, metal, bricks, telephone poles, drywall, dimensional lumber, shingles, used tires and wood pallets 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 the deposition of 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) (2004).

The inspector observed abandoned mobile homes, vinyl siding, bricks, drywall, dimensional lumber, shingles, a metal bathtub and rebar at the site. Tr. at 9-10. A mobile home is a "structure" under Section 5/3.160(a), and a metal bathtub is a "plumbing fixture" under the same section. Further, "[d]imensional lumber qualifies as construction or demolition debris under the Act." *Illinois EPA v. Yocum, et al.*, PCB Nos. AC 01-29 and AC 01-30 (Consolidated), June 6, 2002, p. 7; *aff'd, Yocum, et al. v. Illinois Pollution Control Board*, (4-02-0709), June 20, 2003 (unpub.). All of these wastes meet the definition of "construction or demolition debris" for purposes of Section 21(p)(7) of the Act, and therefore Respondent violated that section.

Respondent indicated in his filings that he intended to use some of the waste materials open dumped on the site. *See, e.g.*, Amended Response to Administrative Citation, filed May 29, 2007, pp. 7-9. However, the waste near the entrance to the site had not moved or been used in eight years. Tr. at 9. A plan for use of material at some future date is not dispositive in determining whether a material is waste or litter. *Illinois EPA v. Yocum, et al.*, PCB AC 01-29 and 01-30 (consolidated) (June 6, 2002), slip op. at 8. Furthermore, a person can cause or allow a violation of the Act without

knowledge or intent. *County of Will v. Utilities Unlimited, Inc.*, et al. PCB AC 97-41, (July 24, 1997) p. 5, citing *People v. Fiorini*, 143 Ill.2d 318, 574 N.E.2d 612 (1991).

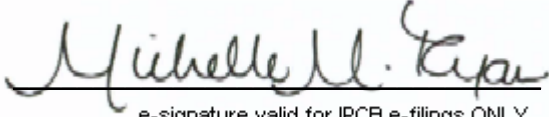
Respondent also indicated that he “asked” to be present during any inspection, (Tr. at 14) and apparently took issue with the fact that he was not present during the April 26, 2006 inspection. Tr. at 12. However, Respondent admittedly did not own this property (Tr. at 14; *see also* Exhibit 1) and there is no evidence in the record that he has any valid legal claim on this issue.

The only issues raised by Respondent in his defense at hearing were his lack of access to the property during his divorce proceedings and an oblique reference to third parties not present at the hearing. Respondent’s divorce proceedings commenced on January 4, 2007 (Tr. at 14), more than eight months *after* the inspection on which this Administrative Citation is based. The third party reference (Tr. at 15) is so obscure and unsubstantiated that it does not appear to have any evidentiary value, and as such it should be disregarded in its entirety.

The Illinois EPA photographs, inspection report and the testimony show that Respondent caused or allowed open dumping of waste in a manner resulting in litter and the deposition of construction and demolition debris in violation of Sections 21(p)(1) and (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: February 19, 2008



Michelle M. Ryan

e-signature valid for IPCB e-filings ONLY

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

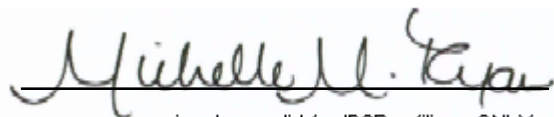
PROOF OF SERVICE

I hereby certify that I did on the 19th day of February, 2008, 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: Mark Gates
P.O. Box 161
Lincoln, IL 62656

and an electronic copy of the same foregoing instrument on the same date via electronic filing

To: John Therriault, Acting Clerk
Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601



e-signature valid for IPCB e-filings ONLY

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