

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF CHICAGO DEPARTMENT)
OF ENVIRONMENT,)
)
Complainant,)
)
v.)
)
1601-1759 EAST 130TH STREET, LLC,)
)
Respondent.)

AC 06-041
(Administrative Citation)

NOTICE OF FILING

TO: Jeffrey J. Levine
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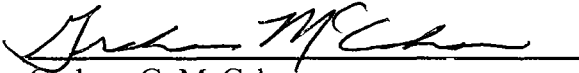
PLEASE TAKE NOTICE that on May 13, 2008 Complainant filed with the Clerk of the Illinois Pollution Control Board the attached CITY OF CHICAGO'S REPLY TO 1601-1759 EAST 130TH STREET, LLC'S POST-HEARING BRIEF, a copy of which is served upon you.


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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on May 13, 2008, he caused copies of this notice and the documents referenced therein to be served on the persons listed above by U.S. Mail, first class postage prepaid.


Graham G. McCahan

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF CHICAGO DEPARTMENT)	
OF ENVIRONMENT,)	
)	
Complainant,)	
)	
v.)	AC 06-41
)	(Administrative Citation)
)	
1601-1759 EAST 130 TH STREET, LLC,)	
)	
Respondent.)	

**CITY OF CHICAGO'S REPLY TO 1601-1759 EAST 130TH STREET, LLC'S
POST-HEARING BRIEF**

Complainant, the City of Chicago Department of Environment ("CDOE"), hereby submits the following as its Reply to Respondent 1601-1759 East 130th Street, LLC's Post-Hearing Brief. In support thereof, CDOE states as follows:

INTRODUCTION

The narrow issues before this Board are whether CDOE has demonstrated that there existed violations of Sections 21(p)(1), 21(p)(2), 21(p)(3), 21(p)(4), and 21(p)(7)(i) of the Illinois Environmental Protection Act¹ (the "Act") (415 ILCS 5/21) at 1601 E. 130th Street in Chicago, Illinois (the "Site") on March 22, 2006, and whether Respondent is liable for those violations. The evidence and testimony at hearing demonstrated that the above violations existed on the Site on March 22, 2006. Respondent, as owner of the Site, should be held liable for those violations under Illinois law. Not only has Respondent not contradicted this evidence, but Respondent, in its Post-Hearing Brief, also admits to many of the facts required to establish those violations.

¹ Despite Respondent's statement to the contrary in its Post-Hearing Brief (Resp. Post-Hearing Br. at ¶ 20), CDOE has not alleged, in its citation or at hearing, that Respondent was involved in salt unloading operations, asbestos-related violations, improper site security, waste next to residential homes, or oil flowing into the sewer.

ARGUMENT

A. CDOE Has Established that There Were Violations of Sections 21(p)(1), 21(p)(2), 21(p)(3), 21(p)(4), and 21(p)(7)(i) on the Site on March 22, 2006.

As shown in CDOE's Post-Hearing Brief, the testimony and evidence at hearing demonstrated that there were violations of Sections 21(p)(1), 21(p)(2), 21(p)(3), 21(p)(4), and 21(p)(7) on the Site on March 22, 2006. Respondent has not contradicted CDOE's evidence and has admitted to some of the conditions on which those violations are based. With respect to the charge of open dumping resulting in litter under Section 21(p)(1), for instance, Respondent's counsel admits "[t]hat debris was on the property is uncontested." Resp. Post-Hearing Br. at ¶ 9. With respect to the charge of deposition of general construction and demolition debris under Section 21(p)(7), Respondent's counsel admits that E. King [Construction] was renting the Site and that E. King dumped what he described as "CTA construction debris" on the Site. *Id.* at ¶¶ 9-15. With respect to the charge of scavenging under Section 21(p)(2), rather than contradicting CDOE's evidence that there was a wire on the Site that appeared to be getting stripped for its copper content, Respondent's counsel claims that such activity would be legitimate if a landfill would not accept wire. *Id.* at ¶ 28.

B. Respondent, As Owner of the Site, Is Liable for the Open Dumping and Resulting Violations Observed on the Site on March 22, 2006.

It is uncontested that Respondent owned the Site on March 22, 2006. Compl. Post-Hearing Br. at 1, 4; *see also* Resp. Post-Hearing Br. at ¶ 1. The Board has repeatedly held that a landowner can be held liable for "causing or allowing" open dumping even if the landowner did not actively participate in the dumping. *See IEPA v. Shrum*, AC 05-18 (IPCB Mar. 16, 2006); *IEPA v. Carrico*, AC 04-27 (IPCB Sep. 2,

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2004); *IEPA v. Rawe*, AC 92-5 (IPCB Oct. 16, 1992). Respondent claims that fly-dumpers and E. King dumped waste at the Site without Respondent's permission and that there was waste on the Site when Respondent purchased it. Resp. Post-Hearing Br. at ¶ 9. However, a person can cause or allow open dumping in violation of the Act without knowledge or intent. See *County of Will v. Utilities Unlimited, Inc.*, AC 97-41 (IPCB July 24, 1997), citing, *People v. Fiorini*, 143 Ill.2d 318, 574 N.E.2d 612 (1991). In addition, "passive conduct" on the part of a landowner can amount to "acquiescence sufficient to find a violation of Section 21(a) of the Act." *IEPA v. Shrum*, AC 05-18 (IPCB Mar. 16, 2006). Therefore, Respondent, as owner of the Site, is liable for the violations observed on March 22, 2006 because Respondent failed to prevent others from dumping waste on the Site and Respondent let waste remain on the property.

C. Waste Remained On the Site for Fourteen Months While it was Under Respondent's Ownership.

In his Post-Hearing Brief, Respondent's counsel states that "Respondent secured the property and rather than causing or allowing open dumping, was cleaning refuse when ticketed. The Respondent LLC did not allow waste to remain on his property." Resp. Post-Hearing Br. at ¶ 30. Respondent's counsel also distinguishes between Respondent's alleged clean up activities and the respondent in *IEPA v. Cadwallader*, who "did not remove debris over a two year period" and was found liable for violations of the Act. *Id.* Respondent's counsel admits, however, that "[w]hen [Respondent] acquired the property is [sic] was loaded with junk" and that there were "tires, signs and material...on the property when purchased." *Id.* at ¶¶ 1, 9. In addition, Respondent's counsel admits that there was "trash that was constantly being fly-dumped" on the Site. Resp. Post-Hearing Br. at ¶ 9. As demonstrated at hearing, Respondent acquired the Site in January

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2005 – a full fourteen months prior to CDOE's March 2006 inspection. Compl. Ex. B; Tr. at 67-68. Even if clean up activities were a defense to violations of the Act², Respondent has failed to show why leaving waste on a site for two years, as in *Cadwallader*, is legally distinguishable from allowing waste to remain on this Site for fourteen months. Respondent has admitted that there was waste both on the Site and added to the Site during the period that Respondent owned the Site from January 2005 to March 2006. This is clearly sufficient to find Respondent liable for causing or allowing open dumping and the resulting violations of Sections 21(p)(1), 21(p)(2), 21(p)(3), 21(p)(4), and 21(p)(7)(i) of the Act.

CONCLUSION

Respondent is liable for violating Sections 21(p)(1), 21(p)(2), 21(p)(3), 21(p)(4), and 21(p)(7)(i) of the Act due to Respondent's ownership of the Site where these violations were observed on March 22, 2006. Therefore, 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).

² As stated in CDOE's Post-Hearing Brief, the Board has repeatedly held that clean up efforts are not a defense to violations of the Act. See *City of Chicago v. City Wide Disposal, Inc.*, AC 03-11 (IPCB Sept. 4, 2003); *County of Jackson v. Easton*, AC 96-58 (IPCB Dec. 19, 1996).

Respectfully submitted,

CITY OF CHICAGO
DEPARTMENT OF ENVIRONMENT

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By: 
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Dated: May 13, 2008

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