

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

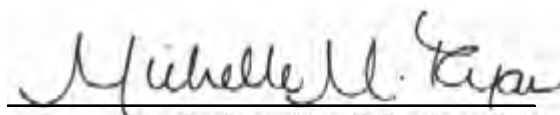
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 08-27
)	
v.)	(IEPA No. 51-08-AC)
)	
HIRAM L. VANDERHEIDEN, JR.,)	
)	
Respondent.)	

NOTICE OF FILING

To: Hiram L. Vanderheiden, Jr.
510 N. Park Ave.
Manito, IL 61546-9221

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: December 15, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
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POST-HEARING BRIEF OF COMPLAINANT

On June 25, 2009, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Hiram L. Vanderheiden, Jr. (“Respondent”). The citation alleges violations of Section 21(p)(1), (3) and (7) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1), (3) & (7) (2008)), in that Respondent caused or allowed open dumping of waste resulting in litter, open burning and the deposition of clean or general construction or demolition debris. The violations occurred at a property located at 510 North Park Avenue, Manito, Mason County. Transcript, pp. 3, 26; Exhibit 1.

Preliminary Motion to Conform Pleadings to Evidence

Although Illinois EPA initially cited Respondent with a violation of Section 21(p)(3) of the Act for open burning, the testimony at hearing made clear that this activity did not appear to have recurred recently on the date of the February 7, 2008 inspection. Tr. at 24. Therefore, Illinois EPA moves to withdraw the allegation regarding 21(p)(3) of the Act, consistent with the evidence presented at hearing.

Violations of 21(p)(1) and (7)

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 (2008). “Refuse” means “waste,” (415 ILCS 5/3.385 (2008)), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2008)). The February 7, 2008 inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that materials including cinder block, buckets, automotive parts, wood siding, lawn tools, floor jacks, windows, commercial lights, PVC conduit, weathered lumber, roofing materials, Christmas lights, wooden ladders, trailers, an air conditioner, wheelbarrows, boats, camper, parts washer, scrap metal, duct work, rusty drum, tanks, tires, drain tile, snowmobiles, shower stall, snow fence, snowplows, scaffolding, fence posts, sawhorse, bicycles, wire, landscape waste and other miscellaneous items were present at the site. Tr. at 9-24; Exh. 1, pp. 3-34. These materials were weathered (Tr. at 13), covered with algae and dust (Tr. at 20) and overgrown with vegetation (Tr. at 19, 23), indicating that they had been present in their current location for a significant period of time. Respondent does not contest these allegations. Tr. at 26. Therefore, Respondents caused or allowed the open dumping of waste observed on February 7, 2008.

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) (2008)). 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.

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415 ILCS 105/3(a) (2006); 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 various items present at the site constitute “litter” under Section 21(p)(1) of the Act, and therefore Respondent violated that section.

Respondent’s causing or allowing the 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) (2008)). “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.

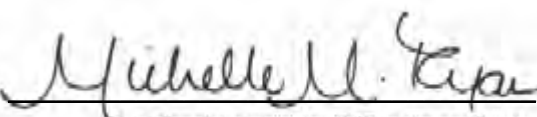
415 ILCS 5/3.160(a) (2008).

The cinder block, wood siding, windows, PVC conduit, weathered lumber, and roofing materials at the site are clearly included within the above definition of general construction or demolition debris, in addition to other materials that may also meet the definition. Therefore Respondent violated Section 21(p)(7).

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 clean or general construction or demolition debris in violation of Sections 21(p)(1) and (7) of the Act. Illinois EPA requests that the Board enter a final order dismissing the count regarding Section 21(p)(3) and finding that Respondent violated Sections 21(p)(1) and (7) and imposing the statutory penalty.

Respectfully Submitted,

DATED: December 15, 2009



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Michelle M. Ryan
Special Assistant Attorney General

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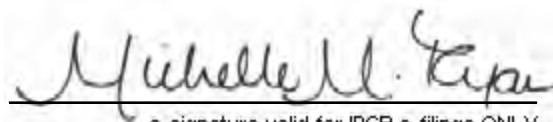
PROOF OF SERVICE

I hereby certify that I did on the 15th day of December, 2009, 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: Hiram L. Vanderheiden, Jr.
510 N. Park Ave.
Manito, IL 61546-9221

and the original of the same foregoing instrument on the same date by electronic filing

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



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