

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	AC 09-55
	)	
v.	)	(IEPA No. 130-09-AC)
	)	
JASON D. and ANGELA R. MARRS d/b/a	)	
MARRS HAULING, LANDSCAPING	)	
AND MORE,	)	
	)	
Respondents.	)	

**NOTICE OF FILING**

To: Blake Weaver, Esq.  
Novak Weaver Solberg  
130 W. Main St.  
Urbana, IL 61801

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  
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Springfield, Illinois 62794-9276  
(217) 782-5544

Dated: June 28, 2010

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POST-HEARING BRIEF OF COMPLAINANT

On June 15, 2009, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Jason D. and Angela R. Marrs d/b/a Marrs Hauling, Landscaping, and More (“Respondents”). The citation alleges violations of Section 21(p)(1) and (7) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1) & (7) (2008)), in that Respondents 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 at 30 County Road 3050 North, in Lotus near Foosland in Champaign County. Transcript, p. 7; Exhibit 1.

Illinois EPA has demonstrated that Respondents 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)). Respondents stipulated to ownership and occupation of the property. Tr. at 7, 27. The May 18, 2009 inspection report admitted into

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evidence as Exhibit 1 and the testimony at hearing show that materials including dimensional lumber (possibly painted), a dead Christmas tree, paper, metal bed parts, mixed landscape waste, and black plastic garbage bags containing unidentifiable items were present at the site. Tr. at 11; Exh. 1, pp. 7-8. These materials had been in the same position on site for at least two months (Tr. at 11; Exh. 1, pp. 3-4), with only some apparent weathering to shrink the pile somewhat. Tr. at 11. Testimony at hearing later showed that some of the materials in the pile of debris came from the outbuildings on the property, including the dead Christmas tree, white cardboard boxes, and burned and melted decorations from the Christmas village that Respondents operated from their site. Tr. at 34-37. In addition, Respondent Jason Marrs explained what the black plastic garbage bags contained: “We had our upright freezer out in the garage, so all that food went bad. I mean, it was weeks after we went back out there to the property. All that was really bad, so we, kind of, *just bagged it up and put it all out there in that pile.*” Tr. at 37 (emphasis added). Therefore, Respondents caused or allowed the open dumping of waste observed on June 11, 2009.

Respondents’ 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.

415 ILCS 105/3(a) (2006); see *St. Clair County v. Louis I. Mund* PCB AC 90-64, (Aug. 22, 1991) pp. 4, 6. “Garbage” is defined in the Act as: “waste resulting from the handling, processing, preparation, cooking, and consumption of food, and wastes from the handling, processing, storage,

and sale of produce.” 415 ILCS 5/3.200. The food from the broken freezer that went bad is “waste resulting from the handling...of food” and is therefore garbage. According to the definition and supporting case law, the dimensional lumber, dead Christmas tree, paper, metal bed parts, mixed landscape waste, and black plastic garbage bags containing melted Christmas decorations and rotting food constitute “litter” under Section 21(p)(1) of the Act, and therefore Respondents violated that section.

Respondents’ 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).

“Dimensional 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.). Therefore, Respondents violated Section 21(p)(7) of the Act.

Respondents had a house fire on December 23, 2008 (Tr. at 27), and this was undoubtedly a hardship for them. However, neither the inspection report admitted as Exhibit 1 nor the Administrative Citation complains of the remaining burned debris from the house. *See* Exhibit 1; Tr. at 17. In fact, it is the pile of waste behind the burned structure that is at issue in

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this Administrative Citation. Tr. at 20-21. Respondents did receive insurance money for the cleanup of the burnt debris, but don't recall the amount. Tr. at 41. It appeared to be enough to rent a Bobcat and transport a portion of the house debris and some materials from the outbuildings to the transfer station. Tr. at 39, 46; Respondents' Exhibit 1.

Unfortunately for their neighbors (some of whose property appears to be visible beyond Respondents' fence in Photo #2 of Exhibit 1), it was the black plastic garbage bags of rotting food that Respondents chose to leave on site indefinitely. Rotting food is putrescible waste, which means that it is capable of being decomposed to cause malodor, gases, or other offensive conditions, and to provide food for disease vectors. 35 Ill. Adm. Code 810.103. More regrettable is the fact that Illinois EPA didn't find out until the hearing on May 5, 2010, that rotten garbage was present in the pile, because Respondents fenced off their property and didn't return phone calls from the inspector. See Tr. at 24-25.

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). In this case, it is not clear whether Respondents were aware that they were violating the Act, but they "ran out of money" to address the problem. Tr. at 46. Respondents offered no documentary evidence by way of bank statements, tax returns, or credit card receipts, of their inability to remove the rotten food and other waste in the pile. This Board has previously found that delays in removing waste from a site due to lack of funds is not relevant to the statutory defense of "uncontrollable circumstances." *Illinois EPA v. John Brown, d/b/a John Brown Painting*, PCB AC 04-82, (May 19, 2005) p. 9.

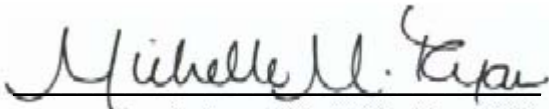
In fact, Respondents did receive money from the insurance company, but chose to use it to remove other, less environmentally damaging waste from the property. Tr. at 41, 46. They

chose not to return to the property for “weeks” before removing the rotting food from the freezer. Tr. at 37. They then chose to leave the rotten garbage on the ground for months, within sight of their neighbor’s property. Tr. at 11. Although it is not clear in the record whether Respondents were responsible for the house fire, it is unquestionable that they were responsible for disposing of garbage and other waste in their backyard. Therefore, Respondents had enough control over their property and their voluntary actions for this Board to find them in violation of the provisions cited in the Administrative Citation.

The Illinois EPA photographs, inspection report and the testimony show that Respondents 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 finding that Respondents violated these sections and imposing the statutory penalty.

Respectfully Submitted,

DATED: June 28, 2010



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Special Assistant Attorney General

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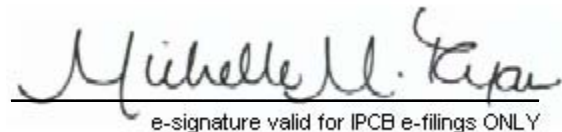
**PROOF OF SERVICE**

I hereby certify that I did on the 28<sup>th</sup> day of June, 2010, 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: Blake Weaver, Esq.  
Novak Weaver Solberg  
130 W. Main St.  
Urbana, IL 61801

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



e-signature valid for IPCB e-filings ONLY

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