

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 09-40
)	
v.)	(IEPA No. 51-09-AC)
)	
THOMAS AND VALERIE HILL,)	
)	
Respondents.)	

NOTICE OF FILING

To: Thomas and Valerie Hill
1955 Christian Chapel Road
One Metropolitan Square
Anna, IL 62906

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: June 30, 2010

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ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
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Complainant,)	AC 09-40
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POST-HEARING BRIEF OF COMPLAINANT

On April 13, 2009, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to Thomas and Valerie Hill (“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 Lot 18 Agnes Ussery Addition, Anna, Union 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 have owned the property since 1994. Tr. at 9, 23. The March 4, 2009 inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that materials including a dilapidated mobile home with an exposed interior, a vehicle battery, a couch, and a pile of demolition debris consisting primarily

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of wood were present at the site. Tr. at 10-12; Exh. 1, pp. 5-7. These materials had been on site since at least 2007 (Tr. at 18), and the mobile home had continued to collapse between November 2008 and March 2009. Exh. 1 at 3. Therefore, Respondents caused or allowed the open dumping of waste observed on March 4, 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. According to the definition and supporting case law, the dilapidated mobile home, vehicle battery, a couch, and other demolition debris 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).

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“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.). The dilapidated mobile home contained wood, walls, wall coverings, roof coverings, and glass windows, all of which are defined as general construction and demolition debris. Therefore, Respondents violated Section 21(p)(7) of the Act.

Respondents had attempted in the summer of 2007 to have Truly Blessed, Inc. remove their uninhabitable (Tr. at 23) mobile home from the site in exchange for the metal, but most of the trailer on Lot 18 was left behind. Tr. at 18, 19. The Secretary of State’s website indicates that Truly Blessed, Inc. was involuntarily dissolved on August 1, 2005,¹ two years before Respondents hired them for this job, so it is unsurprising that the company turned out to be unreliable. Two appliances that had been dumped on the site in November 2008 had been moved by March 2009, but there is no information in the record to show how or where they went. Exh. 1 at 3. Rather, Respondents have a list of reasons why they can’t bring their property into compliance.

Respondents appeared to be aware that they were violating the Act, but they were too “financially strapped” to address the problem. Tr. at 17. Respondents offered no documentary evidence by way of bank statements, tax returns, or credit card receipts, of their financial inability to remove the waste on their site, other than to note that Mr. Hill had been unemployed for an unidentified amount of time. *Id.* Respondents indicated that they do have a credit card, on which they make monthly payments. Tr. at 21. 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’ credit card is being used to pay an attorney to sue the City of Anna for closing Baker Street (Tr. at 19-21), which they had used since they acquired the property in 1994. Tr. at 23. The litigation has been ongoing in some form since 2007 (Tr. at 18), although it continues to be dismissed without prejudice, and Respondents don’t even recall their case number at this point. Tr. at 20-21. Respondents have maintained that they cannot remove waste from the property until Baker Street is reopened. Tr. at 18. In addition, Respondents now claim that the waste is evidence in their case against the City regarding Baker Street, and state, “[W]e should not have to remove such debris until our court case is resolved.” Tr. at 18-19.

In reality, “Baker Street” is visible in Photo #6 of Exhibit 1, as a grassy slope running through the middle of the photograph, which was never improved. Tr. at 26-28. In contrast, Ussery Street is a paved alley, on which vehicles travel routinely. Tr. at 32; Exh. 2. Respondents don’t want to bring a dumpster in via Ussery Street, due to the fact that their son’s trailer “almost went off in the neighbor’s yard” when traveling on that street. Tr. at 22. A dumpster would have to be pulled off onto Respondents’ other driveway on Lot 17 if a car wanted to pass on Ussery Street (Tr. at 33), and their son wouldn’t have a place to park his car. Tr. at 24. Nevertheless, a pickup truck or smaller utility trailer could be brought onto the site by way of Ussery Street to remove most of the debris. Tr. at 32.

However, the theme throughout this case has been that Respondents are the “victim” in this situation. Tr. at 7; *see also* Tr. at 18. First, Truly Blessed, Inc. “left this debris on our property” (Tr. at 18); then their neighbor got the City to close down Baker Street “through a

¹ This information is not in the record, because the name of the company was not known to Illinois EPA until the

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bunch of lies” (Tr. at 23), which street they never improved “even though they get taxes for roads” (Tr. at 28); then Illinois EPA told Respondents to clean up the site, and even though Respondents “tried to explain [their] circumstances,” (Tr. at 17) Illinois EPA was “not willing to cooperate and help [them],” (Tr. at 19), but rather “was wanting to impose a fine and citation on us if we didn’t get it cleaned up.” Tr. at 17. Respondents claim that all of this amounts to “discrimination.” Tr. at 25.

Legal cases are decided on facts, not emotions, and Respondents are heavy on the latter, but sadly lacking in the former. Respondents have offered no evidence to show that Illinois EPA has treated them any differently than other similarly-situated open-dumpers. The Board should not allow Respondents’ victim mentality to permit them to absolve themselves from failing to take responsibility for their own choices. Respondents are able to find money to sue the City for the wrongs it has committed against them, but no money is available to correct the wrongs they have committed against the laws of this State and the environment. Respondents have chosen to blame everyone else for their problems, but in reality have made no substantial attempt to change their circumstances.

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). It appears in this case that Respondents don’t believe they have any choice but to continue violating the law until Baker Street is reopened. The facts belie this belief, however, and it does not amount to a legal defense against the violations cited in the Administrative Citation.

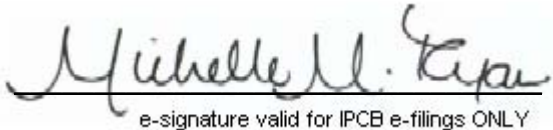
hearing. Illinois EPA asks the Board to take judicial notice of this fact from the Secretary of State’s website.

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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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Michelle M. Ryan
Special Assistant Attorney General

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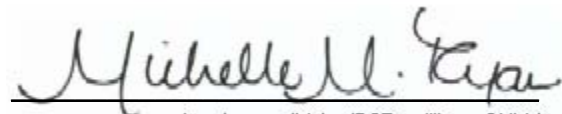
PROOF OF SERVICE

I hereby certify that I did on the 30th 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: Thomas and Valerie Hill
1955 Christian Chapel Road
One Metropolitan Square
Anna, IL 62906

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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