

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 10-72
)	(Enforcement)
BYROM WARD, d/b/a WARD ELECTRIC,)	
and TIMOTHY JAMES,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

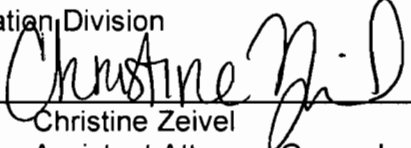
PLEASE TAKE NOTICE that on February 10, 2011, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, a Motion for Summary Judgment, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
Christine Zeivel
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500 South Second Street
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Dated: February 10, 2011

CERTIFICATE OF SERVICE

I hereby certify that I did on February 10, 2011, cause to be served by U.S. Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING and MOTION FOR SUMMARY JUDGMENT upon the persons listed on the Service List.



Christine Zeivel
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Byrom Ward
d/b/a Ward Electric
2237 County Road 1975 East
Crossville, IL 62827
(Certified Mail/Return Receipt Requested)

Timothy James
203 South 8th Street
Carmi, IL 62821

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

No. 10-72
(Enforcement - Land)

BYROM WARD d/b/a WARD ELECTRIC)
and TIMOTHY JAMES,)

Respondents.)

MOTION FOR SUMMARY JUDGMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Supreme Court Rules 191 and 192, Section 2-1005 of the Code of Civil Procedure, 735 ILCS 5/2-1005, and Section 101.516 of the Board's Procedural Rules, 35 Ill. Adm. Code 101.516, hereby moves for Summary Judgment against the Respondents, BYROM WARD d/b/a WARD ELECTRIC and TIMOTHY JAMES, as to Count I of the Complaint.

INTRODUCTION

The People's Complaint was filed on March 19, 2010. Both Respondents have failed to file an answer to the Complaint or any other responsive pleading. Therefore, all material allegations should be taken as admitted pursuant to Section 103.204(d) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204(d). Accordingly, there is no genuine issue of material fact and the People are entitled to a judgement as a matter of law.

The Complaint alleges that on or before December 20, 2007 the Respondent, BYROM WARD, gave six (6) old electrical transformers that he had collected on his property, with dielectric oil still in them, to the Respondent, TIMOTHY JAMES, to be scrapped for metal. Compl. ¶ 5. The Complaint further alleges that, the Respondent, TIMOTHY JAMES, transported

the six electrical transformers to the James residence, located at 202 Fackney Street in Carmi, White County, Illinois, using a pickup truck and spilled approximately sixty (60) gallons of PCB-laden oil onto the ground of the James residence. Compl. ¶¶ 3, 6 and 7.

Additionally, the Complaint alleges that on January 3, 2008, the Illinois Environmental Protection Agency ("Illinois EPA") inspected the James residence. On that date, three transformers were present on the back of a truck trailer and the remaining transformers were present on the ground in the backyard. Straw was also present on the ground at the site of the oil spill. Compl. ¶ 9. The Complaint alleges that on January 3, 2008, the Illinois EPA collected several oil samples from the James residence and results indicated that five of the transformers contained oil with PCB concentrations ranging from 260 ug/kg to 5,600,000 ug/kg. Soil samples collected also revealed PCB contamination of the soil in the backyard of the James residence and the pickup truck. Compl. ¶ 10.

As a result of the Respondents' actions, the People allege violations of Section 21(a) of the Act, 415 ILCS 5/21(a) (2008) (causing or allowing the open dumping of waste), Section 21(e) of the Act, 415 ILCS 5/21(e) (2008) (disposing, treating, storing or abandoning waste at a site that does not meet the requirements of the Act or regulations and standards thereunder), and Section 21(p)(1) of the Act (causing or allowing the open dumping of waste in a manner resulting in litter). No Answer or responsive pleadings to the Complaint have been filed and, therefore, no affirmative defenses have been pleaded and all material allegations of the Complaint should be taken as admitted pursuant to Section 103.204(d) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204(d). Accordingly, there is no genuine issue of material fact that the Respondents open dumped waste at a site that does not meet the requirements of the Act or regulations and standards thereunder and in a manner that resulted in litter. Therefore, the People are entitled to a judgement as a matter of law.

LEGAL ARGUMENT

THE BOARD SHOULD GRANT THE PEOPLE SUMMARY JUDGEMENT DETERMINING THAT THE RESPONDENTS CAUSED OR ALLOWED THE OPEN DUMPING OF WASTE AT A SITE THAT DOES NOT MEET THE REQUIREMENTS OF THE ACT OR REGULATIONS IN A MANNER RESULTING IN LITTER

In adopting Title V of the Illinois Environmental Protection Act ("Act") (Land Pollution and Refuse Disposal), the Legislature declared that "inefficient and improper methods of refuse disposal result in scenic blight, cause serious hazards to public health and safety, create public nuisances, divert land from more productive uses, depress the value of nearby property, offend the senses, and otherwise interfere with community life and development." 415 ILCS 5/20. The purpose of Section 21 is to prevent the hazards to the public health and safety caused by the improper disposal of waste such as the transformers and the PCB-laden oil contained within them. Polychlorinated biphenyls, or PCBs, are persistent organic pollutants that are known to cause neurobehavioral and immunological changes in children, skin conditions in adults and cancer in animals. Compl. ¶ 8. PCBs were widely used for many applications, including capacitors, coolants and dielectric fluids in transformers such as the ones improperly disposed of at the James residence, until the hazards they present led to a ban on manufacturing PCBs in the United States in 1979. TSCA §(6)(e)(2), 15 U.S.C. §2605(e)(2)(A). When the Respondents chose to improperly dispose of the old transformers that contained PCBs, they contributed to all of the problems the Legislature was specifically attempting to address in its passage of Title V.

- a. The Respondents open dumped waste in a manner resulting in litter at a site that does not meet the requirements of a sanitary landfill.**

Count I alleges that the Respondents caused or allowed the open dumping of refuse and waste at the James residence, a site that does not meet the requirements of the Act or associated regulations for a waste disposal site, in a manner that resulted in litter and thereby

violated Sections 21(a), 21(e), and 21(p)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/21(a), 21(e), and 21(p)(1) (2008).

“Open dumping” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirement of a sanitary landfill. “Refuse” is waste, 415 ILCS 5/3.385, and “waste” means any garbage . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities. . . . 415 ILCS 5/5.535. The old electrical transformers and PCB-laden oil spilled from them, as discarded material, are both waste and refuse as those terms are defined by the Act.

A “waste disposal site” is a site on which solid waste is disposed, 415 ILCS 3.540, and “disposal” means the “dumping . . . or placing of any waste . . . into or on any land . . . so that such waste . . . or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.” 415 ILCS 5/3.185. The Respondents disposed of the six old electrical transformers at the James residence, where they were placed onto the land and, along with the dielectric PCB-laden oil that spilled onto the land, entered the environment. Because the Respondents disposed of solid waste at the James residence, it is a waste disposal site as that term is defined by the Act.

While the James residence is a waste disposal site for purposes of the Act, it is not a sanitary landfill. A “sanitary landfill” is a “facility permitted by the Agency for the disposal of waste on land meeting the requirements of [RCRA] and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day’s operation. . . .” 415 ILCS 5/3.445. Because the James residence is not permitted as a landfill and the Respondents’ disposal of waste at the James residence created nuisances or hazards to public health and safety, the

James residence is a waste disposal site as defined by the Act, but does not meet the requirements of a sanitary landfill as outlined in the Act or associated regulations. By consolidating refuse at a disposal site that is not a sanitary landfill, the Respondents open dumped waste at a site that does not meet the requirements of the Act in violation of Sections 21(a) and 21(e) of the Act, 415 ILCS 5/21(a), 5/21(e).

Disposal of the transformers at the James residence resulted in litter. While the Act does not specifically define the term litter, there is some relevant precedent that provides guidance in determining what constitutes litter. In *Miller v. Pollution Control Board*, 267 Ill. App. 3d 160 (4th Dist. 1994), the appellant argued that the proscription against open dumping resulting in "litter" was unconstitutionally vague. *Id.* at 168. The Fourth District rejected the appellant's argument and explained that "given its ordinary meaning, 'litter' refers to material of little or no value which has not been properly disposed of." *Id.* at 169. The Court went on to say that the Litter Control Act should provide additional guidance in determining what qualifies as litter. *Id.* The Illinois Pollution Control Board ("Board") went further and adopted the definition of "litter" contained in the Litter Control Act for purposes of 21(p)(1). *St. Clair County v. Louis Mund*, AC 90-64 (1991). The Litter Control Act defines litter as "any discarded, used or unconsumed substance or waste. 'Litter' may include, but is not limited to, any garbage, trash, refuse, debris, rubbish . . . any nauseous or offensive matter of any kind, any object likely to injure any person . . . anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly." 415 ILCS 105/3(a). As discarded refuse of an unsightly and unsanitary nature with little or no value that was disposed of improperly and could cause injury to people, the old electrical transformers, including the PCB-laden dielectric oil spilled from them, are litter.

Accordingly, the Respondents caused or allowed the open dumping of refuse and waste at the James residence, which does not meet the requirements of the Act or associated regulations for a waste disposal site, in a manner that resulted in litter and thereby violated Sections 21(a), 21(e), and 21(p)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/21(a), 21(e), and 21(p)(1) (2008).

b. The Respondents have admitted all material allegations by failing to file any responsive pleadings and therefore leave no material fact in dispute.

A Motion for Summary Judgment should be granted when the pleadings reveal that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *People ex. rel. Madigan v. Lincoln, Ltd.*, 383 Ill. App. 3d 198, 204 (1st Dist. 2008). Inferences or conclusions drawn from the evidentiary material before the court must be reasonable; courts are not required to adduce remote factual possibilities in favor of the opponent of such a motion. *Gehrman v. Zajac*, 34 Ill. App. 3d 164, 166 (1st Dist. 1974). The use of summary judgment is encouraged under Illinois law to facilitate litigation and avoid unnecessary trials. *Lincoln*, 383 Ill. App. 3d at 204. As was noted by the Supreme Court in *Allen v. Meyer*, 14 Ill. 2d 284, 292 (1958):

Summary judgment procedure is an important tool in the administration of justice. Its use in a proper case, wherein is presented no genuine issue as to any material fact, is to be encouraged. The benefits of summary judgment in a proper case insure not only to the litigants, in the saving of time and expense, but to the community in avoiding congestion of trial calendars and the expense of unnecessary trials.

The State's entitlement to judgment as a matter of law is not challenged by any defense or factual assertion by the Respondent. In fact, the Respondents have not filed any answer to the Complaint or any responsive pleadings and, therefore, all material allegations of the Complaint should be taken as admitted pursuant to Section 103.204(d) of the Board's

Procedural Rules, 35 Ill. Adm. Code 103.204(d). Therefore, there is no genuine issue as to the material factual issues underlying liability for Count I of the Complaint.

c. Control over the pollution source and not actual knowledge of pollution is all that is required to find the Respondents liable for violations of the Illinois Environmental Protection Act.

Illinois courts have held that violations of the Illinois Environmental Protection Act are malum prohibitum and that no proof of guilty knowledge or Mens Rea is necessary to a finding of liability. *Meadowlark Farms v. Illinois Pollution Control Board*, 17 Ill. App. 3d 851 (5th Dist. 1974); *Perkinson v. Pollution Control Board*, 187 Ill. App. 3d 689, 694 (3d Dist. 1989); *People v. McFalls*, 313 Ill. App. 3d 223, 229 (3d Dist. 2000). In other words, civil liability under the Act is grounded upon ownership and/or control over the source of pollution and any purported lack of knowledge by an owner regarding a pollutional release does not bar such liability. *Perkinson*, 187 Ill. App. 3d at 694. "Ownership or control of the premises or control over the source of pollution is a sufficient condition where an owner or operator is alleged to have passively permitted pollution to enter the environment." *McFalls*, 313 Ill. App. 3d at 229.

The Respondent BYROM WARD owned and controlled the electrical transformers and the PCB laden oil contained within them when he chose to improperly dispose of them with TIMOTHY JAMES. By disposing of the transformers with TIMOTHY JAMES, BYROM WARD caused or allowed the open dumping of his waste and is therefore liable under the Act, regardless of whether he had any guilty knowledge of the resulting pollutional release. Similarly, the Respondent, TIMOTHY JAMES, controlled the transformers when he chose to dispose of them at his residence and then spilled the PCB laden oil onto the ground, thereby also causing or allowing the open dumping of waste.

CONCLUSION

The Board should grant the People summary judgement determining that both BYROM WARD d/b/a WARD ELECTRIC and TIMOTHY JAMES caused or allowed the open dumping of waste at a site that does not meet the requirements of the Act or regulations in a manner resulting in litter. No Answer or responsive pleadings to the Complaint have been filed and, therefore, no affirmative defenses have been pleaded and all material allegations of the Complaint should be taken as admitted pursuant to Section 103.204(d) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204(d). Accordingly, there is no genuine issue as to any material fact as to the prima facie proof of the alleged violations and Complainant is entitled to judgment as a matter of law as to Count I of the Complaint.

WHEREFORE, Complainant, People of the State of Illinois, respectfully request that the Board grant the following relief:

- A) Enter summary judgment in favor of Complainant and a finding of liability against Respondents on Count I of the Complaint;
- B) Find violations of Sections 21(a), 21(e) and 21(p)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/21(a), 21(e) and 21(p)(1) (2008), as to compliance with the specified waste disposal requirements;
- C) Order Respondents to cease and desist from any further violations of the Act and associated regulations;
- D) Assess against each Respondent a civil penalty in the amount of \$5,000.00 pursuant to Section 42(h) of the Act; and

E) Grant such other relief as the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

MATTHEW J. DUNN, Chief
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BY: 
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