

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 13-7
)	(IEPA No. 175-12-AC)
ROBERT MANKER,)	(Administrative Citation)
)	
Respondent.)	

NOTICE

John T. Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Robert Manker
2287 West Street
P.O. Box 23
Literberry, IL 62660

The Hon. Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

PLEASE TAKE NOTICE that I have today caused to be filed COMPLAINANT'S POST-HEARING BRIEF with the Illinois Pollution Control Board, a copy of which is served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Dated: March 24, 2014

Scott B. Sievers
Attorney Registration No. 6275924
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Complainant,

BY: 

Scott B. Sievers
Special Assistant Attorney General

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COMPLAINANT’S POST-HEARING BRIEF

NOW COMES the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by and through its counsel, Special Assistant Attorney General Scott B. Sievers, and for its post-hearing brief states the following:

I. SUMMARY OF THE EVIDENCE

At the final hearing in the case at bar, the Respondent testified that he lives at 2287 West Street in Literberry, Illinois (“the Site”). (Tr. at 25.) He has a mobile home and half a mobile home on that property. (Tr. at 25.) The Respondent operates a business, 6J Construction Painting & More, which does remodeling, construction, and painting. (Ex. F; see Tr. at 25.)

Illinois EPA Inspector Mark Weber testified about the Respondent’s property. (E.g., Tr. at 6-9.) A 21-year employee of Illinois EPA, Inspector Weber has been an inspector in the Springfield Region Office for eight years and conducted inspections prior to that while working for Illinois EPA’s Site Assessment Unit. (Tr. at 6.) A college graduate who has received both course and on-the-job training on inspections, Inspector Weber had been conducting an inspection of another site in Literberry when he observed a large pile of waste in the Respondent’s front yard at the Site. (Tr. at 7-8.) Inspector Weber then conducted an inspection of the property. (Tr. at 7-

8.)

Inspector Weber testified that he returned to conduct an inspection at the Site on June 6, 2012. (Tr. at 8-9.) While the large pile of waste observed previously was gone from the Site, Inspector Weber observed other conditions that he understood violated the Illinois Environmental Protection Act. (Tr. at 9.) Inspector Weber observed dimensional lumber, plastic, cardboard, and some partially burned waste in a burn pit on the property. (Tr. at 9.) The Respondent testified that “[W]e had just finished a roof. ... We had just finished a job. That’s why there’s tarps. We had used the tarps on the roof. The guys pulled up, backed the truck up, dumped everything off and took off.” (Tr. at 30.)

Inspector Weber recorded his observations through photographs and field notes. (Tr. at 9.) Inspector Weber testified that Exhibits A, B, C, and D were photographs he took on June 6, 2012 that fairly and accurately depicted the conditions on the Respondent’s property on that day. (Tr. at 10-12.)

Inspector Weber testified that Exhibit A depicts dimensional lumber, including sheeting and strand board as well as some vinyl tarp, finished hardwood flooring, and empty cardboard boxes. (Tr. at 14.) Inspector Weber testified the materials were not protected or preserved from the weather in any way, nor protected or preserved from insects or anything else that might degrade their quality. (Tr. at 14.) Inspector Weber understood the tarps shown in Exhibit A to be made out of vinyl, which is a form of plastic. (Tr. at 19.) The tarps were not covering up or otherwise protecting any materials, although some materials were on the tarps. (Tr. at 19-20.)

Inspector Weber testified that Exhibit B depicted empty cardboard boxes, finished hardwood flooring, plastic sheeting, and a burn pit. (Tr. at 15.) He testified that a brick-lined area was depicted in Exhibit B, and that the bricks had ash located on them and exhibited some stress

from heat. (Tr. at 16.) Inspector Weber testified that partially burned wood within the pit and ashy residue remaining within the brick-lined area indicated to him that it was a burn pit. (Tr. at 16.) The burn pit was out in the open on the Respondent's property and not enclosed in any way. (Tr. at 17.) Inspector Weber testified the flooring looked like it had been removed because there were nails in it and dumped beside the burn pit. (Tr. at 15.) The corrugated cardboard boxes were located in the burn pit area and were empty, but Inspector Weber assumed they had been used to contain hardwood flooring, as the boxes indicated Bruce Hardwood Floors. (Tr. at 15, 17.) Inspector Weber testified that there was nothing that indicated on June 6, 2012 that the flooring or the boxes were being preserved or protected from the elements or from insects or anything else that might degrade their quality. (Tr. at 15-16.) The cardboard boxes in Exhibit B indicated to Inspector Weber that they had been discarded and there was no intended future use of them, as they were located within the burn pit and were empty. (Tr. at 20.)

In questioning Inspector Manker at hearing, the Respondent stated that "[i]n Exhibit B, there is a picture of a burn pit." (Tr. at 23.) The Respondent further stated in part that "[t]his is actually where I have my family come out and we do wiener roasts and stuff, and I use this cardboard as starter for our fires." (Tr. at 23.) In Exhibit F, the Respondent wrote, "The cardboard boxed [sic] I use to start personal fires in the fire pit when my children come out to visit." (Ex. F.) The Respondent testified that "[s]ome of the dimensional lumber I would burn because I didn't realize burning a 2 by 4 was against the law at the time." (Tr. at 28.) He further testified that "[t]he burn pit was used basically for recreational. It was not used as a commercial burn for, say, shingles or things that shouldn't be burned. I was burning 2 by 4s in it to have wiener roasts with my children. I used the cardboard as starter." (Tr. at 29.)

Inspector Weber testified that Exhibit C depicted a pile of construction or dimensional lumber, such as a two-by-four-by-eight-foot board used in construction. (Tr. at 13.) Inspector Weber said there was no sign that the materials were being protected in any way from rain, the weather generally, or from insects. (Tr. at 14.) Inspector Weber did not observe anything of those materials that indicated they were being preserved for future use, as they were exposed to the elements. (Tr. at 14.)

Inspector Weber testified that Exhibit D primarily depicts wallboard or drywall and dimensional lumber as it appeared on June 6, 2012 on the Respondent's property. (Tr. at 13.) Inspector Weber testified that he did not observe this material to be preserved in any way for future use, nor from the weather, insects, or any other elements that might degrade it. (Tr. at 13.) Inspector Weber testified that the drywall depicted in Exhibit D was mostly broken up and appeared to have been torn out of a building recently; it was not whole, pristine sheets of drywall. (Tr. at 20.) The drywall was not protected from the elements in any way. (Tr. at 20.)

Inspector Weber understood the hardwood flooring in Exhibits A and B, the oriented strand board (OSB) in Exhibit A, the lumber in Exhibit A, C, and D, and the drywall in Exhibit D all to be materials used in construction, remodeling, repair, or the demolition of structures. (Tr. at 17.) OSB and dimensional lumber are wood or wood products. (Tr. at 17.) The dimensional lumber Inspector Weber observed indicated to him that the material was not being preserved or protected for future use, as some of the lumber on the property was moldy and rotting and not under a tarp or other kind of cover. (Tr. at 19.) Inspector Weber did not recall any of the OSB or dimensional lumber he observed on the Respondent's property on June 6, 2012 as being protected from the elements in any way. (Tr. at 19.)

The Respondent testified that Exhibit F was a true and accurate copy of a request that he wrote to Illinois EPA for review of an inspection and submitted to the Pollution Control Board. (Tr. at 26.) The Respondent testified that he wrote the statements in Exhibit F in response to the administrative citation he received in this case. (Tr. at 26.)

II. ARGUMENT

A. THE RESPONDENT CAUSED OR ALLOWED OPEN DUMPING BY CONSOLIDATING REFUSE OR WASTE FROM ONE OR MORE SOURCES AT THE DISPOSAL SITE: HIS OWN PROPERTY, WHICH IS NOT A PERMITTED SANITARY LANDFILL.

In the instant case, Illinois EPA filed an Administrative Citation with this Board and served it upon the Respondent alleging he violated subsections (p)(1), (p)(3), and (p)(7) of Section 21 of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, at the Site on June 6, 2012. Those subsections provide as follows:

§ 21. Prohibited acts. No person shall:

(a) Cause or allow the open dumping of any waste.

...

(p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

(1) litter;

...

(3) open burning;

...

(7) deposition of:

(i) general construction or demolition debris as defined in Section 3.160(a) of this Act; or

(ii) clean construction or demolition debris as defined in Section 3.160(b) of this Act.

415 ILCS 5/21(a), (p)(1), (p)(3), and (p)(7). Section 3.305 of the Act defines “open dumping” as “the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill,” while Section 3.385 defines “refuse” as meaning “waste.” 415

ILCS 5/3.305, 3.385 (West 2012).

At the hearing, Inspector Weber testified that he recorded his observations during his June 6, 2012, inspection through field notes as well as photographs that fairly and accurately depicted the conditions of the Respondent's property on that date. (Tr. at 9-12.) Inspector Weber testified that the four photographs admitted as Exhibits A, B, C, and D depicted the cardboard, dimensional lumber, drywall, hardwood flooring, and plastic he observed upon the Site that day that were not protected or preserved from insects, the weather, or anything else that might degrade their quality. (Tr. at 13-14.)

In particular, Inspector Weber testified that the drywall was mostly broken up and appeared to have been torn out of a building recently, as it was not whole, pristine sheets of drywall, and the hardwood flooring also appeared to have been removed, as there were nails in it and dumped beside the burn pit. (Tr. at 20.) Further, in a letter admitted as Exhibit F, the Respondent, the operator of a construction and remodeling business, wrote after this action was filed that "[t]he drywall that was on the ground was NOT from another job, it was from the partial mobile home that I purchased for storage. I removed the walls from the unit to make more room" and that "the trash has been cleaned up." (Ex. F; Tr. at 26.) The Respondent testified in reference to Exhibit A, which depicts dimensional lumber, vinyl tarps, hardwood flooring, and empty cardboard boxes, that "[W]e had just finished a roof. ... We had just finished a job. That's why there's tarps. We had used the tarps on the roof. The guys pulled up, backed the truck up, dumped everything off and took off." (Tr. at 14, 30.) Finally, Inspector Weber testified that the Respondent's property is not a sanitary landfill permitted by Illinois EPA. (Tr. at 18-19.)

Thus, the preponderance of the evidence admitted in this action proves that the Respondent consolidated refuse or waste from one or more sources at a disposal site—his own

property—that does not fulfill the requirements of a sanitary landfill, thus causing or allowing open dumping. *See* 415 ILCS 5/3.305, 3.385.

B. THE RESPONDENT’S OPEN DUMPING RESULTED IN LITTER.

This Board has relied upon the definition in the Illinois Litter Control Act, 415 ILCS 105/1 *et seq.*, in defining “litter.” *Illinois EPA v. Northern Ill. Serv. Co.*, PCB No. AC 05-40 at 5 & 9 (Sept. 21, 2006). That act defines litter as follows:

(a) “Litter” means any **discarded, used** or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other **packaging construction** material, abandoned vehicle (as defined in the Illinois Vehicle Code), motor vehicle parts, furniture, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, potentially infectious medical waste as defined in Section 3.360 of the Environmental Protection Act, or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

415 ILCS 105/3 (West 2012) (emphasis added). This Board has found that “litter” comprises discarded materials such as cardboard, plastics, lumber, and other miscellaneous waste. *Illinois EPA v. Porter et al.*, PCB No. AC 2012-053 (Sept. 5, 2013).

At hearing, Inspector Weber testified that empty corrugated cardboard boxes labeled “Bruce Hardwood Floors” were located upon the Site. (Tr. at 15, 17.) Nothing indicated to him during his June 6, 2012 inspection that the boxes were being preserved or protected from the elements or from insects or anything else that might degrade their quality. (Tr. at 15-16.) They appeared to Inspector Weber to have been discarded, with no intended future use of them, as they were empty and located within the burn pit. (Tr. at 20.)

Inspector Weber also testified that Exhibit A depicted vinyl tarps made out of plastic, while Exhibit B depicted plastic sheeting observed on the Site during his inspection. (*See* Tr. at

15, 19.) The tarps were not covering up or otherwise protecting any materials. (Tr. at 19-20.)

Inspector Weber testified that Exhibits A, C, and D depicted lumber he observed on the Site during his June 6, 2012 inspection. (Tr. at 13-14.) He observed dimensional lumber, such as a two-by-four-by-eight-foot board used in construction as well as strand board or sheathing. (Tr. at 13, 14). The Respondent himself testified that both dimensional lumber and oriented strand board, or OSB, was present upon his property on June 6, 2012. (Tr. at 30.) None of the lumber Inspector Weber observed appeared protected in any way from the weather or insects or preserved in any way for future use. (Tr. at 13-14, 19.) In fact, Inspector Weber testified that “some of the lumber that was on the property was actually moldy and rotting, and it was not under a tarp or any other kind of cover.” (Tr. at 19.)

Thus, a preponderance of the evidence in this action proves the Respondent’s open dumping resulted in items previously found by this Board to be litter to be dumped at the Site: discarded or used cardboard or packaging construction material; plastics, including vinyl tarps; and lumber, including dimensional lumber and oriented strand board, or OSB, sheathing. Consequently, Illinois EPA has proved the Respondent violated Section 21(p)(1) of the Act by a preponderance of the evidence.

B. THE RESPONDENT’S OPEN DUMPING RESULTED IN OPEN BURNING.

Section 3.300 of the Act defines “open burning” as “the combustion of any matter in the open or in an open dump.” 415 ILCS 5/3.300 (2002).

At hearing, Inspector Weber testified that, during his June 6, 2012 inspection of the Respondent’s property, he observed a burn pit on the Site. (Tr. at 9.) The burn pit was out in the open on the Respondent’s property and not enclosed in any way. (Tr. at 17.) Inspector Weber testified that Exhibit B depicted the burn pit as well as the cardboard boxes in it. (Tr. at 15.) The

boxes located in the burn pit area were empty, but Inspector Weber assumed they had been used to contain hardwood flooring, as the boxes indicated Bruce Hardwood Floors on them. (Tr. at 15.) Inspector Weber testified that Exhibit B depicted a brick-lined area, and that the bricks had ash on them and exhibited some stress from heat. (Tr. at 16.) Partially burned wood within the pit and ashy residue remaining within the brick-lined area indicated to him that it was a burn pit. (Tr. at 16.)

The Respondent himself corroborated that he burned materials on the Site. In questioning Inspector Manker at hearing, the Respondent stated that “[i]n Exhibit B, there is a picture of a burn pit.” (Tr. at 23.) The Respondent stated in part that “[t]his is actually where I have my family come out and we do wiener roasts and stuff, and I use this cardboard as starter for our fires.” (Tr. at 23.) In Exhibit F, the Respondent wrote, “The cardboard boxed [sic] I use to start personal fires in the fire pit when my children come out to visit.” (Ex. F.) The Respondent testified that “[s]ome of the dimensional lumber I would burn because I didn’t realize burning a 2 by 4 was against the law at the time.” (Tr. at 28.) He further testified that “[t]he burn pit was used basically for recreational. It was not used as a commercial burn for, say, shingles or things that shouldn’t be burned. I was burning 2 by 4s in it to have wiener roasts with my children. I used the cardboard as starter.” (Tr. at 29.)

Thus, a preponderance of the evidence in this action proves the Respondent’s open dumping resulted in opening burning through the combustion of cardboard and dimensional lumber in the open upon the Site. Consequently, Illinois EPA has proved the Respondent violated Section 21(p)(3) of the Act by a preponderance of the evidence.

C. THE RESPONDENT'S OPEN DUMPING RESULTED IN THE DEPOSITION OF CLEAN OR GENERAL CONSTRUCTION OR DEMOLITION DEBRIS.

Subsections 3.160(a) and (b) of the Act provide in pertinent part as follows:

(a) "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 or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and corrugated cardboard, piping or metals incidental to any of those materials.

...

(b) "Clean construction or demolition debris" means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities.

...

415 ILCS 5/3.160 (West 2012).

Inspector Weber observed a variety of general construction or demolition debris upon the Site during the course of his June 6, 2012 inspection. (*See, e.g.*, Tr. at 9.)

Inspector Weber testified that he observed and photographed lumber, including wood or wood products such as sheeting or strand board, dimensional lumber, and finished hardwood flooring, as well as vinyl tarps, drywall and corrugated cardboard boxes on the Site. (Tr. at 13-15, 17, 19.) The flooring appeared removed because there were nails in it and dumped beside the burn pit. (Tr. at 15.) Inspector Weber assumed that the empty corrugated cardboard boxes in the burn pit had contained hardwood flooring, as the boxes indicated Bruce Hardwood Floors. (Tr. at 15.) Inspector Weber testified that the drywall depicted in Exhibit D was mostly broken up and appeared to have been torn out of a building recently; it was not whole, pristine sheets of drywall. (Tr. at 20.) Some of dimensional lumber Inspector Weber observed was moldy and rotting and

not under a tarp or other kind of cover. (Tr. at 19.) Inspector Weber testified that the cardboard, lumber, drywall, hardwood flooring, and plastic he observed upon the Site that day that were not protected or preserved from insects, the weather, or anything else that might degrade their quality. (Tr. at 13-14.)

Inspector Weber understood the hardwood flooring in Exhibits A and B, the oriented strand board (OSB) in Exhibit A, the lumber in Exhibit A, C, and D, and the drywall in Exhibit D all to be materials used in construction, remodeling, repair, or the demolition of structures. (Tr. at 17.)

The Respondent himself corroborated much of Inspector Weber's testimony. He acknowledged that he had trusses and two-by-fours that were not covered by a tarp on the Site. (Tr. at 27.) The Respondent testified that the dimensional lumber in Exhibit D "was only there for a short time until I could get a dumpster to dispose of everything." (Tr. at 28.)

The Respondent further testified:

We had just finished a job when [Inspector Weber] came out and observed this. As you can tell from Exhibit A that the height of the grass is not very tall, so the lumber has not been there very long. We had just finished a job. We **dumped** it off. It had not been straightened out and moved to where we take stuff.

...

We had just finished a job. That's why there's tarps. We had used the tarps on the roof. The guys pulled up, backed the truck up, **dumped** everything off and took off.

(Tr. at 29-30 (emphasis added).)

Thus, a preponderance of the evidence in this action proves the Respondent's open dumping resulted in the deposition of general construction or demolition debris upon the Site. Consequently, Illinois EPA has proved the Respondent violated Section 21(p)(7) of the Act by a preponderance of the evidence.

D. THE FACTS UNDERCUT THE RESPONDENT'S ARGUMENT THAT HE WAS UNABLE TO PREVENT THE VIOLATIONS.

The Respondent has asserted that he was unable to prevent the violations due to uncontrollable circumstances, but has failed to identify the circumstances, what made them uncontrollable, and how they caused him to be unable to prevent the violations. (*See* Ex. F; Tr. 1-34.) Further, his own testimony undermines his argument. The Respondent testified that all of the material depicted in Exhibits A, B, C, and D subsequently was placed in a dumpster except for the two-by-six lumber. (Tr. at 31.) This included drywall, buckets of concrete or thinset, tires, cardboard boxes, hardwood flooring, and shingles. (Tr. at 31.) Thus, the Respondent clearly was able to prevent the violations by doing what he said he ultimately did: place the waste in a dumpster for proper disposal.

WHEREFORE, the Complainant, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, prays that this Honorable Board FIND it has proven by a preponderance of the evidence that the Respondent violated subsections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act on June 6, 2012 and on his own property and that the Respondent's argument that he was unable to prevent the violations due to uncontrollable circumstances lacks merit.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Dated: March 24, 2014

Scott B. Sievers
Attorney Registration No. 6275924
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(217) 782-5544

Complainant,

BY:



Scott B. Sievers
Special Assistant Attorney General

Illinois Environmental Protection Agency v. Robert Manker
Pollution Control Board No. AC 13-7

CERTIFICATE OF SERVICE

Scott B. Sievers, Special Assistant Attorney General, herein certifies that he has served a copy of the foregoing **COMPLAINANT'S POST-HEARING BRIEF** upon:

John T. Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Robert Manker
2287 West Street
P.O. Box 23
Literberry, IL 62660

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

by mailing true copies thereof to the addresses referred to above in envelopes duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois, on March 24, 2014.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

Dated: March 24, 2014

Scott B. Sievers
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BY:



Scott B. Sievers
Special Assistant Attorney General