

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

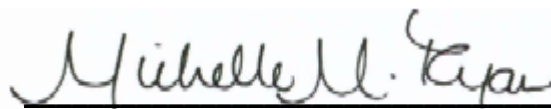
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	AC 13-60
)	
v.)	(IEPA No. 126-13-AC)
)	
JAMES HARRIS,)	
)	
Respondent.)	

NOTICE OF FILING

To: Mark V. Kelly, Esq.
112 West D Street
P.O. Box 5
Alpha, IL 61413-0005

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: September 23, 2014

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

On June 28, 2013, the Illinois Environmental Protection Agency (“Illinois EPA”) issued an administrative citation to James Harris (“Respondent”). The citation alleges violations of Section 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (“Act”) (415 ILCS 5/21(p)(1), (3) & (7) (2012)), in that Respondent caused or allowed open dumping of waste resulting in litter, open burning, and deposition of construction or demolition debris. The violations occurred at a property located at the end of Market Street at Haw Creek, in Knoxville, Knox County, on May 17, 2013. Transcript, p. 7-8; Exhibit 1.

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 (2012). “Refuse” means “waste,” (415 ILCS 5/3.385 (2012)), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2012)). The inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show furniture, white goods, plastics, metals, bricks, concrete, lumber and a pallet, containers, and glass were present at the site. Tr. at 10-21; Exh. 1, pp. 9-18. These materials constitute “discarded material” within the meaning of the term

“waste.” Respondent has owned the site since 1975 (Tr. at 50) and continues to operate a business there (Tr. at 67). Therefore, Respondents caused or allowed open dumping of waste observed on May 17, 2013.

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) (2012)). 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) (2002); see *St. Clair County v. Louis I. Mund* (Aug. 22, 1991), AC 90-64, slip op. at 4, 6. Using this definition, the materials noted above at the site constitute “litter” under Section 21(p)(1) of the Act, and therefore Respondent violated that section.

Respondent’s open dumping of these wastes also resulted in open burning in violation of Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2012)). “Open burning” is defined in Section 3.300 of the Act, 415 ILCS 5/3.300 (2012), as “the combustion of any matter in the open or in an open dump.” As described above, the different areas of waste located on the site meet the definition of “open dumping.” Waste in the wire and metal containers and on the ground at the site included metal, furniture, lumber that was partially burned and charred, and ashes, as evident from the photos. Exh. 1, pp. 9-18; Tr. at 10-20. Respondent admitted at hearing that he needed to reduce the waste in volume in order to pay lower tipping fees at the landfill. See Tr. at 63. The Act prohibits “open dumping of waste in a manner that results in...open burning” 415 ILCS 5/21(p)(3). Because Respondent was responsible for the open dumping, he is also responsible

for the result of open burning. *Illinois EPA v. Alan Smith*, PCB No. AC 01-42 (June 6, 2002), p.

7. Therefore, Respondent violated Section 21(p)(3) of the Act.

Respondent's open dumping of 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) (2012)).

"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) (2012).

Evidence introduced at hearing showed that bricks, concrete, wood, glass, plastics, and piping were present throughout the site. Tr. at 10-13; Exh. 1, pp. 3-17. These materials meet the definition of "construction or demolition debris" for purposes of Section 21(p)(7) of the Act, and therefore Respondent violated that section.

Respondent raises various issues in his defense: lack of evidence, evidence obtained in violation of his constitutional rights, and uncontrollable circumstances. With respect to the alleged lack of evidence, the above discussion demonstrates that sufficient evidence was presented to support the violations cited. Regarding the claim that evidence was obtained by trespassing, Illinois EPA's inspector testified that inspections have been conducted at this site for thirty years and there was no indication in the file or at the site that Respondent had denied Illinois EPA access to this property. Tr. at 47. The inspector had never spoken to Mr. Harris to

obtain express permission to enter, because he did not have his contact information. Tr. at 34, 41-43.

Respondent also alleges that because Knox County Landfill had banned him from using the landfill until his past due fines were paid that he was unable to avoid violating the Act. Respondent testified that it would cost him \$100 to transport the wastes to Kickapoo or Coal Valley. Tr. at 64. However, the documentation submitted by Respondent shows that the ban from Knox County Landfill would have been lifted if Respondent paid \$93.52 (Respondent's Exhibit 1, p. 6), of which he admitted half had been paid. Tr. at 69. Clearly, it would have been cheaper to pay \$47 to Knox County to be allowed to dump there than to pay \$100 to travel to a farther disposal site just once, and the need to burn the wastes to reduce the volume would also be eliminated. Respondent made a business decision to refuse to pay the \$47 to Knox County because he didn't agree that his fee was properly doubled. Therefore, he cannot now claim uncontrollable circumstances prevented him from using their services.

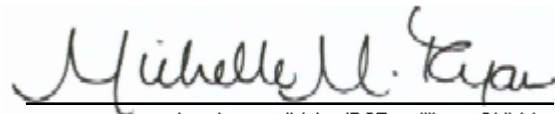
Respondent was explicitly made aware of these problems at the site two years prior, when on October 7, 2011, this Board issued a final order on AC 11-27, finding Respondent in violation of six subsections of 415 ILCS 5/21(p), including (p)(1), (p)(3), and (p)(7). Nevertheless, after cleaning up the site (Tr. at 74), he decided to conduct his business operations in an illegal manner again in 2013. A person can cause or allow a violation of the Act without knowledge or intent. *County of Will v. Utilities Unlimited, Inc.*, et al. (July 24, 1997), AC 97-41, slip op. at 5, citing *People v. Fiorini*, 143 Ill.2d 318, 574 N.E.2d 612 (1991). Therefore, the arguments raised by Respondent do not provide a defense to the proven violations.

The Illinois EPA photographs, inspection report and the testimony show that Respondent allowed open dumping of waste in a manner resulting in litter, open burning, and deposition of

construction or demolition debris in violation of Sections 21(p)(1), (p)(3), and (p)(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 of \$3,000 per violation for a second or subsequent offense.

Respectfully Submitted,

Dated: September 23, 2014



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Michelle M. Ryan
Special Assistant Attorney General

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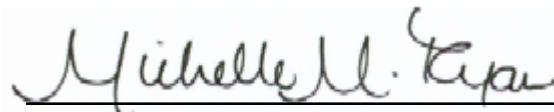
PROOF OF SERVICE

I hereby certify that I did on the 23rd day of September 2014, 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: Mark V. Kelly, Esq.
112 West D Street
P.O. Box 5
Alpha, IL 61413-0005

and an electronic copy of the same foregoing instrument on the same date via electronic filing

To: John Therriault, 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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