

Prevent Illegal Dumping



STATE OF ILLINOIS
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Specific legal citations for authority to enforce against dumping in the state of Illinois

November 2010

Preventing Illegal Dumping at the Local Level

We have all observed illegal dumping – fly dumping of bags of trash, old mattresses or appliances thrown down a stream bank, piles of construction debris or tires left on an empty city lot or even on private property. All acts of illegal dumping affect the quality of life for anyone who lives near it. How can we prevent this criminal activity?

The Illinois Environmental Protection Agency (Illinois EPA), the Office of the Illi-

nois Attorney General (OIAG), the Illinois Departments of Public Health (IDPH), Natural Resources (IDNR), Commerce and Economic Opportunity (DCEO), as well as county, township and municipal enforcement authorities and elected officials are linking strategies to fight these unsightly blights on our communities that may present a threat to public health and the environment as well as a potentially negative impact on area property values.

SECTIONS 21, 44(A, P) AND 55(A) OF THE ENVIRONMENTAL PROTECTION ACT AS WELL AS SECTION 47-5 OF THE ILLINOIS CRIMINAL CODE PROVIDE ENFORCEMENT AUTHORITY AGAINST ILLEGAL DUMPING.

What are the state criminal laws regarding illegal dumping?

Section 21 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/21, prohibits the open dumping of waste. Section 55(a) of the Act, 415 ILCS 5/55 (a), prohibits open dumping of used or waste tires. Section 44(a) of the Act, 415 ILCS 5/44(a) provides that a knowing violation of either Section 21 or Section 55 is a Class A misdemeanor, and Section 44(p)(1)(A) of the Act makes knowingly conducting unpermitted storage,

treatment or disposal of more than 250 cubic feet of waste a Class 4 felony.

In addition, Section 47-5 of the Illinois Criminal Code of 1961, 720 ILCS 5/47-5 provides that dumping garbage, rubbish, refuse or trash on someone else’s property without their consent is a Class B misdemeanor for the first offense, a Class A misdemeanor for the second offense and a Class 4 felony for the third or subsequent offense.



Markham Illegal Dump Site, South Cook County, Illinois, April 2010

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Vegetation growing through waste tires at the Markham Dump.

ILLINOIS EPA HAS AN EXPERIENCED STATE POLICE SPECIAL CRIMINAL INVESTIGATOR WHO CAN OFFER CONSULTING AND TECHNICAL ASSISTANCE TO LOCAL LAW ENFORCEMENT.

Who may enforce the criminal laws against illegal dumping?

Section 44(l) of the Act, 415 ILCS 5/44(l), provides that it *shall be the duty of all* State and local law enforcement officers to enforce the provisions of the Illinois Environmental Protection Act and its regulations. This means that local municipal police officers and patrolmen, county

sheriffs and their deputies, Illinois State Police troopers, Conservation Police Officers, park and forest preserve district police, housing and transit authority police, railroad police, and all other law enforcement officers are required to investigate illegal dumping and when appropriate,

file charges and make arrests. Section 44 Environmental Protection Act criminal violations may be prosecuted in the circuit court by the Office of the Illinois Attorney General or the state's attorney of the county where the violation occurred.

Are there civil laws that also deal with this issue?

Yes. Section 21 of the Act may be enforced through civil actions in the Circuit Courts brought by the OIAG or the State's Attorney of the county where the violation occurred. In addition, the Illinois EPA and certain county officials with delegated authority may issue administrative citations for penalties in actions before the Illinois Pollution Control Board. Remedies available in Circuit Court civil

actions include monetary penalties and injunctive relief, whereas only monetary penalties are available in an Administrative Citation action.

Many counties and municipalities have local ordinances that expressly prohibit open dumps and unpermitted landfills. Most have ordinances that prohibit maintaining a nuisance that can also apply.

How may local law enforcement agencies and prosecutors be assisted by the state?

Illinois EPA has approximately 70 full-time trained and experienced field investigators assigned to its Springfield headquarters and various regional offices located throughout the state. While their primary duty is to conduct compliance inspections, EPA inspectors can also provide technical ad-

vice, assistance and expertise to local officials in an investigation of an illegal open dumping case. In addition, Illinois EPA headquarters has an experienced State Police Special Criminal Investigator on contract who can consult with local law enforcement officers, arrange for techni-

cal assistance, and in an appropriate case, assist with the illegal dumping investigation.

The Attorney General's Environmental Crimes Bureau has prosecuting attorneys who can consult or co-counsel with and provide assistance to the local States Attorney, or, with

the State's Attorney's concurrence, prosecute the case directly. In addition, Illinois EPA legal counsel can provide research and other legal assistance to the local State's Attorney, and, in appropriate cases, function as court appointed special prosecutors.

What advantages are there to prosecuting an illegal dumper under state law as opposed to a local ordinance?

1. Citation Authority. In addition to imposing the statutory obligation on all law enforcement officers to enforce the laws against illegal dumping, Section 44 (l) of the Act expressly authorizes the issuance of citations for such violations. Apprehended violators may thus be immediately charged and subjected to the jurisdiction of the local court in much the same way as serious traffic and conservation violations are handled. The prosecutor may decide to amend the citation or file additional charges.

2. Extended Statute of Limitations. Section 44(p) **felony violations** of the Act are subject to an extended statute of limitations (5 years) pursuant to Criminal Code Section 3-6(f), 720 ILCS 5/3-6(f). Regardless of when the dumping occurred, the statute of limitations does not begin until the offense is discovered by or reported to a state or local agency hav-

ing the authority to investigate violations.

3. Enhanced Penalties. Illegal dumping violations are subject to the standard provisions of the Unified Code of Corrections misdemeanor and felony sentences, fines and restitution (730 ILCS 5). In addition, Section 44(a) misdemeanor violations of Section 21 (open dumping of waste) and Section 55(a) (open dumping of used and waste tires) carry an additional allowable sentence of up to 300 hours of community service work.

Class 4 felony violations of Section 44(p)(1)(a) (unpermitted storage, treatment or disposal of more than 250 cubic feet of waste) is subject to an additional fine of \$25,000 **for each day of violation.** (A second or subsequent violation is a Class 3 felony with an additional fine of \$50,000 per day of violation.)

4. Corporate Accountability.

Per Criminal Code Section 5-4(a)(1), 720 ILCS 5/5-4 (a)(1), if illegal dumping is committed by a corporate employee or agent while acting in the scope of employment, the corporation may also be held criminally responsible without the necessity of proof that the dumper acted in accordance with corporate policy or management direction.

5. Significant Forfeiture Provisions.

Finally, Section 44.1(a) of the Act provides that in addition to all other civil and criminal penalties provided by law, any person convicted of a criminal violation of the Act *shall* forfeit to the State an amount equal to the value of all profits earned, savings realized, and benefits incurred as direct or indirect result of such violation, and any vehicle or conveyance used in the perpetration of such violation. By statute, 30% of all monies forfeited

goes directly to the law enforcement agency that investigated the violation, 30% goes directly to the office of the Attorney General or the State's Attorney (whichever prosecuted the case), and the remainder goes into the State of Illinois Hazardous Waste Fund to be used for ongoing enforcement of environmental protection laws.

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What are the potential health issues related to dumps?

Illegal dumps often present physical hazards with broken glass, sharp metal objects protruding from the ground or on discarded items, and appliances in which children may be trapped.

There may be disposed chemicals that would po-

tentially harm someone who comes into contact with them. Biological hazards may be present, such as used syringes or other discarded medical use items. Mosquitoes that carry encephalitis or West Nile Virus may breed in standing water held by discarded items.



Chemical containers found at the Markham site, April 2010.

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How can local officials and law enforcement prevent illegal dumping?

Local government and law enforcement agencies can encourage citizens to exercise vigilance in identifying and reporting illegal dumping as soon as it is observed. Municipal and county officials may then work with county state's attorney offices, with or without assistance from the state, to prosecute offenders. Publicizing arrests and successful prosecutions helps to deter others who would

dump illegally. **Don't tolerate illegal dumping in your jurisdiction.**

In rural areas, local organizations such as Soil and Water Conservation Districts, Farm Bureau chapters or township supervisors may distribute information to members at regional or local meetings. Likewise, in urban areas, mayors and managers, bar associations, chambers of commerce, libraries and banks may want to distribute information through their organizations' contact lists.

We're on the web— www.epa.state.il.us/land/illegal-dumping/

WHEN ALL LOCAL ORGANIZATIONS AND AGENCIES TAKE OWNERSHIP OF THE ISSUE, MORE RESOURCES ARE FOCUSED ON THE PROBLEM, AND COMMUNITIES CAN COME CLOSER TO ELIMINATING ILLEGAL DUMPING.

Preventing Illegal Dumping Saves Time and Money

Prevention could be the small cost of better informing citizens with public service announcements, flyers and hotline numbers or a few well-placed video cameras in common dumping spots versus many hundreds of thousands of tax dollars to clean up a complex site with illegally dumped tires, chemical waste, landscape waste, construction and demolition debris, and general refuse.

Additional Links:

<http://www.epa.state.il.us/community-relations/fact-sheets/illegal-dumping/index.html>
<http://www.epa.state.il.us/emergency-response/>
<http://www.epa.state.il.us/environmental-justice/>
<http://www.state.il.us/iema/disaster/pdf/EmerNotFactsheet2-04.pdf>
http://www.epa.gov/reg5rcra/wptdiv/illegal_dumping/index.html
<http://www.p2pays.org/ref/01/text/0076916.htm>
<http://www.msa2.saccounty.net/illegaldumping/Pages/Reward.aspx> (Rewards Program)
<http://wastenot.enr.state.nc.us/SWHOME/IllegalDumpinginNC.htm>