

ILLINOIS POLLUTION CONTROL BOARD
November 4, 1993

SANGAMON COUNTY,)	
)	
Complainant,)	
)	
v.)	AC 93-6
)	Dockets A & B
RUTH ANN SHEPPARD and)	(SCDPH-93-AC-2)
STEVE SHEPPARD,)	(Administrative
)	Citation)
)	
Respondents.)	

ROBERT L. SMITH, ASSISTANT STATE'S ATTORNEY, APPEARED ON BEHALF OF SANGAMON COUNTY.

RUTH SHEPPARD AND STEVEN SHEPPARD APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by C. A. Manning):

This matter is before the Board pursuant to a petition for review timely filed by the respondents, Ruth Ann and Steven Sheppard, on February 22, 1993. Respondents have requested review of an administrative citation issued February 1, 1993 by Sangamon County. Sangamon County is vested with the authority to bring such a citation pursuant to Section 31.1 of the Environmental Protection Act (Act) (415 ILCS 5/31.1) and a delegation of authority agreement with the Illinois Environmental Protection Agency statutorily authorized in Section 4(r) of the Act. (415 ILCS 5/4(r).) The Board accepted the petition for review on March 11, 1993 and set the case for hearing. Hearing was held before Hearing Officer Orville S. Kahn on May 13, 1993 in Springfield, Illinois. No post-hearing briefs were filed.

The administrative citation alleges a single violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1)) which carries a statutory civil penalty of \$500 if the Board finds that such a violation occurred. For the reasons set forth below, the Board affirms the finding of Sangamon County that respondents, Ruth Ann and Steve Sheppard, have violated Section 21(p)(1). The Board finds respondents liable for \$500 and any associated hearing costs incurred by Sangamon County or the Board.

FACTS

Ruth Ann Sheppard is the owner of a salvage yard located in the Village of Berlin, Sangamon County, Illinois. (Tr. at 15.) The property is commonly known to the Agency and Sangamon County as "Berlin/R.Sheppard". The site is being operated as an auto salvage yard. (Complaint at 1.) The Agency has designated the facility

with site code no. 1670150004 and the current operator of the facility is Steven Sheppard. (Tr. at 15.)

The instant administrative citation is the second citation issued to Ruth and Steve Sheppard by Sangamon County for open dumping violations at the auto salvage yard. On May 14, 1992, Sangamon County filed the first administrative citation with the Board alleging a single violation of Section 21(p)(1) - open dumping in a manner resulting in litter. The respondents failed to file a petition for review and on June 23, 1992, the Board entered a default order affirming Sangamon County's finding of violation. (Sangamon County v. Ruth Ann Sheppard and Steve Sheppard, (June 23, 1992) AC 92-36, 134 PCB 371. Photographs of the auto salvage yard entered as exhibits during the second administrative citation hearing indicate that a large number of used tires were among the litter. (Def.Exh. #2.)

On December 23, 1992, the Sangamon County Department of Public Health conducted a "re-inspection" of the Sheppard facility to determine if the facility had been cleaned up. (Complaint at 1;Tr. at 14 and 17.) Testifying on behalf of Sangamon County at hearing, Allen Alexander, a Waste Management Specialist for the Sangamon County Department of Public Health, indicated that he observed a "large mound" of approximately 50 to 100 tires, both mounted and unmounted on tire rims, on-site. (Tr. at 19.)

Alexander testified that in his opinion the respondents had caused open dumping resulting in litter because "of the way the tires were placed on the property." (Tr. at 21.) He further stated the tires "did not appear to be stored for any use. They were just mounded together in a pile." (Id.) Also, the tire pile was out in the open where it could be rained or snowed on, and there was no coverage such as tarp. (Id.)

Jerry Ferguson, also a Waste Management Specialist with the Sangamon County of Public Health, accompanied Alexander to the site and participated in the inspection. His testimony was substantially similar to Alexander's: "the tires were open-dumped on the property. They were not covered in any way or properly stored." (Tr. at 31.)

As a result of the re-inspection, Sangamon County issued the second administrative citation which is the subject of this opinion and order. The inspection report regarding the December 13, 1992 Sangamon County site visit, entitled "Open Dump Inspection Report," indicates that Alexander and Ferguson observed violations of

Section 21(p)(1) of the Act - causing or allowing litter.¹

Steve Sheppard offered no testimony during hearing, nor was he called to testify by Sangamon County; however, Ruth Ann Sheppard offered testimony explaining the origin of the tire mound. She testified that as a result of the first administration citation order, Steve Sheppard spent \$1700 hauling tires to ADM in Decatur. (Tr. at 11.) The tire mound was intended "to be left there until he [Steve Sheppard] had a full load to go to ADM." (Id. and Tr. at 39.) Ruth Ann Sheppard explained the tires are hauled away from the auto salvage yard by ADM; however, ADM contacts Steve Sheppard to let him know when ADM is "ready for a load [of tires]." (Tr. at 41.) It was also her testimony that other tire pick-up companies, such as those in Peoria or Chicago, are too expensive to use. The salvage yard has to pay the driver, the truck, and the company to take the tires. (Id.)

Sheppard also testified there were approximately 73 tires in the pile and that only 10 to 12 were unmounted. (Tr. at 51.) The unmounted tires were dumped on the property from gas stations (Tr. at 41) and by people who drive up on the road and dump on her property (Tr. at 52). Sheppard testified that the source of the tires at the salvage yard was the salvage yard business itself (Tr. at 39) and Steven Sheppard's body shop (Tr. at 39) located down the street from the salvage yard (Tr. at 45). She thought the tires would be all right if they were mounted and that they were originally in "trouble" because Steven had taken the tires off their rims. (Tr. at 39.)

She described the buildings on the property as not being big enough to store tires waiting to be hauled away (Tr. at 39 and 45), nor was there space for a building on the premises (Tr. at 46). She did not believe it would be practicable to take the time to store the large number of tires in a building in any event (Tr. at 45). She also testified that it would not be cost-effective to put up a gate to keep dumpers from dumping "unrimmed" tires on her property - that they had tried to do so once and the effort failed. (Tr. at 43.)

¹ Additionally, the county inspector noted violations of the following sections of the Act or regulations: Section 807.201 and 807.202 of the Board's regulations - causing or allowing the development and/or operation of a solid waste management site without a permit issued by the Agency; Section 21(a) of the Act - causing or allowing the open dumping of any waste; Section 21(d) of the Act - conducting any waste-storage, waste-treatment, or waste-disposal operation without a permit granted by the Agency; and Section 55(a) (general violations section of the Used Tire Act 415 ILCS 5/55 et. seq.). None of these alleged violations are before us in this proceeding, however.

Ruth Ann Sheppard further testified she understood that Sangamon County does not want tires "laying around," (Tr. at 40) but Steve Sheppard was in the salvage business and there would always be tires at an auto salvage yard (*Id.*). Sheppard also testified that her son had moved the business to an entirely new location and on the date of inspection, December 23, 1992, the property was no longer being used as a salvage yard. The premises were completely cleaned up except for the tire mound (Tr. at 41, 47, 52, 65-66). It was Ruth Ann Sheppard's belief that even if the Sheppards paid the \$500 penalty for the litter violation, it would have no effect, because the tire mound is gone and the auto salvage yard is no longer there.

DISCUSSION

The Act establishes that, in order to seek enforcement by way of the administrative citation process for violations of Section 21(p), the Agency must establish that the person caused or allowed open dumping and must also prove that the open dumping resulted in litter, open burning or other specified conduct at the dump site. If the record demonstrates that such violation occurred then the Board must adopt an order finding a violation and impose the specified penalty. The only mitigation of a violation is if "...the person appealing the citation has shown that the violation resulted from uncontrollable circumstances" in which case the Board shall adopt an ordering which imposes no penalty. (415 ILCS 5/31.1(d)(2) (1992).)

The administrative citation issued against Sheppard alleges that Section 21(p) subsection (1) of the Act was violated. Section 21(p)(1) provides that no person shall in violation of Section 21(a) of the Act:

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;

Section 21(a) of the Act sets forth a general prohibition against open dumping by providing that "[n]o person shall cause or allow the open dumping of any waste".

Section 3.24 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". (415 ILCS 5/3.24 (1992).) Section 3.31 of the Act defines "refuse" as "waste". (415 ILCS 5/3.31 (1992).) Section 3.53 defines "waste" as, *inter alia*, "garbage...or other discarded material, resulting from industrial, commercial, mining and agricultural operations...." (415 ILCS 5/3.53 (1992).)

In St. Clair County v. Louis Mund (August 22, 1991), AC 90-64, 125 PCB 381, the Board adopted the definition of litter contained 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...abandoned vehicle...or anything else of an unsightly or unsanitary nature which has been discarded, abandoned or otherwise disposed of improperly. (Ill. Rev. Stat. 1990 supp., ch. 38, par. 86.3.) [415 ILCS 105/3].

In five previous Board opinions finding violations of Section 21(p)(1), used tires were found to be litter²: IEPA v. Sickles, (September 17, 1992) AC 92-47, 136 PCB 83; IEPA v. Sickles, (July 30, 1992) AC 92-47, 135 PCB 223; IEPA v. Hillebrenner, (May 21, 1992) AC 92-16, 133 PCB 559; IEPA v. Loveless, (August 13, 1992) AC 91-31, 135 PCB 367; and IEPA v. Springman, (May 9, 1991) AC 90-79, 122 PCB 147. In Hillebrenner, the litter included 500 tires in a ravine on rural property. (Hillebrenner, 133 PCB at 559.) In Springman, a portion of the litter was an uncovered tire pile. (Springman, 125 PCB at 151.) In Loveless, Hammond, and Sickles, used tires were merely among the litter found "open-dumped" on the site during inspection. (Loveless, 135 PCB at 371; Hammond, Slip Op. at 2; and Sickles, 135 PCB at 223 and 136 PCB at 83.)

Further, an auto salvage yard has been previously cited for a violation of Section 21(p)(1). In Hammond infra, the Board affirmed the Agency's issuance of an administrative citation for "open dumping" of used tires and other various types of waste at a junkyard. The tires at the site were rimmed and unrimmed, were located without cover in haphazard piles around the property. (See generally, Hammond, Slip Op. at 2.)

Causing or Allowing Litter

Mrs. Sheppard admits that she is the owner of the property inspected by Sangamon County. She further admits that the tires were on her property at the time of the inspection. According to Mrs. Sheppard's testimony, her son operates a car salvage yard as well as a garage and body shop down the street from the site. These activities generate the tires. (Tr. at 45.) Mrs. Sheppard testified that there were no fences or gates around the property to restrict access. According to the inspector Alexander, he believed open dumping had occurred "because of the way the tires were placed on the property." (Tr. at 21.) Mr. Alexander also stated that the

²Section 21(p)(1) was formerly codified as Section 21(q)(1) and therefore a number of the cases are brought under Section 21(q)(1).

tires were "just mounded together in a pile". (Tr. at 21.) Further, Mrs. Sheppard testified that "he [her son Steve] has to wait for them [ADM] to call him" before the tires are picked up. (Tr. at 45.) Thus, although Mrs. Sheppard claims that the tires are being stored on the property, there is no regular routine or schedule for the tires to be picked up. Therefore, after reviewing the evidence, the Board finds that open dumping of waste occurred on the property resulting in litter in violation of Section 21(p)(1) of the Act.

Mrs. Sheppard also points out that the litter had been cleaned up from the site and numerous tires had been removed from the property after the first administrative citation was issued. Also, the tires which were the subject of this citation have been removed. However, the Board has previously held that removal of the litter after the issuance of an administrative citation does not restrain the Board from a finding of violation. The Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative or voluntarily cleans up the site. (IEPA v. Jack Wright (August 30, 1990), AC 89-227, 114 PCB 863.) Clean-up of the site is not a mitigating factor under the administrative citation program. (IEPA v. Dennis Grubaugh (October 16, 1992), AC 92-3, 136 PCB 425.)

PENALTY

Penalties in administrative citation actions are prescribed by Section 42(b)(4) of the Act which states:

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) of Section 21 of this Act shall pay a civil penalty of \$500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency. Such penalties shall be made payable to the Environmental Protection Trust Fund to be used in accordance with the provisions of "An Act creating the Environmental Protection Trust Fund", approved September 22, 1979, as amended; (415 ILCS 5/42(b)(4) (1992).)

Respondent will therefore be ordered to pay a civil penalty of \$500 based on the violation as found. Further, pursuant to Section 42(b)(4) of the Act, respondents are also required to pay hearing costs incurred by the Board and the Sangamon County. The Clerk of the Board and Sangamon County will therefore be ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon respondents. Upon receipt and subsequent to appropriate review, the Board will issue a separate final order in which the issue of costs is addressed. Additionally, Docket B will be opened to treat all matters pertinent to the issue of costs.

For the reasons stated in the above opinion, the Board finds that the respondents, Ruth Ann Sheppard and Steve Sheppard, violated Section 21(p)(1) of the Act. Accordingly, the respondents are liable for a penalty of five hundred dollars (\$500.00).

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. Respondents, Ruth Ann Sheppard and Steve Sheppard are hereby found to have violated 415 ILCS 5/21(p)(1) (1992).
2. Within 30 days of this order, the Respondents shall pay the sum of five hundred dollars (\$500.00) by check or money order to the Illinois Environmental Trust Fund. The payment shall be mailed to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Il. 62706

Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003 (1992)), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

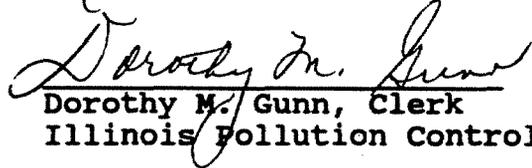
3. Docket A in this matter is hereby closed.
4. Within 30 days of this order, the Sangamon County shall file a statement of its hearing costs, supported by affidavit, with the Board and with service on the respondents. Within the same 30 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service upon the respondents. Such filings shall be entered in Docket B of this matter.
5. Respondents are hereby given leave to file a reply/objection to the costs submitted pursuant to paragraph 4 of this order within 45 days of this order.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41

(1992).) provides for appeal of final orders of the Board within 35 days. The rules of the Supreme Court of Illinois establish filing requirements. See also, 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 4th day of November, 1993, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board