

ILLINOIS POLLUTION CONTROL BOARD

March 16, 2006

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 04-75
	)	(IEPA No. 221-04-AC)
CHARLES L. PARKER,	)	(Administrative Citation)
	)	
Respondent.	)	

MICHELLE M. RYAN APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

INTERIM OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On May 5, 2004, the Illinois Environmental Protection Agency (Agency) filed an administrative citation against Charles L. Parker (respondent). The citation alleges that the respondent violated Section 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (Act), 415 ILCS 5/1 *et seq.* (2004). For the reasons below, the Board finds that the respondent violated sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), 21(p)(3), and 21(p)(7) (2004)), by causing or allowing the open dumping of waste resulting in litter, open burning, and the deposition of general construction or demolition debris or clean construction or demolition debris, as alleged by the Agency. The Board assesses the statutory penalty of \$4,500 as well as costs as described below.

In this interim opinion and order, the Board first describes the administrative citation process and the procedural history and facts of this case. The Board then sets forth the pertinent provisions of the Act. Next, the Board analyzes the issues and makes its conclusions of law regarding the alleged violations before addressing the issue of penalties.

**ADMINISTRATIVE CITATION PROCESS**

Section 31.1 of the Act authorizes the Agency and units of local government to enforce specified provisions of the Act through an administrative citation. 415 ILCS 5/31.1 (2004). Part 108 of the Board's procedural rules provides the process of a citation before the Board. 35 Ill. Adm. Code 108.100 *et seq.* Unlike other environmental enforcement proceedings in which the Act prescribes a maximum penalty, *see, e.g.*, 415 ILCS 5/42(b)(1) (2004), the Act sets specific penalties for administrative citations. 415 ILCS 5/42(4, 4-5) (2004). In cases such as this, the Board has no authority to consider mitigating or aggravating factors when determining penalty amounts. *Id.* However, "if the Board finds that the person appealing the [administrative] citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a

final order which makes no finding of violation and which imposes no penalty.” 415 ILCS 5/31.1(d)(2) (2004).

### **PROCEDURAL HISTORY**

On May 5, 2004, the Agency filed with the Board an administrative citation (AC) alleging violations of the Act at a site in rural Logan County designated with Site Code No. 1078055001, known to the Agency as “Parker 1,” and described as follows:

All that part of the North Half of the Southwest Quarter of Section 32, Township 20 North, Range 2 West of the 3rd P.M., Logan County, Illinois, lying south of the south line of the right of way of the Champaign-Havana Branch of the Illinois Central Railroad Company and east of the southeasterly line of the right of way of the Peoria-Evansville Branch of the said railroad company and west of the northwesterly line of the right of way of the wye track connecting the said Champaign-Havana Branch (Havana District) and the Peoria-Evansville Branch (Peoria District) of said railroad company. AC at 1.

The citation, which was served on the respondent on May 22, 2005, alleges that the respondent violated section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2004)) by causing or allowing the open dumping of waste resulting in litter. AC at 2. The citation further alleges that the respondent violated section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2004)) by causing or allowing the open dumping of waste resulting in open burning. AC at 2. The citation further alleges that the respondent violated section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2004)) by causing or allowing the open dumping of waste resulting in the deposition of general construction or demolition debris or clean construction or demolition debris. AC at 2.

On June 23, 2004, the respondent filed a petition for review of the citation (Pet.). The Board accepted the petition for hearing in an order dated July 8, 2004.

On November 30, 2005, Board Hearing Officer Carol Webb (née Sudman) conducted a hearing (Tr.) at the Logan County Courthouse in Lincoln. At the hearing, Special Assistant Attorney General Michelle M. Ryan appeared and participated on behalf of the complainant. Mr. Parker was not present for the hearing. One witness testified during the hearing: Mr. William E. Zierath of the Agency on behalf of the complainant. Based on her legal judgment, experience, and observations at hearing, Hearing Officer Webb found that the witness testified credibly in this matter. Tr. at 12. On January 12, 2006, the complainant filed its post-hearing brief (Pet. Brief) in this matter.

### **FACTS**

On November 10, 2003, Agency Inspector William E. Zierath inspected the site designated with Site Code No. 1078055001 and owned by Charles L. Parker. AC at 9; Tr. at 6. The site is located on the east side of Lincoln south of the Lincoln Christian College. Tr. at 6. In January 2004, an Administrative Warning Citation Notice (ACWN) was sent to Charles Parker as the owner of the site. AC at 9. The ACWN required a written response within 15 days. *Id.*

The ACWN also required removal of materials from the site by March 15, 2004. *Id.* A March 25, 2004 inspection sought to determine whether materials observed during the earlier inspection had been removed from the site. *Id.* At the time of the March 25, 2004 inspection, the Agency had received no response to the ACWN from Charles Parker. *Id.*

The November 10, 2003 inspection revealed “several large piles of landscape waste at the site.” AC at 9. During the March 25, 2004 inspection, Zierath observed that landscape waste present in November had been burned and that some of it was still burning at the time of the second inspection. *Id.*; see AC at 12, 14-17 (showing burn area in photographs 2, 6, 7, 8, and 10). Zierath observed a small endloader or backhoe near the burn area. AC at 9; see AC at 16 (showing endloader in photograph 10). He also observed tire tracks and scrape marks indicating that materials had been moved to the burn area. AC at 9; see AC at 15-17 (showing tracks in photographs 8, 10, and 12). Zierath looked on the site for materials such as tree stumps or other indications that the burned material originated on the site. AC at 9. He did not locate any stumps or see disturbed soil consistent with stump removal. *Id.*; Tr. at 8.

In addition to landscape materials, Zierath observed that the burn pile included pieces of metal including mattress springs. AC at 10; see AC at 14-15 (photographs 6 and 7). The burn pile also included “a few pieces of demolition waste.” AC at 10; Tr. at 8; see AC at 17 (photograph 11). To the south of the burn pile, Zierath observed a sofa, chair, and old carpeting. AC at 10; Tr. at 9; AC at 11 (map of site); see AC at 16 (photograph 9). Near a storage building, Zierath saw sixteen stacked used tires, at least 2 of which remained on rims. AC at 10; AC at 11 (map of site); see AC at 19 (photograph 15). Zierath also observed that water had accumulated in the off-rim tires. AC at 10.

Zierath observed that materials present during his initial November 10, 2003 inspection remained on the site at the time of his March 24, 2004 re-inspection. AC at 10. Materials observed included demolition waste (AC at 10; Tr. at 7-10; see AC at 12-19 (photographs 1-3, 5, 8-10, 12, 14, and 16)); abandoned vehicles (AC at 10; AC at 11 (map of site); Tr. at 7-10; see AC at 12-14, 16, and 18 (photographs 1-6, 9-10, and 13)); white goods (AC at 10; AC at 11 (map of site); Tr. at 7-10; see AC at 14, 16 (photographs 5 and 10)); used air conditioners (AC at 10; Tr. at 7-10; see AC at 12, 18 (photographs 1, 14)); other appliances (Tr. at 7; see AC at 12 (photograph 1)); and 55-gallon drums (AC at 10; Tr. at 7-10; AC at 11 (map of site); see AC at 13 (photograph 4)).

### **STATUTORY BACKGROUND**

Section 3.160 of the Act defines “general construction or demolition debris” as:

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.

General construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any general construction or demolition debris or other waste.

\* \* \*

415 ILCS 5/3.160(a) (2004).

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 landfill.” 415 ILCS 5/3.305 (2004).

Section 3.385 of the Act defines “refuse” as “waste.” 415 ILCS 5/3.385 (2004).

Section 3.535 of the Act defines “waste” as:

any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility 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, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto. 415 ILCS 5/3.535 (2004).

Section 21(a) of the Act provides that “[n]o person shall [c]ause or allow the open dumping of any waste.” 415 ILCS 5/21(a) (2004).

Section 21(p) of the Act provides that no person shall, “in violation of subsection (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(p) (2004).

Section 31.1(d)(2) of the Act provides that:

“[I]f the Board finds that the person appealing the [administrative] citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.” 415 ILCS 5/31.1(d)(2) (2004).

Section 42(b)(4-5) of the Act provides that:

“In an administrative citation 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 \$1,500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency . . . .” 415 ILCS 5/42(b)(4-5) (2004).

### **ISSUES AND ANALYSIS**

Because he did not appear for hearing and did not file a brief in this case, the respondent’s petition for review is the only item in the record presented in defense of the violations alleged in the administrative citation. Specifically, that petition states that he “didn’t cause the violations” and that “[t]he violations were due to uncontrollable circumstances.” Pet. at 1. “Uncontrollable circumstances” is the only statutory defense to an administrative citation. *See IEPA v. John Groff*, AC 05-20 (Oct. 20, 2005). The only other available defense is that the violations did not occur. *See IEPA v. Omer Thomas*, AC 89-215 (Jan. 23, 1992). The Board finds that this petition is insufficient evidence with which to support a finding for the respondent.

The uncontroverted evidence at hearing shows that items including demolition materials, abandoned vehicles, tires, furniture, wood, white goods, air conditioners and other appliances, and 55-gallon drums had been accumulated at this site. Because these items constitute “discarded material” within the meaning of the terms “refuse” and “waste” (415 ILCS 5/3.385, 3.535 (2004), and because the respondent owns this site (Tr. at 6), the Board finds that the respondent has caused or allowed the open dumping of the waste observed by the Agency on March 25, 2004. *See* 415 ILCS 5/3.305 (2004).

Furthermore, the evidence shows that these items fall within the statutory definition of “litter” relied upon by the Board. *See* 415 ILCS 105/3(a) (2004). The evidence also reveals the presence of burned waste and a smoldering burn pile at the site. Tr. at 8-9; AC at 9-10, 12, 14-17. Finally, the evidence also shows that the items included metal materials from the renovation of a gas station. Tr. at 10. Consequently, the Board finds that the alleged violations did occur and the respondent has violated section 21(p)(1), 21(p)(3), and 21(p)(7) of the Act.

## **CONCLUSION**

After reviewing the record in this case and the relevant portions of the Act, the Board finds that the respondent caused or allowed the open dumping of waste resulting in litter, open burning, and the deposition of general construction or demolition debris or clean construction or demolition debris. The Board further finds that the respondent has not persuasively argued the statutory defense of “uncontrollable circumstances.” While the Board in rare cases will dismiss an administrative citation without finding uncontrollable circumstances, *see IEPA v. Jack Wright*, AC 89-227, slip op. at 14 (Aug. 30, 1990), the record in this case does not warrant that result.

Consequently, the Board finds that the respondent has violated section 21(p)(1), 21(p)(3), and 21(p)(7) of the Act. 415 ILCS 5/21(p)(1), 21(p)(3), and (p)(7) (2004). In its final order, the Board will order him to pay a civil penalty of \$4,500. As set forth below, the Board directs the Clerk and the Agency to document hearing costs and serve them upon the respondent, after which the Board will issue a final order.

This interim opinion and order constitutes the Board’s findings of fact and conclusions of law.

## **PENALTY**

In an administrative citation proceeding, any person found to have violated subsection (p) of section 21 of the Act must pay a penalty of \$1,500 for each violation of each provision of the section and \$3,000 for each violation of each provision that is a second or subsequent offense, plus any hearing costs incurred by the Board and the Agency. 415 ILCS 5/42(b)(4-5) (2004). Because the Board finds that Mr. Parker has violated three subsections of section 21 and that these are first offenses, in its final order the Board will order Mr. Parker to pay a civil penalty of \$4,500 plus costs.

## **ORDER**

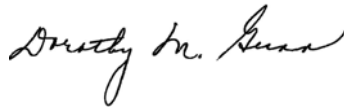
1. The Board finds that Charles L. Parker violated sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act. 415 ILCS 5/21(p)(1), 21(p)(3), and 21(p)(7) (2004).
2. The Illinois Environmental Protection Agency must file a statement of its hearing costs within 14 days of this order, on or about March 30, 2006. The statement must be supported by affidavit and served upon Mr. Parker. Within the same 14-day period, the Clerk of the Illinois Pollution Control Board must also file and serve upon Mr. Parker a statement of the Board’s hearing costs supported by affidavit.
3. Respondent may file any objections to those statements within 21 days of service of those statements, by a date on or about April 20, 2006. 35 Ill.

Adm. Code 108.506(a). The Agency may then file a reply to the respondent's response within 14 days of service of that response. 35 Ill. Adm. Code 108.506(b).

4. The Board will then issue a final order assessing a statutory penalty of \$4,500 for the violations and awarding appropriate hearing costs. 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on March 16, 2006, by a vote of 4-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board