

ILLINOIS POLLUTION CONTROL BOARD
November 5, 2015

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 15-25
)	(IEPA No. 424-14-AC)
MARK E. BOSECKER,)	(Administrative Citation)
)	
Respondent.)	

MICHELLE M. RYAN, ATTORNEY, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY; AND

MARK E. BOSECKER APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by J.A. Burke):

The Illinois Environmental Protection Agency (Agency) filed an administrative citation against Mark E. Bosecker (respondent). *See* 415 ILCS 5/31.1(c) (2014); 24 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent's property located at 7053 East 350 Road in rural Mt. Carmel, Wabash County. The property is known to the Agency as the "Mt. Carmel/Bosecker, Mark E." site and is designated with Site Code No. 1858530001.

The Board's hearing officer held a hearing on September 2, 2015, in Mt. Carmel, and the transcript (Tr.) was received on September 9, 2015. The Agency filed its post-hearing brief on September 24, 2015 (Agency Br.). Respondent did not file a post-hearing brief. For the reasons below, the Board finds that respondent violated Sections 21(p)(1) and 55(k)(1) of the Illinois Environmental Protection Act (Act). 415 ILCS 5/21(p)(1), 55(k)(1) (2014). The Board directs the Agency and the Clerk of the Board to file hearing cost documentation by December 7, 2015. Respondent may respond to any requests for costs by January 6, 2016.

ADMINISTRATIVE CITATION

The Agency filed this administrative citation (AC) on December 30, 2014, alleging that respondent violated Sections 21(p)(1) and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), 55(k)(1) (2014)) by causing or allowing (1) open dumping of waste resulting in litter, and (2) water to accumulate in used or waste tires.

Specifically, at a December 8, 2014 inspection, an Agency inspector observed approximately thirty vehicles "that did not appear to be in use, useable in their current condition, or protected for future use." Open Dump Inspection Checklist (Report) (attached to AC) at 3. The inspector considered 24 vehicles to be waste "due to overgrowth in vegetation, age,

condition and/or not having valid license plates.” *Id.* The inspector stated that six of the vehicles were not considered waste. *Id.* Further, the inspector saw over 150 tires that he considered used or waste tires. *Id.* A number of tires were scattered in small piles, and others were stored in a barn. *Id.* Some tires were off-rim and had accumulated water, while others had accumulated leaves. *Id.* The inspector also observed small piles of construction or demolition debris including scrap lumber and windows, as well as scrap metal, vehicle parts, rusted metal drums and “other unidentifiable materials.” *Id.* at 4.

The Agency inspector stated that the inspection was performed as a follow-up to a previous inspection conducted on January 30, 2012, and that similar conditions had been noted at the site during each onsite visit since an initial inspection that took place in April 2007. Report at 4.

BOARD DISCUSSION

Litter

The Agency alleges that respondent violated Section 21(p)(1) of the Act by causing or allowing open dumping of waste resulting in litter. To prove a violation of Section 21(p) of the Act, the Agency must first prove that respondent violated Section 21(a) of the Act by causing or allowing open dumping of waste. *See IEPA v. Ray Newingham*, AC 11-13, slip op. at 4 (Feb. 16, 2012). “Waste” is defined as “any garbage . . . or other discarded material.” 415 ILCS 5/3.535 (2014).

The Agency inspector details various items in the report and accompanying photographs. The photographs include items such as window panels and boards stacked on the ground (photograph 7), a car axle (photograph 16), scrap metal items (photograph 29), metal drums (photograph 32), and various vehicles with vegetation growing over them (photographs 26, 30). The Agency contends that these items are “discarded material” within the meaning of the term “waste,” and that respondent’s causing or allowing the open dumping of these wastes resulted in “litter” under Section 21(p)(1) of the Act. Agency Br. at 2. The Board has previously found that such visual evidence is proof of a lack of intent to use the materials in the future. *IEPA v. Stutsman*, AC 05-70, slip op. at 7 (Sept. 21, 2006). Respondent acknowledged that a pile of items shown in photograph 29 was garbage (Tr. at 17), and that a number of the cars and tires have since been removed from the property (Tr. at 15-17). Tr. at 17. The Board finds that these materials constitute “garbage . . . or other discarded material,” and are therefore “waste.”

“Open dumping” is “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 (2014). “Refuse” means “waste.” 415 ILCS 5/3.385 (2014). Respondent did not contend that the property was a permitted sanitary landfill. Having found that the material is waste, the Board concludes that the waste has been open-dumped at respondent’s property.

Under Section 21(p)(1) of the Act, no person shall cause or allow the open dumping of any waste in a manner resulting in litter. 415 ILCS 5/21(p)(1) (2014). The Act does not define “litter,” and the Board instead looks to the Litter Control Act which defines “litter” as

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) (2014).

As stated above, the property contains various discarded items that are waste. These items constitute “litter” as defined at 415 ILCS 105/3(a) (2014). The Board therefore finds that respondent caused or allowed the open dumping of waste in a manner resulting in litter, in violation of Section 21(p)(1) of the Act.

Respondent, in his petition for review, stated that the violations were a result of uncontrollable circumstances. At hearing, respondent stated that a number of the items had been removed and that others were scheduled to be removed. Tr. at 15-17. Respondent further stated that he “was told that I needed to do all of that by September and that’s pretty much what I did.” *Id.* at 17.

Cleanups performed by a respondent generally are not a defense to the alleged violations. *See IEPA v. Wright*, AC 89-227, slip op. at 7 (Aug. 30, 1990) (“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.”). Respondent acknowledged that the cleanup he described at hearing happened after the December 8, 2014 inspection. Tr. at 18. The Board finds that the alleged violations were not the result of uncontrollable circumstances, and that respondent violated Section 21(p)(1) of the Act. 415 ILCS 5/21(p)(1) (2014).

Water in Used or Waste Tires

The Agency also alleges that respondent violated Section 55(k)(1) of the Act. Section 55(k)(1) states that no person shall cause or allow water to accumulate in used or waste tires. 415 ILCS 5/55(k)(1) (2014). This rule does not apply to a residential home where twelve or less tires are kept. *Id.* Section 54.13 of the Act defines “used tire” as “a worn, damaged, or defective tire that is not mounted on a vehicle.” 415 ILCS 5/54.13 (2014). Section 54.16 defines a “waste tire” as a “used tire that has been disposed of.” 415 ILCS 5/54.16 (2014).

The photographs attached to the Agency inspector’s report show various piles of off-rim tires (photographs 18, 19) some that contained water (photographs 23 and 35). The inspector observed “more than 150 used / waste tires” at the site. Report at 3. A number of tires were placed randomly on the ground, without any covering, and appeared worn. *See, e.g.*, photograph 20, 33. Respondent stated at hearing that many of these tires have been removed from the site. Tr. at 16-17.

The Board finds that the tires described above are used or waste tires as defined under the Act. The tires were also left in a manner that allowed them to accumulate water. The exception to Section 55(k)(1) does not apply as the property contained more than twelve tires. The Board therefore finds that respondent caused or allowed water to accumulate in used or waste tires, in violation of Section 55(k)(1) of the Act.

Civil Penalty and Hearing Costs

The Board finds that respondent violated Sections 21(p)(1) and 55(k)(1) of the Act, and that the violations were not a result of uncontrollable circumstances. The civil penalty in an administrative citation for a violation of Section 21(p)(1) or 55(k)(1) is \$1,500 for a person's first violation, for each section that is violated. Respondent is therefore subject to a total penalty of \$3,000.

If the Agency proves a violation at hearing, a respondent will also be held liable for hearing costs of the Board and the Agency. 415 ILCS 5/42(b)(4-5) (2014). The Board directs the Agency and the Clerk of the Board to file hearing cost documentation, to which respondent may respond. 35 Ill. Adm. Code 108.506(a). After the time periods for the filings on hearing costs have run, the Board will issue a final opinion and order imposing civil penalties and assessing appropriate hearing costs.

CONCLUSION

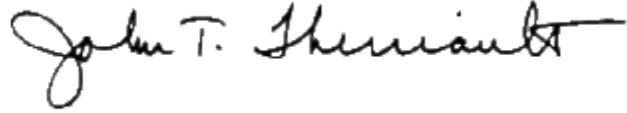
After reviewing the record in this case, the Board finds that Mark E. Bosecker caused or allowed the open dumping of waste in a manner resulting in litter, in violation of Section 21(p)(1) of the Act. 415 ILCS 5/21(p)(1) (2014). The Board also finds that respondent caused or allowed water to accumulate in used or waste tires, in violation of Section 55(k)(1) of the Act. 415 ILCS 5/55(k)(1) (2014). The Board directs the Agency and the Clerk of the Board to file hearing costs by December 7, 2015. Respondent may respond to any requests for costs by January 6, 2016.

ORDER

1. The Board finds that Mark E. Bosecker (Respondent) violated Sections 21(p)(1) and 55(k)(1) of the Act. 415 ILCS 5/21(p)(1), 55(k)(1) (2014).
2. The Illinois Environmental Protection Agency must file a statement of hearing costs by Monday, December 7, 2015, which is the first business day after the 30th day of this order. 35 Ill. Adm. Code 108.502. Within the same 30-day period, the Clerk of the Illinois Pollution Control Board must also file and serve upon respondent a statement of the Board's hearing costs supported by affidavit. 35 Ill. Adm. Code 108.504, 108.506(a).
3. Respondent may file any objections to these statements by January 6, 2016. 35 Ill. Adm. Code 108.506(a).
4. The Board will then issue a final order assessing a statutory penalty of \$3,000 for the violations and awarding appropriate hearing costs. 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 5, 2015 by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board