

ILLINOIS POLLUTION CONTROL BOARD
November 19, 2015

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 15-26
) (IEPA No. 434-14-ac)
JOSEPH DEROSA & GWEN A. GRIFFITTS,) (Administrative Citation)
and DEROSA AUTOBODY,)
)
Respondents.)

SCOTT B. SIEVERS, ATTORNEY, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY; AND

JOSEPH DEROSA AND GWEN A. GRIFFITTS APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by G.M. Keenan):

The Illinois Environmental Protection Agency (Agency) filed an administrative citation against Joseph DeRosa, Gwen A. Griffitts, and DeRosa Autobody (collectively, respondents). See 415 ILCS 5/31.1(c) (2014); 24 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondents' property located at 2235 E. Ash Street, Springfield, Sangamon County. The property is known to the Agency as the "Springfield/DeRosa Autobody" site and is designated with Site Code No. 1671209146.

The Board's hearing officer held a hearing on September 9, 2015 in Springfield and the transcript (Tr.) was received on September 15, 2015. The Agency filed a post-hearing brief on October 14, 2015 (Agency Br.). The respondents 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 21, 2015. Respondents may respond to any request for costs by January 20, 2016.

ADMINISTRATIVE CITATION

The Agency filed this administrative citation (AC) on January 2, 2015, alleging that respondents violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2014), by causing or allowing the open dumping of waste in a manner resulting in litter. The Agency also alleged that respondents violated Section 55(k)(1) of the Act, 415 ILCS 5/55(k)(1) (2014), by causing or allowing water to accumulate in used or waste tires. Specifically, at a December 2, 2014 inspection of the site, an Agency inspector observed open dump wastes such as metals, plastics, paint filters, sand paper, and ten used tires in front of, on both sides, and in the rear of the auto

body shop according to the inspection report attached to the AC. The December 2, 2014 inspection was performed as a follow-up to previous inspections described in the report that occurred in December 2005, April 2006, December 2006, and March 2010.

BOARD DISCUSSION

Litter

The Agency alleges that the respondents 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 respondents 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’s inspector report and attached photos show various items observed on respondents’ property. These include used tires (photographs 4, 5, and 6), car parts (photograph 7), cans of solvent (photograph 8), paint supplies (photograph 9), and a television set (photograph 10). The Agency argues that these materials meet the definition of waste under the Act and that the respondents caused or allowed the open dumping of these wastes, resulting in “litter” under Section 21(p)(1) of the Act. Agency Br. at 9.

The photographs depict various items scattered around the property as listed above. In similar factual scenarios, the Board has 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). So, the Board finds that the materials at the property described above constitute garbage or other discarded material and are therefore “waste” as defined in the Act.

“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). The respondents 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 the respondents’ 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 contained various items that are waste. These items constitute “litter” as defined at 415 ILCS 105/3(a) (2014). The Board therefore finds that

the respondents caused or allowed the open dumping of waste in a manner resulting in litter, in violation of Section 21(p)(1) of the Act.

Respondents filed a petition for review on February 4, 2015, stating that they were unaware of the alleged violation, that the property was since cleaned up, and that they would not allow the property to accumulate waste again. Pet. at 1. At hearing, Ms. Griffiths stated that since the December 2014 inspection and as of the date of the hearing, “everything is cleaned up and will remain so.” Tr. at 38:13-14. The Board finds that the subsequent efforts to clean up the property are not relevant to the alleged violations of open dumping at the time of the inspection and that respondents 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 respondents 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 fewer 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 waste, including off-rim tires (photograph 4) and some tires with water inside (photographs 5 and 6). The tires in the photographs were placed on the ground without covering and appeared worn. Respondents stated at hearing that the tires have been removed from the site except for those on rims. Tr. at 48:15-16.

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 was a commercial establishment, not a residence. The Board therefore finds that respondents 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 respondents violated Sections 21(p)(1) and 55(k)(1) of the Act and that subsequent efforts to clean up the property are not relevant to the violations as alleged. The civil penalty in an administrative citation for a violation of Section 21(p)(1) or 55(k)(1) is \$1,500 for a first violation, for each section 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 period 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 Joseph DeRosa, Gwen A. Griffiths, and DeRosa Autobody 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 21, 2015. Respondents may respond to any requests for costs by January 20, 2016.

ORDER

1. The Board finds that Joseph DeRosa, Gwen A. Griffiths, and DeRosa Autobody 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 December 21, 2015, which is the first business day after the 30th day from 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 respondents 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 those statements by January 20, 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, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 19, 2015, by a vote of 5 to 0.



Don A. Brown, Assistant Clerk
Illinois Pollution Control Board