ILLINOIS POLLUTION CONTROL BOARD
November 2, 1995

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Complainant, v. A-RELIABLE AUTO PARTS AND WRECKERS, INC. a/k/a SCRAP PROCESSORS, Respondent.	)	AC 95-6 (IEPA No. 815-94-AC) (Administrative Citation)

MELANIE A. JARVIS, ASSISTANT COUNSEL, APPEARED ON BEHALF OF THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY;

VINCENT BRIZGYS APPEARED ON BEHALF OF THE RESPONDENT.

INTERIM OPINION AND ORDER OF THE BOARD (by E. Dunham):

This matter is before the Board pursuant to a petition for review of an administrative citation timely filed by respondent, A-Reliable Auto Parts and Wreckers, a/k/a Scrap Processors, on February 17, 1995. Respondent requested review of an administrative citation issued by the Illinois Environmental Protection Agency (Agency) on January 18, 1995 and filed with the Board on January 20, 1995. The Environmental Protection Act (Act) allows parties 35 days from the date of service of an administrative citation in which to appeal. (415 ILCS 5/31.1 (b)(4)(1994).) The Board accepted the petition for review on February 23, 1995 and set the case for hearing. Hearing was held before Hearing Officer Deborah Frank on July 19, 1995 in Chicago, Illinois. No post-hearing briefs were filed.

The administrative citation alleges violations of Sections 21(p)(1) and (3) of the Act (415 ILCS 5/21(p)(1) and (3) (1994).) which carry statutory civil penalties of $500 each, for a total penalty of $1,000 if the Board finds that such violations occurred. For the reasons set forth below, the Board affirms the finding of the investigation by the Agency that respondent, A-Reliable Auto Parts and Wreckers, a/k/a Scrap Processors, has violated Sections 21(p)(1) and (3). The Board finds respondent liable for $1,000 and any associated hearing costs incurred by the Agency and the Board.

FACTS

Respondent is the present owner and operator of the site in question, located in Blue Island in the County of Cook. (Tr. at 7.)[1] The site is commonly known to the Agency as Blue Island/Scrap Processors (Comp. at 1) and is currently an automobile salvage yard. (Tr. at 13.) The site does not have an Agency Operating Permit and is designated by Site Code No. 0310240029. (Comp. at 1.) The administrative citation alleges that respondent violated Sections 21(p)(1) and (3) of the Act by causing or allowing open dumping in a manner which resulted in litter and open burning.

The administrative citation is based upon a December 13, 1994 inspection of the site by James Haennicke. Mr. Haennicke is employed by the Agency primarily as a field inspector. (Tr. at 6.) Mr. Haennicke also inspected the site on a prior occasion, August 16, 1994, in response to a complaint to the Agency. (Tr. at 7).

According to Mr. Haennicke, at the time of the December 13th inspection, there was evidence of open burning in a pile of refuse on the ground and in a barrel. (Tr. at 11.) The pile of refuse on the ground was, itself, offered as evidence of open dumping so as to cause or allow litter. (Tr. at 12.) Mr. Haennicke gave testimony attesting to the presence of the remains of at least one tire in the refuse on the ground, and at least one used oil filter in the barrel. (Tr. at 11, 13-19.)

Mr. Don Gottschlich, General Manager of A-Reliable Auto Parts and Wreckers, a/k/a Scrap Processors, admitted that there was at least a remnant of a tire in the refuse on the ground, and at least one oil filter in the barrel referred to in the complaint (Tr. at 24.) Mr. Gottschlich, testified that A-Reliable disposes of approximately 9 tons of tires a week through a tire shredder in Ford Heights. (Tr. at 22.) The company disposes of used oil filters with waste handled by a waste hauler. (Tr. at 23.) Mr. Gottschlich testified that it is against company policy to dispose of tires or oil filters through burning. (Tr. at 21-24.) Mr. Gottschlich stated that employees are instructed that no tires or oily debris are to

[1] References to the hearing transcript are denoted by Tr. at_____. References to the administrative citation complaint are shown as Comp. at _____.

be burned in warming barrels and that only used pallets are to be burnt. (Tr. at 25.)

Mr. Gottschlich stated that he could not determine how the tire parts were placed in the warming barrel. (Tr. at 24.) He stated that the probable source of the tire and oil filter was the father of the owner, who had started a fire to keep warm while working on a cold day. (Tr. at 24.) Mr. Gottschlich stated that the father of the owner was not a company employee, but that he was granted a small area in which to perform recycling activities on the property. (Tr. at 24-27.)

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 order which imposes no penalty. (415 ILCS 5/31.1(d)(2) (1994).)

The administrative citation issued against A-Reliable Auto Parts and Wreckers, a/k/a Scrap Processors alleges that Section 21(p) subsections (1) and (3) of the Act were violated. Sections 21(p)(1) and (3) provide 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;
>
> * * *
>
> 3. open burning;

(415 ILCS 5/21(p)(1) and (3) (1994).)

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". (415 ILCS 5/21(a) (1994).)

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 (1994).)

Section 3.31 of the Act defines "refuse" as "waste". (415 ILCS 5/3.31 (1994).) Section 3.53 of the Act defines "waste" as, inter alia, "garbage...or other discarded material, including solid, liquid, industrial, commercial, mining and agricultural operations, and from community activities..." (415 ILCS 5/3.53 (1994).)

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, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, 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.]

The Act defines "open burning" as "the combustion of any matter in the open or in an open dump." (415 ILCS 5/3.23 (1994).)

Respondent argues that the burning took place on a very small portion of a several acre site, and that the person responsible for the burning and the litter was outside the control of the respondent company. Respondent argues that the burning and dumping were not intentionally set for the purpose of disposing of refuse and therefore, there is no violation. (Tr. at 30; See People v. Joliet Ry. Equipment Co. (3d Dist.,

1982), 108 Ill. App. 3d 197, 205, 63 Ill. Dec. 842, 438 N.E.2d 1205, Wasteland, Inc. v. IPCB (3d Dist., 1983), 118 Ill. App. 3d 1041, 75 Ill. Dec. 143, 456 N.E. 2d 964.) In Joliet Ry. Equipment Co., the court held that the accidental or incidental starting of a fire of wooden materials on rail cars when metal on the cars was being dismantled with cutting torches did not constitute open burning of waste as defined in the Act. In Wasteland, the court found no open burning violation because there was no evidence that the fires were intentionally set for the purpose of disposing of refuse.

The Board finds that in the instant matter the fires were intentionally set. Respondent does not contend that the fires were unintentional or accidental but asserts that the fire and the smoldering debris were from warming barrels used at the facility. (Tr. at 25.)

Joliet Ry. Equipment Co. and Wasteland are both cited in Pielet Brothers' Trading v. IPCB (Fifth Dist., 1991) 217 Ill. App. 3d 125, 159 Ill. Dec. 991, 576 N.E. 2d 914. In Pielet Brothers' the court found an open burning violation where trespassers burned the rubber insulation from copper wiring to retrieve the underlying wire. The court held that Pielet Brothers' was aware of the burning but took no action to stop the burning and therefore, allowed such operation to occur on its premises.

The Board has held that passive conduct amounts to acquiescence sufficient to find a violation of Section 21(a) of the Act. (EPA v. Dobbeke et al. (August 22, 1972), PCB 72-130, 5 PCB 219.) In Freeman Cool Mining Corp. v. IPCB (3rd Dist. 1974), 21 Ill. App. 3d 157, 313 N.E. 2d 616, the court stated that the Act is malum prohibitum and no proof of guilty knowledge or mens rea is necessary to a finding of guilt.

The photos presented by the Agency and attached to the complaint show that part of a tire, oil filter and other unidentifiable materials were disposed at the facility through burning. (Exh. 1.) The photos show the smoldering debris was improperly dumped onto the ground. The improper disposal of these discarded materials result in litter. The photos also show the burning of these materials in the open resulting in an open burning violation.

The Board finds respondent in this matter was aware of the use of warming barrels on the facility and the improper burning of waste in those barrels. In the facts admitted in this case, someone intentionally started a fire. In that fire, someone had to have placed at least part of a tire, and at least one used oil filter. The tire and used oil filter were discarded materials within the meaning of the Act. The

Board finds that the actions taken by respondent to prevent the disposal of waste in the warming barrels was inadequate as the inspection by the Agency demonstrates that such acts continued.

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), and resulting in open burning in violation of Section 21(p)(3) of the Act.

Respondent has not presented any uncontrollable circumstances to cause the Board not to impose a penalty in this matter.

PENALTY AND COSTS

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) (1994).)

In the Board's final order in this case, respondent will be ordered to pay a civil penalty of $1,000 based on the violations as found. Further, pursuant to Section 42(b)(4) of the Act, respondent is also required to pay hearing costs incurred by the Board and the Agency. Those costs are not contained in the record at this time. Therefore as part of this interim order, the Clerk of the Board and Agency are ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon respondent.

This interim opinion constitutes the Board's interim findings of fact and conclusions of law in this matter. A final order will be issued pursuant to the interim order which follows.

INTERIM ORDER

1. Respondent, A-Reliable Auto Parts and Wreckers,

a/k/a Scrap Processors, is hereby found to have violated 415 ILCS 5/21(p)(1)and (3) (1994) on December 13, 1994.

2. The Illinois Environmental Protection Agency is hereby directed to file a statement of its hearing costs, supported by affidavit, with the Board and with service on the respondent, A-Reliable Auto Parts and Wreckers, a/k/a Scrap Processors, within 14 days of this order. Within the same 14 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 respondent, A-Reliable Auto Parts and Wreckers, a/k/a Scrap Processors.

3. Respondent, A-Reliable Auto Parts and Wreckers, a/k/a Scrap Processors, is hereby given leave to file a reply to the filings ordered in paragraph 2 within 14 days of receipt of that information, but in no case later than 40 days after the date of this order.

4. After the deadline for filing such information and reply thereto has expired, the Board will issue a final order assessing the statutory penalty, and making the appropriate award of costs.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the _____ day of _____, 1995, by a vote of _____.

_____
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board