

ILLINOIS POLLUTION CONTROL BOARD
December 19, 1996

COUNTY OF JACKSON, ILLINOIS,)
)
 Complainant,)
)
 v.)
)
GARY EASTON,)
)
 Respondent.)

AC 96-58
(Administrative Citation)

DANIEL W. BRENNER, STATE'S ATTORNEY, APPEARED ON BEHALF OF JACKSON COUNTY;

GARY EASTON APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board pursuant to a petition for review timely filed by respondent, Gary Easton (Easton), on July 22, 1996. Easton requests review of the administrative citation issued by the County of Jackson, Illinois (County) on June 21, 1996 and filed with the Board on June 25, 1996.¹ Pursuant to the Illinois Environmental Protection Act (Act) parties may appeal an administrative citation within 35 days of the date of service of the citation. (415 ILCS 5/31.1(b)(4) (1994).)

On August 1, 1996 the Board accepted the petition for review and set the matter for hearing. Hearing was held before Chief Hearing Officer Michael L. Wallace on November 6, 1996 in Murphysboro, Illinois.² No post-hearing briefs were filed.

The administrative citation alleges four separate violations of: Section 21(p)(1), causing or allowing litter to be collected or dumped; Section 21(p)(2), causing or allowing scavenging at the site; Section 21(p)(5), causing or allowing proliferation of disease vectors; and Section 21(p)(6), causing or allowing standing or flowing liquid to be discharged from the site. Each of the violations carry a statutory civil penalty of \$500 if the Board finds that such violation occurred, for a total penalty of \$2,000. For the reasons set forth below, the Board today finds that Easton has violated Sections 21(p)(1), (2), (5) and (6) of the Act. The Board will impose a penalty of \$2,000 plus any associated hearing costs incurred by the County and the Board.

¹ The administrative citation will be cited as (AC at ____).

² The hearing transcript will be referred to as (Tr. at ____).

FACTS

Easton is the owner/operator of property located on Ava Road, in Murphysboro, Jackson County, Illinois (site). The site is known to the Environmental Protection Agency (Agency) as Murphysboro/ Gary Easton #2, and is designated with Site Code No. 0778140035. The Agency has not granted a permit for this site to conduct dumping operations.

The administrative citation is based upon inspections of the site conducted on October 27, 1995 and May 22, 1996 by George Browning, Field Inspector for the Jackson County Health Department. (AC at 2, Tr. at 21-23.) At hearing, Browning testified that as a result of his first inspection on October 27, 1995 the Agency sent Easton an Administrative Warning Notice. At the re-inspection on May 22, 1996, Browning found the site in generally the same condition as on the previous inspection. (Tr. at 24, 29-30.) According to testimony and photographs taken during the re-inspection, the following items were present at the site: tire piles and tires holding water (AC Exhibit 2, photos 9, 10, 11, 12, 13, 14, 15, 20 and 24); metal materials and wiring (Id. at photos 9, 10, 11, 14, 17, 21 and 24); household goods (Id. at photo 25); farm equipment (Id. at 9, 21, and 24); and oil drums, some of which were leaking petroleum products (Id. at 15, 16, 17, 18, 22, 23 and 25, Tr. at 5-6.). As a result of these direct observations, Browning issued an administrative citation which alleges that Easton violated Section 21(p)(1) by causing or allowing litter to be collected or dumped; Section 21(p)(2) by causing or allowing scavenging at the site; Section 21(p)(5), causing or allowing proliferation of disease vectors; and Section 21(p)(6), causing or allowing standing or flowing liquid to be discharged from the site. (AC at 2.)

REGULATORY FRAMEWORK

The Act establishes that in order to seek enforcement by way of the administrative citation process for violations of Section 21(p), the County must establish that the person caused or allowed open dumping and must also prove that the open dumping resulted in litter 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).)

The administrative citation issued against Easton alleges that Section 21(p), subsections (1), (2), (5) and (6) were violated at the site. Section 21(p) provides that no person shall:

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;

2. scavenging;
5. proliferation of disease vectors;
6. standing or flowing liquid discharge from the dump site.

(415 ILCS 5/21(p).)

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.)

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

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.

(415 ILCS 105/3.)

Pursuant to Subtitle G of the Board’s Waste Disposal regulations (Subtitle G, Waste Disposal), scavenging is defined as “the removal of materials from a solid waste management facility or unit which is not salvaging”. (35 Ill.Adm.Code 810.103). In turn, salvaging means:

the return of waste materials to use, under the supervision of the landfill operator, so long as the activity is confined to an area remote from the operating face of the landfill, it does not interfere with or otherwise delay the operations of the landfill, and it results in the removal of all materials for salvaging from the landfill site daily or separates them by type and stores them in a manner that does not create a nuisance, harbor vectors or cause an unsightly appearance.”

(35 Ill. Adm. Code 810.103.)

DISCUSSION

After careful review of the record, the Board finds that the evidence presented by the County is sufficient to find that Easton caused or allowed open dumping on the site which resulted in litter, scavenging, proliferation of disease vectors, and standing or flowing liquid discharge at the site. Specifically, the Board is persuaded by the testimony of the County inspector, and the photographs which depict discarded materials including abandoned vehicles and scrap metal, tire piles with collected water and visible mosquito larvae, and liquid discharges from the site. In addition, the photographs demonstrate that the materials have been stored in a manner that has created an unsightly appearance and harbored disease vectors.

Defenses

The Board next considers whether Easton has demonstrated that the alleged violations resulted from uncontrollable circumstances. If the Board so determines, then no violations would be found and no penalties imposed. (415 ILCS 5/31.1(d)(2).)

Easton testified at hearing that he is now cleaning the site, and that probably 30 or 40 tons of material have been removed. (Tr. at 40.) However, the Board has held that post-citation correction activities by the citation recipient are not material as to whether a violation had occurred and accordingly, not material to the Board's review of the citation. (In re: Lincoln Chamber of Commerce (May 25, 1989), AC 89-26, 99 PCB 325.) Clean-up of the site is not a mitigating factor under the administrative citation program. (IEPA v. Dennis Grubach (October 16, 1992), AC 92-3, 136 PCB 425.)

Easton further stated that the furniture on site was left there by somebody else. (Tr. at 8.) The Board previously has held that passive conduct amounts to acquiescence sufficient to find a violation of the Act. (IEPA v. Bill Hammond (August 22, 1993), AC 92-62, 141 PCB 285.) An owner's present inaction to remedy the disposal of waste that was placed on the site constitutes "allowing" litter in that the owner allows the illegal situation to continue. The Act is *malum prohibitum* and no proof of guilty knowledge, or *mens rea* is necessary to a finding of a violation. (Freeman Coal Mining Corp. v. IPCB, 21 Ill. App. 3d 157, 313 N.E.2d 616 (5th Dist. 1974).)

Easton presented other explanations why the site was in its observed condition, including that the site is used to store equipment which he buys, fixes and resells, and that there were problems with the waste hauler which delayed clean-up for seven months. (Tr. at 9, 39.) The Board finds no uncontrollable circumstances in this matter.

CONCLUSION

Based on review of the record and the pertinent provisions of the Act, the Board finds that open dumping resulting in litter occurred at the site as of May 22, 1996 as evidenced in the administrative citations and testimony offered by the County.

The presence of litter on the site and the failure by Easton to take action is sufficient to find a violation of the "cause or allow" language of Section 21(p) of the Act. The Board finds that Easton caused or allowed litter on the property in violation of Sections 21(p)(1), (2), (5) and (6) of the Act. The Board further finds that none of the explanations offered for the presence of litter served to justify a finding of uncontrollable circumstances. Accordingly, Easton is found to have violated the open dumping provisions of the Act; therefore, the Board affirms the County's determination of violation and assessment of penalty.

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 (o) or (p) of Section 21 of the Act shall pay a civil penalty of \$500 for each violation of each such provision, plus any hearing costs by the Board and the Agency. Such penalties shall be made payable to the Environmental Protection Fund, to be used in accordance with the provisions of the Environmental Protection Fund Act except that if a unit of local government issued the administrative citation, 50% of the civil penalty shall be payable to the unit of local government.

(415 ILCS 5/42(b)(4).)

In the Board's final order in this case, Easton will be ordered to pay a civil penalty of \$500 for each violation as found, totaling, \$2,000. Further, pursuant to Section 42(b)(4), Easton is required to pay hearing costs incurred by the Board and the County. Those costs are not contained in the record at this time. Therefore, as part of this interim order, the Clerk of the Board and the County are ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon Easton.

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, Gary Easton (Easton), is hereby found to have violated 415 ILCS 5/21(p)(1), (2), (5) and (6) (1994) at Muryphysboro/Gary Easton #2 on May 22, 1996.
2. The County of Jackson is hereby directed to file a statement of its hearing costs, supported by affidavit, with the Board and with service on Easton 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 Easton.

3. Easton 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 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 order was adopted on the ____ day of _____, 1996, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board