

ILLINOIS POLLUTION CONTROL BOARD
February 1, 1996

MONTGOMERY COUNTY,)
ILLINOIS,)
)
Complainant,)
)
v.) AC 95-43
) (Administrative Citation)
CLIFFORD CRISPENS,)
JACQUELINE R. CRISPENS)
AND LINE PILOT BUNGEE,)
INC.,)
)
Respondents.)

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

On June 12, 1995, complainant, Montgomery County (County) filed an administrative citation against Clifford Crispens, Jacqueline R. Crispens and Line Pilot Bungee, Inc. The administrative citation alleges that respondents violated Sections 21(p)(1), and 21(p)(3) of the Environmental Protection Act (Act). (415 ILCS 5/21(p)(1) and 21(p)(3)(1994).) The County is vested with the authority to bring such a citation pursuant to Section 31.1 of the Act (415 ILCS 5/31.1) and a delegation of authority agreement with the Illinois Environmental Protection Agency (Agency) statutorily authorized in Section 4(r) of the Act. (415 ILCS 5/4(r).)

Respondent Clifford Crispens filed a timely petition for review on June 12, 1995. Hearing was held in this matter on December 18, 1995 in Hillsboro, Montgomery County, Illinois before Chief Hearing Officer, Michael L. Wallace. Respondent, Clifford Crispens, appeared *pro se*, and counsel for the County also filed its appearance. No members of the general public made a statement at hearing, and no briefs were filed in this matter.

For the reasons set forth below, the Board dismisses Line Pilot Bungee, Inc. as a respondent, and finds Jacqueline R. Crispens, as an owner of the site, and Clifford Crispens, as an operator of the site, in violation of Sections 21(p)(1) and 21(p)(3) by allowing open dumping in a manner resulting in litter and by allowing open burning of refuse on the site.

FACTS

The property at issue in this matter is located in the City of Litchfield, Montgomery County, Illinois (hereinafter, "site"). Situated on the north side of Illinois Route 16 and west of Sportsman's Park, the site is commonly known to the Agency as

Litchfield/ Crispens and is designated as Site No. 1350400026.
(AC at 1.)¹

On March 24, 1995, Weldon Kunzeman of the Montgomery County Health Department inspected the site. (Tr. at 6.) Mr. Kunzeman testified at hearing that he observed and took photographs of refuse and burned areas at the site. (Id.) Based upon Mr. Kunzeman's inspection, the County issued an administrative warning notice on March 30, 1995. (Tr. at 8.) The notice was mailed to Clifford Crispens, Jacqueline R. Crispens, as well as Line Pilot Bungee, Inc., the current trustee of the property as recorded at the County Assessor's office. (Tr. at 7-8.) The notice indicated that the property was to be cleared of the waste on or before June 2, 1995 by disposing of the waste in a permitted landfill. (Tr. at 8-9.)

Mr. Kunzeman further testified that he returned to the site on April 10, 1995, and observed an even larger burn area, indicating that the refuse was burned rather than hauled to a permitted landfill. (Tr. at 9-11, 33.) Based upon these observations, the County issued a citation alleging violations of Sections 21(p)(1) and 21(p)(3) of the Act. (AC at 2.)

On June 12, 1995, the Board received a letter from Respondent Clifford Crispens which stated "[p]lease accept this letter as my 'Petition for Review'". Crispens' petition for review was timely filed but did not raise any jurisdictional objections.

Clifford Crispens offered his narrative statement at hearing. (Tr. at 39-44.) Mr. Crispens contended that none of the respondents in this matter are the current landowners of the site at issue. (Tr. at 39.) He testified that in 1992 he sold the site to a land trust, the beneficiaries of whom are his three adult children. (Id.)

Mr. Crispens further testified that his son was involved in a construction project and "at our direction", one of his son's employees placed construction debris at the site with the intention to burn the debris and recycle the wood. (Tr. at 41, 48, 50, 51.) Mr. Crispens stated that the phrase "at our direction" meant "my son, myself and my daughters". (Tr. at 51.) Mr. Crispens testified that he first became aware of the situation after receiving the administrative notice, whereupon he notified his son. Mr. Crispens stated that, despite having nothing to do with the dumping and burning of waste on the site, he chose to respond to the notice by letter and by appearing at the hearing. (Tr. at 49.)

¹The filed administrative citation will be referenced as (AC at __.) and the transcript will be referenced as (Tr. at __.).

DISCUSSION

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 Agency, or local governing body, 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. (415 ILCS 5/31.1(d)(2) (1994).) If the record demonstrates that such violation occurred then the Board must adopt an order finding a violation and impose the specified penalty of \$500 for each penalty. (Id.) 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. (Id.)

The administrative citation issued against respondents alleges violations of subsections (1) and (3) of Section 21(p) of the Act, which 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; or
- (3) open burning

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

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". (415 ILCS 5/3.31.) Section 5.53 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.)

In St. Clair County v. Louis Mund (August 22, 1992), 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.) Finally, for purposes of this case, Section 3.26 of the Act defines "person" as:

"any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns."

(415 ILCS 5/3.26) (emphasis added).

Defenses

Respondent, Clifford Crispens, (Crispens) argued that proper service was not achieved in this matter because none of the named respondents are owners of the site; therefore the named respondents are not proper parties in this matter, and the Board has no personal jurisdiction over them. The County argued that, according to the current warranty of deed on file at the Montgomery County Assessor's office, the trustee of the site is Line Pilot Bungee, Inc. for Jacqueline R. Crispens and Clifford D. Crispens located at 310 East Main Street, Apt. F, Mount Olive, Illinois 62029. (Tr. at 12, 15.) Therefore, the respondents are the proper parties in this matter. Alternatively, the County argued that prior to hearing, respondents never challenged jurisdiction due to improper notice. (Tr. at 57.) Further, Mr. Crispens had responded to the administrative citation notice and to the citation itself, and admitted to the violations at hearing, thereby subjecting himself to the Board's jurisdiction. (Id. at 57.)

As a preliminary matter, the Board notes that respondent, Clifford Crispens, never challenged personal jurisdiction within the statutorily-mandated time frame. If a respondent wishes to contest personal jurisdiction he must do so "prior to the filing of any other document by the moving participant or party". (35 Ill. Adm. Code 101.243 (1994).) This provision allows a party to challenge the Board's jurisdiction without actually submitting to it. (Thomas Sneed and Barbara Sneed v. Frank Farrar, First Bank & Trust Company, (February 25, 1993) PCB 91-183, 139 PCB 481.) Once an objection is made, the party may participate in the proceeding while preserving the objection. (Id. at 485.)

Clifford Crispens requested that his June 12, 1995 letter be construed as a petition. A petition is considered a document as defined in 35 Ill. Adm. Code 101.101. Crispens' petition was filed prior to any objection to the Board's jurisdiction in this matter; therefore, we find that Clifford Crispens waived his right to challenge jurisdiction due to improper notice. In addition, the Board notes that Mr. Crispens responded to the administrative notice, appeared at hearing and stated that he was taking responsibility for this matter, thereby subjecting himself to the Board's jurisdiction. The threshold question, then, is whether the County properly served the administrative notice and the administrative complaint to respondents, the trustees of the site in question.

As previously set forth, the Act includes a trust in its definition of "person". This case involves a land trust, and it is well-settled law that true ownership in a land trust lies with the beneficiary, while title lies with the trustee. (Azar v. Old Will Falls Condo. Ass'n, 228, Ill.App.3d 753, 593 N.E.2d 583 (1st Dist. 1992).) The only attribute ascribed to the trustee is the legal title of the property, while the beneficiary retains all other aspects of ownership. (Id. at 697, 593 N.E.2d at 586.) The court in Azar further explained that "ownership is comparable to control and denotes an interest in real estate other than that of holding title thereto." (Id.)

The Board has also recognized that trustees are not culpable under the Act. (See Sangamon County v. The Illinois National Bank of Springfield, n/k/a First of America Trust Company, Trust No. 894-6418-002, and Ray Landers (May 21, 1992), AC 92-30, 133 PCB 569; IEPA v. Wayne D. Molen and Farmers & Merchants State Bank (January 25, 1990), AC 89-196, 107 PCB 219.)

In the instant matter, Clifford Crispens and Jacqueline R. Crispens, as husband and wife, deeded the site in question on May 14, 1992 to Line Pilot Bungee, Inc., as trustee. (Exh. #4.) Since Line Pilot Bungee, Inc. is a trustee only, it cannot be considered an owner or operator under the Act and therefore the Board cannot assert jurisdiction upon it. Line Pilot Bungee, Inc. is accordingly dismissed from this matter.

At hearing, Crispens testified that his three children were the primary beneficiaries of the trust, and that his wife, Jacqueline R. Crispens, was the secondary beneficiary. (Tr. at 45, 47.) Specifically referring to his wife, he stated: "[i]f, for example, the children were to expire all at the same time, the trust would ultimately go to her." (Tr. at 47.) Therefore, Jacqueline R. Crispens, as secondary beneficiary to the land trust, has an ownership interest in the land at issue and is a proper party in this matter. Since the administrative notice was mailed and the complaint personally served at her current address as recorded at the county tax office, proper service was achieved

as to Jacqueline R. Crispens. (Tr. at 8, 16; AC at Certificate of Service.)

In terms of Clifford Crispens, it is evident that, as trustee, he cannot be considered an owner of the site in question. However, the Act contemplates culpability for persons who exert control over property as operators of the property. (IEPA v. Stacy B. Hess, (March 16, 1995) AC 94-73.) At hearing Crispens testified that his son was involved in a construction project and "at our direction", his son's employee placed construction debris at the site with the intention to burn the debris. (Tr. at 41, 48, 50, 51.) Crispens stated that the phrase "at our direction" meant "my son, myself and my daughters". (Tr. at 51.) Crispens also stated that he chose to respond to the notice by letter and to appear at the hearing. (Tr. at 49.) Finally, Crispens admitted to taking responsibility by investigating the site and making arrangements with his son to have the debris removed. (Tr. at 58.) Based upon his admissions at hearing, we find that Clifford Crispens was an operator of the site. Therefore proper service was achieved when he received the administrative notice and citation at his current address as recorded at the county tax office.

Having found respondents Jacqueline R. Crispens to be an owner and Clifford D. Crispens to be an operator of the site, we also find each to have allowed the violations of open dumping and open burning to occur. The Board has held that passive conduct amounts to acquiescence sufficient to find a violation of the Act. (Illinois Environmental Protection Agency v. Bill Hammond (April 22, 1993), AC 92-62, 141 PCB 285; EPA v. Dobbeke et al. (August 22, 1972), PCB 72-130, 5 PCB 219.) Additionally, the Act is malum prohibitum and no proof of guilty knowledge or mens rea is necessary to a finding of guilt. (Freeman Coal Mining Corp. v. IPCB (3rd Dist. 1974), 21 Ill. App. 3d 157, 313 N.E. 2d 616.) Present inaction on the part of the landowner to remedy the disposal of waste that was previously placed on the site, constitutes "allowing" litter in that the owner allows the illegal situation to continue. (IEPA v. M.K. O'Hara Construction, Inc., Kenneth O'Hara and Madalyn O'Hara (April 6, 1995) AC 94-96/94-97.)

The Board must next consider whether respondents Jacqueline R. Crispens and Clifford Crispens have shown that the alleged violations resulted from uncontrollable circumstances. As previously set forth, a showing of uncontrollable circumstances is the only way the Board can excuse a violation of the Act. If the Board so finds, then no violations would be found and no penalty imposed.

At hearing, Clifford Crispens claimed that he was unaware of the open dumping and burning until he received the administrative

notice. (Tr. at 39-40.) He further testified that the remaining debris was raked up and delivered to a landfill on April 10, 1995, as outlined in his April 12, 1995 letter to Mr. Kunzeman. (*Id.*) The administrative citation was also issued on April 10, 1995; therefore, Crispens maintains that the site was cleaned up in a timely manner.

The Board has held that post-citation activities of the citation recipient are not material to whether a violation had occurred and to the Board's subsequent review of the citation. (In re: Lincoln Chamber of Commerce (May 25, 1989), AC 89-26, 99 PCB 325.) By its terms, the Act does not envision dismissal or mitigation of a properly issued administrative citation because a person is cooperative or voluntarily cleans up the site. (IEPA v. Jack Wright (August 30, 1990), AC 89-227, 114 PCB 863.) Clean-up of a site is not a mitigating factor under the administrative citation program. (IEPA v. Dennis Grubaugh (October 16, 1992), AC 92-3, 136 PCB 425.)

In this case, the County's inspector observed that additional open dumping and open burning had occurred between March 24, 1995 and April 10, 1995, after the Crispens received notice of the violations. (Tr. at 33.) Mr. Crispens admitted that the debris was delivered to the site by his son's employee "at our direction" and was disposed of with the intention of burning it. (Tr. at 51.) Based upon these observations and admissions, the Board finds that respondents Clifford Crispens and Jacqueline R. Crispens allowed open dumping and open burning on the site after receiving notice of these violations. Further, despite the fact that the remaining debris was properly disposed on the same day the citation was issued, we do not find any evidence of uncontrollable circumstances to excuse these violations of the Act.

CONCLUSION

Based upon its review of the pertinent provisions and definitions of the Act, the Board finds that open dumping which resulted in litter, as well as open burning, occurred at the site as evidenced in the administrative citation and testimony offered by the County.

The presence of litter on the site, the testimony of an intention to burn the litter, and evidence of burning the litter after receiving an administrative warning notice is sufficient to find a violation of the "allow" language of Section 21 of the Act. The Board finds that respondents Clifford Crispens and Jacqueline R. Crispens allowed litter and burning to occur on the site in violation of the Act.

The Board further finds that none of the explanations offered by respondents justify a finding of uncontrollable

circumstances. Accordingly, the Board will affirm the Agency's determination of violation and assessment of penalty but only as to respondents, Clifford Crispens and Jacqueline R. Crispens.

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 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 the Environmental Protection Trust 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, Clifford Crispens shall be ordered to pay a civil penalty of \$500 for each violation as found, totalling \$1,000. Further, pursuant to Section 42(b)(4) of the Act, Clifford and Jacqueline R. Crispens are also 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 Clerks of the Board and County are ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon Clifford and Jacqueline R. Crispens.

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. Respondents, Clifford Crispens and Jacqueline R. Crispens, are hereby found to have violated 415 ILCS 5/21(p)(1) and (p)(3)(1994) on April 10, 1995.
2. The County of Montgomery is hereby directed to file a statement of its hearing costs, supported by affidavit, with the Board and with service on respondents, Clifford Crispens and Jacqueline R. Crispens, within 14 days of service 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 respondents, Clifford Crispens and Jacqueline R. Crispens.

3. Respondents, Clifford Crispens and Jacqueline R. Crispens, are 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 1st day of February, 1996, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board