

ILLINOIS POLLUTION CONTROL BOARD  
April 22, 1993

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Petitioner,	)	
	)	
v.	)	AC 92-62
	)	(Dockets A & B)
BILL HAMMOND,	)	(IEPA No. 403-92-AC)
	)	(Administrative Citation)
Respondent.	)	

JAMES G. RICHARDSON APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY;

BILL HAMMOND APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by G. T. Girard):

This matter is before the Board on an administrative citation filed by the Illinois Environmental Protection Agency (Agency) pursuant to the Environmental Protection Act (Act). (415 ILCS 5/1001 et seq. (1992).)<sup>1</sup> The citation was filed on September 3, 1992, and alleges that respondent, Bill Hammond (Hammond) as owner of property located in Fulton County, Illinois, has violated Section 21(p)(1) and (3) of the Act. Specifically, the Agency alleges that Hammond violated Section 21(p)(1) by causing or allowing open dumping of waste resulting in litter, and Section 21(p)(3) by causing or allowing open dumping of waste resulting in open burning.

A petition for review was filed with the Board on September 18, 1992. A hearing was held on November 17, 1992, in the Canton City Hall, Canton, Illinois, at which no members of the public attended. The parties presented closing arguments at hearing and no briefs were filed in this matter.

BACKGROUND

The property in question is owned by Hammond (Tr. at 8) and is located approximately 1.5 miles southwest of Astoria, Fulton County, Illinois (Tr. at 8). According to Hammond, he operated a junkyard at the location for 19 years (Tr. at 5). Hammond moved a trailer to the site (Tr. at 5 and 6), and lived there until

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<sup>1</sup>The Act was previously codified at Ill. Rev. Stat. ch. 111 1/2 par. 1001 et seq.

three-and-a-half or four years ago (Tr. at 59).

The administrative citation resulted from the inspection of the property on August 6, 1992, by Mr. R. Eugene Figge, Field Inspector with the Agency. According to Mr. Figge the area where the violations occurred was "approximately 100 feet by 100 feet". (Tr. at 13.) Mr. Figge took 12 photographs which were entered into the record as group exhibit 2. At the site, Mr. Figge observed accumulations of worn or used tires located in haphazard piles around the facility (Tr. at 12.) Mr. Figge estimated that the tires on site totalled 500-600 (Tr. at 14). Some of the tires were on rims and some were off rims (Tr. at 14). Various metals were located around the facility, including an old car hood (Tr. at 12 and 13). None of the items were protected from the elements (Tr. at 13). The metals and tires were spread out across the site (Tr. at 14). Other items included broken glass and old metal drums (Tr. at 14). Mr. Figge described a deteriorating trailer at the site, with fallen roof and sides (Tr. at 15). The outer covering had been removed or had fallen off the trailer sides (Tr. at 15-16). In addition to the various metals and tires, Mr. Figge also testified that there was "general refuse", including "wood pieces, some landscape pieces and glass, various materials". (Tr. at 16.)

Mr. Hammond testified that he lived at the site for 19 years and junked cars (Tr. at 20). According to Hammond, he lived at the site from 1971 to 1989 (Tr. at 27). He stated that he had a "State of Illinois Junker Certificate" (Tr. at 20) that licensed his junkyard operation until December 31, 1991 (Tr. at 27). He testified that no other people dumped stuff on the site (Tr. at 21). He moved away from the site three and a half to four years ago (Tr. at 59). He gave the cars and "stuff" to his son to clean up (Tr. at 21). His son paid \$240 to have 400 tires hauled from the site in July 1992 (Tr. at 33). Mr. Hammond testified that there were no gates or fences around the property. (Tr. at 33.) Other witnesses who testified for respondent included Hammond's wife, Sara (Tr. at 45-48); Hammond's son, Tom Hammond (Tr. at 34-39), and Hammond's daughter-in-law, Bonnie (Tr. at 48-51).

#### 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 ordering which imposes no penalty. (415 ILCS 5/31.1(d)(2) (1992).)

The administrative citation issued against Hammond alleges two violations of Section 21(p) of the Act: subsections (1) and (3) were allegedly violated. Section 21(p) provides 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;

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 (1992).) Section 3.31 of the Act defines "refuse" as "waste". (415 ILCS 5/3.31 (1992).) Section 3.53 defines "waste" as, inter alia, "garbage...or other discarded material, resulting from industrial, commercial, mining and agricultural operations,...". (415 ILCS 5/3.53 (1992).)

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...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]

#### Causing or Allowing Litter

Mr. Hammond admits that he is the owner of the property inspected by Mr. Figge on August 6, 1992. He further admits that the tires, car parts, and old trailer were on his property at the time of the inspection. According to Mr. Hammond's testimony, he operated a car junking business at the site from 1971 to 1989 that generated the present materials. He discontinued the car junking operation in 1989 when he moved from the site. Mr. Hammond testified that there were no fences or gates around the property to restrict access. According to Agency Inspector Mr.

Figge, "the materials were not organized and it simply appeared that they had been abandoned" (Tr. at 21). 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)(3) of the Act. The items observed on the property and recorded by Mr. Figge in photographs (Agency photographs 1-12) are discarded materials constituting litter.

Mr. Hammond contended that because the litter was being cleaned up slowly and 400 tires had been removed from the property after the administrative citation was issued there is no violation of the Act. The Board has previously held that removal of the litter after the issuance of an administrative citation does not restrain the Board from a finding of violation. 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. (IEPA v. Jack Wright (August 30, 1990), AC 89-227, 114 PCB 863.) Clean-up of the site is not a mitigating factor under the administrative citation program. (IEPA v. Dennis Grubaugh (October 16, 1992), AC 92-3, \_\_\_ PCB \_\_\_.)

#### Causing or Allowing Open Burning

Agency witness, Mr. Figge, testified that during his inspection on August 6, 1992, there was evidence of open burning, including melted metals, ashes, and killed vegetation. (Tr. at 11,12). Mr. Figge maintained that Photograph #1 depicted his observation (Tr. at 12; Exh. 2). Mr. Figge also offered Photograph #11 as evidence of burning, stating that it showed the "very distinctive wire bead ring on the ground" which remains after tires are burned (Tr. at 16-17; Exh. 2). Bill Hammond testified that he did not burn anything on the site (Tr. at 23). Tom Hammond took issue with Mr. Figge's allegation that Photograph 11 was evidence of recent burning (Tr. at 24-25). However, Tom Hammond testified that "we haven't burned tires there for -- it's been years". At another point in his testimony, Tom Hammond admitted burning a discarded camper top at the site (Tr. at 37). Furthermore, Mr. Figge testified that during his investigation of the site he reviewed Agency records and found no evidence that any Agency permit had ever been issued for this site (Tr. at 19-20). Therefore, after reviewing the evidence, the Board finds that open burning did occur at this site in violation of Section 21(p)(3) of the Act.

#### Uncontrollable Circumstances

Having found a violation, the Board must consider whether Hammond has shown that the violation resulted from uncontrollable circumstances. This is the only showing provided in the statute that allows the Board to excuse any violation. If the Board so finds, then no violation would be found and no penalty imposed.

(see 415 ILCS 5/31.1(d)(2) (1992).)

Bill Hammond and his wife, Sara, make three arguments that could be considered as uncontrollable circumstances. Sara Hammond testified that there had been two trailers on the site when they lived on the property. When the Hammonds moved, her two nephews took all the aluminum siding off the trailers and the other valuable parts. The nephews were "supposed to tear the rest of it down for us, but they forgot about doing that". (Tr. at 45 & 46). Bill Hammond testified at one point in the hearing that "somebody went in there while I wasn't home and dumped a whole barrel of stuff". (Tr. at 24.) As previously stated, Mr. Hammond testified that there were no gates or fences around the property. (Tr. at 33.) Thus, there has been no attempt to keep people off the property.

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. 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.

The presence of the litter on the site and the failure by the owner to take action is sufficient to find a violation of the "allow" language of Section 21 of the Act. The Board finds that Hammond allowed litter on the property in violation of the Act.

Mr. Hammond's strongest argument of uncontrollable circumstances is that the medical emergency precipitated by his wife's cancer surgery on May 15, 1992, and subsequent radiation therapy over several months, did not allow him time to clean up the property (Tr. at 47 and 59). While the Board is sympathetic to the priorities of a serious medical situation such as this, "uncontrollable circumstances" relates to the violation occurring not to the cleanup after the violation occurred. Further, with regard to cleaning up the site, Hammond admits that he moved from the site three-and-a-half or four years ago. (Tr. at 59.) Therefore, there were about three years available to clean up the site before his wife's medical emergency in May 1992. The Board does not find any uncontrollable circumstances in this matter. Therefore, the Board finds Hammond in violation of Section 21(p)(1) and (3) of the Act for causing or allowing litter, and causing or allowing open burning.

#### PENALTIES

0141-0289

Penalties in administrative citation actions of the type here brought are proscribed by Section 42(b)(4) of the Act, to wit:

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) (1992).)

Respondent will therefore be ordered to pay a civil penalty of \$1,000 based on the two violations as herein found. In view of the respondent's recent family medical emergency, payment of this penalty will be stayed until May 1, 1994. For purpose of review, today's action (Docket A) constitutes the Board's final action on the matter of the civil penalty.

Respondent is also required to pay hearing costs incurred by the Board and the Agency. The Clerk of the Board and the Agency will therefore be ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon Mr. Hammond. Upon receipt and subsequent to appropriate review, the Board will issue a separate final order in which the issue of costs is addressed. Additionally, Docket B will be opened to treat all matters pertinent to the issue of costs.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

#### ORDER

1. Respondent is hereby found to have been in violation on April 22, 1992, of 415 ILCS 5/21(p)(1) and (3) (1992).
2. On or before May 1, 1994, respondent shall, by certified check or money order, pay a civil penalty in the amount of \$1000 payable to the Illinois Environmental Protection Trust Fund. Such payment shall be sent to:

Illinois Environmental Protection Agency  
Fiscal Service Division  
2200 Churchill Road  
Springfield, Illinois 62706

Respondent shall include the remittance form and write

the case name and number and their social security or federal employer identification number on the certified check or money order.

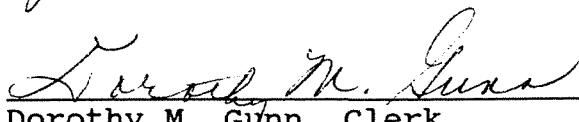
Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003 (1992)), as now or hereafter amended, from the date of payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

3. Docket A in this matter is hereby closed.
4. Within 30 days of this order, the Agency shall file a statement of its hearing costs, supported by affidavit, with the Board and with service upon Bill Hammond. Within the same 30 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service upon Bill Hammond. Such filings shall be entered in Docket B of this matter.
5. Respondent is hereby given leave to file a reply/objection to the filings as ordered in paragraph 4 of this order within 45 days of this order.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also, 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Casteneda v. Illinois Human Rights Commission (1989), 132 Ill. 2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 22<sup>nd</sup> day of April, 1993, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board