

ILLINOIS POLLUTION CONTROL BOARD
June 15, 1992

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) AC 91-34
) (Administrative Citation)
WILLIAM S. POPEJOY, Sr.,)
)
Respondent.)

MR. W. CHARLES GRACE, JACKSON COUNTY STATE'S ATTORNEY, APPEARED ON BEHALF OF COMPLAINANT;

MR. WILLIAM S. POPEJOY, SR., APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board upon review of an administrative citation issued pursuant to authority vested in the Illinois Environmental Protection Agency¹ (Agency) as delegated to Jackson County². The citation finds that respondent, William S. Popejoy, Sr., has conducted an open dump site operation in such manner as to (1) cause or allow litter and (2) cause or allow proliferation of disease vectors. Pursuant to the Illinois Environmental Protection Act (Act) at Ill. Rev. Stat. 1991, ch. 111½, par. 1042(b)(4), respondent is subject to a civil penalty of five hundred dollars (\$500.00) for each of the two cited violations, for a total penalty of one thousand dollars (\$1,000).

Hearing was held on October 11, 1991 at the Jackson County Courthouse, Murphysboro, Illinois.

BACKGROUND

Respondent is owner (Tr. at 10, 25) and resident of a property located in Section 24 of T8S, R4W, near Ava, Jackson County, Illinois.

In December 1990 Mr. George Browning, Field Inspector Jackson County Health Department, received a complaint filed by

¹ Ill. Rev. Stat. 1991, ch. 111½, par. 1031.1.

² Pursuant to Ill. Rev. Stat. 1991, ch. 111½, par. 1004(r) and Delegation Agreement between the Illinois Environmental Protection Agency and Jackson County, dated March 2, 1989.

the United States Forest Service. (Tr. at 7.) In response thereto, Mr. Browning inspected respondent's property on December 11, 1990. (Id.) Mr. Browning found on the property a ditch containing "demolition debris, ... old appliances, general household type waste, ... garbage, ... and papers" (Tr. at 12) in addition to standing water (Tr. at 16). Exhibits 2 through 4 are photographs showing the ditch and its contents on December 11, 1990.

Complainant attempted service of a warning notice upon respondent on several occasions in December 1990 and January 1991 without success. (Tr. at 18-19.) On January 10, 1991, the warning notice was sent to respondent by regular mail. (Tr. at 19.) Mrs. Ruby Popejoy, daughter-in-law and co-resident of respondent, acknowledges receipt of the warning notice. (Tr. at 30.)

Thereupon no contact occurred between Mr. Browning and respondent until June 10, 1991, when Mr. Browning again inspected respondent's property. (Tr. at 19-20.) In testifying to his June 10 inspection Mr. Browning observed:

A: I found that there appeared to be little or no change to the dump site. It is possible that additional materials had been deposited there, but we were not able to determine that conclusively. But by comparing the photographs taken in December and the ones taken in June, we felt that very little change had occurred at that site.

Q: And if any change had occurred, there may have been something more, did you say?

A: Yes, sir.

* * *

Q: Had there been any cover applied on the area at that point?

A: No, sir.

Q: Did you have occasion to inspect relative to disease factors?

A: Yes, sir. At that time, we did observe mosquito larva present and containers and again an ideal environment for their growth.

* * *

Q: Was there still household garbage at the site?

A: Yes, sir, there was. It was an available food source.

(Tr. at 20-22.)

Exhibit #5 consists of two photographs showing the ditch on June 10, 1991.

On July 8, 1991³ an administrative citation was filed citing respondent for causing or allowing the open dumping of any waste in a manner that results in litter (Section 21(p)(1) of the Act⁴) and proliferation of disease vectors (Section 21(p)(5) of the Act).

CONCLUSION

The Act provides for only two defenses to an administrative citation properly brought by the Agency or its delegee. These are that the respondent shows that either no violation(s) occurred or that the violation(s) resulted from uncontrollable circumstances. (see Section 31.1(d)(2) of the Act.) Respondent makes neither of these two showings. Accordingly, the findings of violations as specified in the administrative citation must be upheld.

This matter was authorized for hearing on August 22, 1991 upon the Board's reading that a letter of Ruby Popejoy filed with the Board August 12, 1991 constituted a request for hearing. Although a hearing was not specifically mentioned in the letter, the Board's action reflected concern that a petitioner's intent to appeal not be inadvertently overlooked. Upon further review, however, the reading that a hearing was requested is not substantiated. The Board recovers costs where a hearing is requested. Inasmuch as this is not the case here, the Board will not seek costs in the instant matter.

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

ORDER

Respondent is hereby found to have been in violation on June 10, 1991 of paragraphs 21(p)(1) and 21(p)(5) of the Illinois

³ The citation was received by the Board on July 10, 1991.

⁴ At the time the administrative citation was issued, the open dumping prohibitions were found at subsection 21(q) of the Act. By Public Act 87-752, effective January 1, 1992, subsection 21(q) was renumbered to subsection 21(p).

Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111½, par. 1021(p)(1) and 1021(p)(5)).

Within 45 days of this order respondent shall, by certified check or money order, pay a civil penalty in the amount of \$1,000 payable to the Illinois Environmental Protection Trust Fund and sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield IL 62706

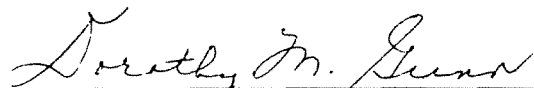
Penalties unpaid after the due date shall accrue interest pursuant to Section 42(g) of the Illinois Environmental Protection Act.

IT IS SO ORDERED.

Board Member J.T. Meyer concurred.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1991 ch. 111½ par. 1041, provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 15th day of June, 1992, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board