

ILLINOIS POLLUTION CONTROL BOARD  
September 12, 1991

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 91-17 (Docket A & B)
	)	(IEPA No. 159-91-AC)
RONALD FELDMAN, d/b/a FELCO	)	(Administrative Citation)
COMPANY,	)	
	)	
Respondent.	)	

MR. RICHARD WARRINGTON, JR., APPEARED ON BEHALF OF COMPLAINANT.

MR. GERALD E. FRANK APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J.C. Marlin):

This matter is before the Board on an Administrative Citation filed by the Illinois Environmental Protection Agency ("Agency") pursuant to the Illinois Environmental Protection Act (hereinafter "the Act") (Ill. Rev. Stat. 1990 Supp., ch. 111½, par. 1001 et seq). The citation was issued April 8, 1991 and alleges that Respondent Ronald Feldman d/b/a Felco Company ("Feldman") is in violation of Section 21(q)(1) of the Act for causing or allowing open dumping of wastes that resulted in litter.

A Petition for Review was filed with the Board on May 7, 1991. Hearing was held July 22, 1991 at the State of Illinois Center, Chicago, Illinois. Mr. Aaron Taylor testified on behalf of the Agency. Mr. Feldman testified in his own behalf. No members of the public were present at hearing.

BACKGROUND

Mr. Feldman is the present owner of a parcel of ground located in southern Cook County, Illinois. The property is directly off the access ramp for the Calumet Expressway and U.S. 30. The site, of undescribed size and shape, is located at the end of an access road. On February 6, 1991, Mr. Aaron Taylor, Agency field inspector, inspected this site. A prior inspection of November 13, 1990 resulted in Mr. Feldman being issued an Administrative Warning Notice (AWN) specifying that corrective action was required at the site. (Complaint). The Agency received no response to the AWN. (Complainant's Exh. 1.) The initial inspection was conducted in response to a call from Felco Company to participate in the Agency's used tire cleanup program.

APPLICABLE LAW

Section 31.1 of the Act provides that "[t]he prohibitions specified in subsections (p) and (q) of Section 21 of this Act shall be enforceable either by administrative citation under this Section or as otherwise provided in this Act." Section 21(p) of the Act applies to sanitary landfills permitted under the Act while Section 21(q) applies to all dump sites. The administrative citation issued against Feldman alleges violation of Section 21(q)(1). Section 21(q)(1) provides that no person shall:

In violation of subdivision (a) of the Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

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1. litter;

Section 21(a) of the Act sets forth the general prohibition against open dumping by providing that, "[n]o person shall cause or allow the open dumping of any waste."

Before a Respondent can be held liable pursuant to Section 21(q), the Board must find 1) that the Respondent caused or allowed open dumping and 2) that the open dumping resulted in one or more of the occurrences specified in Section 21(q). A Respondent has two defenses to an Administrative Citation. The first is to show that the violation did not occur; the second that it occurred but was due to uncontrollable circumstances. Ill. Rev. Stat. 1989, ch. 111 $\frac{1}{2}$ , par. 1031.1(d)(2).

DISCUSSION

Mr. Taylor testified that, upon arriving at the site, he observed a "few thousand tires scattered about, some construction debris, old furniture, scrap metal and landscape waste. (R.8) Mr. Taylor took photographs which were appended to the filed citation. (Comp. Exh. 1 - 3; R.16) Some of the tires appeared to have been set on fire. (R.10)

Mr. Taylor testified that a "rope gate" stretched across the access road at its beginning. The metal cable was suspended between two poles, but was down. A sign was tacked on a tree which said "No dumping, No hunting, No fishing, No trespassing." Mr. Taylor did not observe any additional fencing or barriers. He did not observe anyone present at the site. (R.12)

Upon questioning by Respondent's attorney, Mr. Taylor stated that "he had no evidence at all that [Mr. Feldman] actively

allowed someone to use this site as a dump" or that Feldman allowed third parties to use it as a dump. (R.15) Taylor admitted that the access road was the only access to the site. (R.19) When questioned about an additional sign on the guardrail stating "No trespassing", as shown in pictures taken by Mr. Feldman, Mr. Taylor stated he did not remember seeing it.

Ronald Feldman, of 70 North street, Park Forest, Illinois, testified that he is a principal of Felco Company and the owner of the site in question. (R.22) He stated that he has never knowingly allowed anyone to use the site as a dump site. Felco restricted access to the site, he testified, through the placement of the cable running across the access road. (R.25) It has been there many years, he stated. (R.26)

On examination by the Agency attorney, Mr. Feldman testified that the cable has a lock on it. The key is kept at the office.

#### ANALYSIS

The Respondent argues at hearing that the evidence presented shows that he took all reasonable steps to secure this property and that the Agency's case is, therefore, insufficient as a matter of law. In essence, the Respondent argues that he did not "cause or allow" dumping to take place on his property within the meaning of the statute. The Agency countered that the "testimony of a loose cable [and] of potential access around it indicates that Mr. Feldman... allowed... an open dump and litter..."

The uncontroverted evidence is that the site contained a substantial amount of debris which constitutes litter. The evidence also shows that access to the site is limited to a single road that was intended to be restricted by a locked cable strung between a post and a guardrail at the beginning of the site's access road, but that on the day of inspection, the cable was down. At least one sign is present which states that litter and trespassing are prohibited. Mr. Feldman testified that he has not allowed the site to be used as a dump site.

We conclude that, on the evidence presented, Mr. Feldman caused or allowed the open dumping of waste on his property. Waste is certainly present. While no testimony was presented that Respondent actively caused the waste, the Agency inspector testified that, on the day of the inspection, the cable was not hooked up, thereby allowing him full access to the site. The amount of refuse on the site indicates that others also found ready access. The evidence is therefore sufficient to demonstrate that Mr. Feldman did not adequately restrict access to this site and thereby allowed open dumping resulting in litter. Additionally the Board finds that the Respondent has not

demonstrated that the violation was due to uncontrollable circumstances.

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 February 6, 1991 of Ill. Rev. Stat. 1990 Supp., ch. 111 $\frac{1}{2}$ , par. 1021(q)(1).

2. Within 45 days of this Order Respondent shall, by Certified check or money order, pay a civil penalty in the amount of \$500.00 payable to the Illinois Environmental Protection Trust Fund. Such payment shall be sent to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
2200 Churchil Road  
Springfield, Illinois 62706

Respondent shall also place his Federal Employee Identification Number or Social Security Number upon 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, (Ill. Rev. Stat. 1989, ch. 120, par. 10-1003), from the date 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 is stayed.

3. Docket A in this matter is closed.

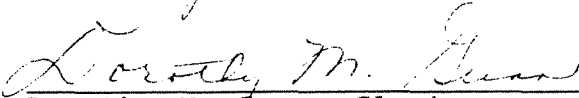
4. Within 30 days of this Order, the Agency shall file a statement of its hearing costs, supported by an affidavit, with the Board and with service upon Respondent. Within the same 30 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service upon Respondent. Such filings shall be entered in Docket B in 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.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111 $\frac{1}{2}$ , 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.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 12<sup>th</sup> day of September, 1991, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board