

ILLINOIS POLLUTION CONTROL BOARD
August 22, 1991

ST. CLAIR COUNTY,)
)
 Complainant,)
)
 v.) AC 90-67
) (Dockets A & B)
) (Administrative Citation)
)
 TIMOTHY E. DOCTOR d/b/a)
 MACLAIR ASPHALT, INC.,)
)
 Respondent.)

DENNIS HATCH APPEARED ON BEHALF OF THE COUNTY.

ANN FOHNE KEELEY APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board upon a petition for review of an administrative citation ("citation") filed by Timothy Doctor on July 31, 1990. The citation was issued on July 5, 1990, by St. Clair County pursuant to Section 31.1 of the Environmental Protection Act (Ill. Rev. Stat. 1990 supp., ch. 111 1/2, par. 1001 et seq.) (the Act) and a delegation agreement with the Illinois Environmental Protection Agency (the Agency) under Section 4(r) of the Act. The citation, received by the Board on July 20, 1990, cited two violations of Section 21 of the Act. On May 17, 1991, hearing was held in Belleville, St. Clair County, Illinois on this case as well as three companion cases. (St. Clair County v. Louis Mund, AC 90-64, St. Clair County v. Arthur Fields, AC 90-65, and St. Clair County v. Sandra L. Petroff, AC 90-66) At hearing, Mr. Doctor filed a Motion to Dismiss the Citation and a Motion to Dismiss Violation A(i) (the littering violation). The issues presented in the Motions are the only issues raised in the appeal. For the reasons enunciated below the Board finds Mr. Doctor in violation of Section 21(q)(1) and (3).

BACKGROUND

The citation was issued to Timothy Doctor as present owner/operator of Maclair Asphalt, Inc. The said company deposited waste in a facility located in St. Clair County, Illinois. The facility is operated without an Agency permit and is commonly known to the Agency as Sugar Loaf/Mund and is designated with the site code No. 1638190005. The facility is owned/operated by Mr. Louis Mund. (see St. Clair County v. Louis Mund, AC 90-64).

On the basis of an inspection conducted by Pamela S. Quandt

and David L. Walchshauser on May 9, 1990, St. Clair County determined that Timothy Doctor had deposited waste in the facility in a manner which resulted in violation of Section 21(q)(1) and (3). The county subsequently issued a citation on July 5, 1990 for violation of Section 21(q)(1) and (3) and noted that Timothy Doctor is subject to a civil penalty of \$1000 for the violation. Timothy Doctor then timely filed a petition for review with the Board.

APPLICABLE LAW

Section 21(q) of the Act provides, in part, that:

No person shall in violation of subdivision (a) of Section 21, 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; Ill. Rev. Stat. 1990 supp., ch. 111 1/2, par. 1021

Section 31.1 of the Act sets forth the procedural aspects of an administrative citation. Section 31.1 provides, in part, that:

- a) The 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 by this Act.
- b) Whenever Agency personnel or personnel of a unit of local government to which the Agency has delegated its functions pursuant to subsection (r) of Section 4 of this Act, on the basis of direct observation, determine that any person has violated any provision of subsection (p) or (q) of Section 21 of this Act, the Agency or such unit of local government may issue and serve an administrative citation upon such person within not more than 60 days after the date of the observed violation. Ill. Rev. Stat. 1990 supp., ch. 111 1/2, par. 1031.1

Penalties in action of the type here brought are prescribed by Section 42 (b)(4) of the Act which provides:

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) or (q) 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 Fund", approved September 22, 1979 as amended; 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. Ill. Rev. Stat. 1990 supp., ch. 111 1/2, par. 1042(b)(4).

DISCUSSION

There were two Motions filed at a consolidated hearing on AC 90-65, AC 90-66 and AC 90-67. The first was a Motion to Dismiss the violation of Section 21(q)(1) was filed at a consolidated hearing on AC 90-65, AC 90-66 and AC 90-67. The County objected to the filing of the Motion on the grounds that the Motion was not timely. The County cited to the Board's procedural rules to support its position. The County also argued that there has been no showing that material prejudice would result if a deviation from the timeliness rule was not allowed.

The County is correct that the Respondents' Motion to Dismiss, as a motion preliminary to hearing under the Board's procedural rules, was untimely filed. However, the Motion articulates the Respondents sole defense at hearing. Therefore, despite any untimeliness in the filing, the Board must address the arguments set forth in the Motion. In addition, we note that, the Board's Hearing Officer allowed the County time to respond to the Motions filed at hearing, thus allowing the County an opportunity to present its arguments on the issues.

It should first be noted that the following exchange occurred at hearing between Mr. Doctor's counsel and the Board's Hearing Officer:

Professor Schoenberger: With respect to the other violation, what's your client's position?
Ms. Keeley: We will plead out to the charges of open burning.

Professor Schoenberger: Okay. Now it's my understanding that the attorneys have agreed to submit the matter of whether littering is a valid count, under state law, to the Illinois Pollution Control Board. Should the Pollution Control Board decide adverse to you on the plead that you just placed, legal arguments you just made, what would your complaints be with respect to the count on litter?

Ms. Keeley: Will (sic) plead out to the charge.

Thus, Mr. Doctor's attorney consented to judgement on the violation of Section 21(q)(3) (open burning) and agreed to consent to judgement on the violation of Section 21(q)(1) if the Board found against the Respondent on the Motion to Dismiss Violation A(1) filed at hearing. These statements appear to negate the arguments set forth in the Motion to Dismiss the Citation. Therefore, the Board denies the Motion to Dismiss the Citation.

The Motion to Dismiss Violation challenges the issuance of the citation for litter based on the definition of litter. The Motion states that "litter" is not defined in the Act. Respondent points to the definition of "litter" in Black's Law Dictionary Fifth Edition which states:

. . . dumping, throwing, placing, depositing, or leaving, or causing to be dumped, thrown, deposited or left any refuse of any kind or any object or substance which tends to pollute, mar or deface into, upon or about:

I) Any public street, highway, alley, road, right-of-way, park or other public place, or any lake, stream, water course, or other body of water, except by direction of some public officer or employee authorized by law to direct or permit such acts; or

II) Any private property without the consent of the owner or occupant of such property.
(Motion p. 1-2)

The Motion further argues that the "area of the alleged violations was privately owned by Louis Mund" and Respondents had Mr. Mund's permission to dump and burn. (Motion p. 2). Therefore, the Respondents argue, that the open dumping could not result in "litter".

The County responds to the arguments set forth in the Motion by citing to the definition of "litter" contained in the Litter Control Act effective January 1, 1974. Ill. Rev. Stat. 1990 supp., ch. 38, par. 86-1 et seq.. "Litter" means any discarded used or unconsumed substance or waste and may include:

. . . 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. Ill. Rev. Stat. 1990 supp., ch. 38, par. 86-3)

The Litter Control Act predates Section (1).¹ Thus, when the General Assembly adopted Section 21(q)(1) of the Act it already had defined "litter". "Unless context of a statute indicates otherwise, words or phrases that were used in a prior act pertaining to same subject matter will be construed to be used in same sense." Jones v. Illinois Department of Rehabilitation Services, 504 F. Supp. 1244. The Litter Control Act clearly pertains to "litter"; thus, the definition of "litter" the Board should look to is the definition found in Chapter 38.

The American Heritage Dictionary, Second College Edition (1982), defines "litter" as "a disorderly accumulation of objects esp. (sic) carelessly discarded waste materials or scraps". The verb "littering", "littered" or "litters" is defined by the same source as: "2. To make untidy by discarding rubbish carelessly and 3. To scatter about". "Words used in a statute are to be given their ordinary and popularly understood meaning." Kozak v. Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago, 69 Ill. Dec. 177, 95 Ill. 2d 211, 447 N.E. 2d 394 at 396 (1983). The ordinary and popular meaning of the word "litter" also supports the finding of violation under Section 21 (q) (1).

Section 21(q)(1) of the Act would be virtually meaningless if the word "litter" was defined to exclude:

refuse of any kind or any object or substance which tends to pollute, mar or deface into, upon or about:. . . Any private property without the consent of the owner or occupant

¹ The Litter Control Act was effective January 1, 1974; Section 21(q) was effective August 31, 1988.

of such property. (Motion p. 1-2)

Open dumping would almost never lead to "litter" on private property and the prohibition of Section 21(q)(1) would seldom be necessary. Using respondent's definition, an owner or occupant of property could never violate the litter provisions of Section 21(q)(1). Such owner or occupant would be liable for violation of the 5 remaining prohibitions of Section 21(q). It is well settled that in interpreting statutes, "[s]tatutes should be construed so that the language is not rendered meaningless or superfluous." People v. Singleton, 82 Ill. Dec. 666, 469 N. E. 2d 200, 103 Ill.2d 336. Therefore, "litter" must be defined in a manner which gives meaning to the statute. Adopting the definition put forward by the Respondent would not do so.

The Board has not explicitly adopted the definition of "litter" used in Chapter 38. Neither has the definition cited by the Respondent been adopted or rejected. However, the Board has upheld a citation, issued under Section 21(p)(12), for "litter" on the site of a landfill. (In the Matter of: Dan Heusinkved, AC 87-25, January 21, 1988). The Board stated in that opinion that:

the interpretation placed upon Section 21(p)(12) by the Agency, which is that it is a violation of that Section of the Act to fail to daily collect and contain litter within the site boundaries, is the correct interpretation. (Heusinkved, p. 5.)

Thus, the Board has explicitly held that litter can occur on the site of a landfill. The Board's finding in Heusinkved is contrary to the definition cited by the Respondent.

The definition of "litter" cited by the Respondents in these four cases does not apply to "litter" as used in Section 21(q)(1) of the Act. If the Board were to hold that the definition cited by the Respondent is applicable, the effect would be to render Section 21(q)(1) virtually meaningless. In addition, the Board has previously held that "litter" can occur on a landfill site. The General Assembly has adopted in Chapter 38 a definition of "litter" which would give Section 21(q)(1) meaning and the Board hereby adopts that meaning. Therefore, the Board holds that the word "litter" as used in Section 21(q)(1) of the Act does include refuse or debris dumped on private property with the consent of the owner of such property.

Because the Board holds that "litter" includes the refuse placed on Mr. Mund's land with his knowledge and consent, the Board denies the Motion to Dismiss Violation A(1) and finds Mr. Doctor in violation of Section 21(q)(1) of the Act. In addition, due to statements made on behalf of Mr. Doctor at hearing the Board finds Mr. Doctor in violation of Section 21(q)(3) of the

Act.

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 May 9, 1990, of Ill. Rev. Stat. 1990 supp., ch. 111 1/2, par. 1021(q)(1) and (3).
2. Within 45 days of this Order Respondent shall, by certified check or money order, pay a civil penalty in the amount of one thousand dollars (\$1,000) payable to the Landfill Citation Fund. Such payment shall be sent to:

Paul Haas
County Collector
#10 Public Square
Belleville, Il 62220

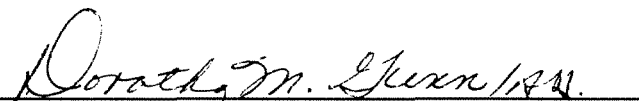
Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (Ill. Rev. Stat. 1990 supp., ch. 120, par. 10-1003), from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal, during which payment of the penalty is stayed.

3. Docket A in this matter is hereby closed.
4. Within 30 days of this Order, the County shall file a statement of its hearing costs, supported by 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 the Respondent. 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.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1990 supp., ch. 111 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, do hereby certify that the above Opinion and Order was adopted on the 22nd day of August, 1991, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board