

ILLINOIS POLLUTION CONTROL BOARD
May 9, 1991

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
) AC 90-79
) (EPA No. 369-90-AC)
v.) (Administrative Citation)
)
AL SPRINGMAN,)
)
Respondent.)

MR. WILLIAM SELTZER APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

MR. AL SPRINGMAN APPEARED PRO SE.

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

This matter comes before the Board upon a petition for review of an administrative citation ("citation") filed by Al Springman on October 2, 1990. The citation was issued on August 31, 1990 by the Illinois Environmental Protection Agency ("Agency") pursuant to Section 31.1(d) of the Illinois Environmental Protection Act ("Act") (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1001 et seq.)

Hearing was held on January 4, 1991 at the Jersey County Courthouse, Jerseyville, Illinois.¹ No members of the public attended. The Agency presented one witness, Allyn Colantino, field investigator for the Agency. Mr. Alan Woahl testified on behalf of Mr. Springman, who also testified in his defense. The Agency filed its brief on February 13, 1991. Mr. Springman did not file a brief. The Hearing Officer, Joseph Kelleher, filed his Memorandum of Hearing and Order on December 19, 1990. The Order stated that Respondent's credibility was at issue in this case.

BACKGROUND

The citation was issued to Springman as the owner of a tract of land located in Piasa Township, Jersey County, Illinois. The tract carries site code number 0838060005 by the Agency and is known to the Agency as Piasa Township/Springman. It is not a permitted landfill. The 80 acre site is flatland in agricultural use but contains a rolling wooded area (R.37). The site also contains a drained pond, which is abutted by a ravine on its

¹ The transcript is cited as "R. ___."

southern side. A small rental house is situated on the back of the site.

On the basis of an inspection conducted by Allyn Colantino on July 7, 1990, the Agency determined that Springman had operated the site in violation of Section 21(q)(1), (q)(4) and (q)(5) of the Act and requested the Board to impose a penalty of \$1,500.00. Springman filed a timely Petition for Review.

APPLICABLE LAW

Section 21(q) of the Act states:

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 a dump site:

1. litter;
- . . .
4. deposition of waste in standing or flowing waters;
5. proliferation of disease vectors;
- . . .

Penalties in actions of this type are \$500 for each provision, plus any hearing costs incurred by the Board and the Agency. Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1042(b)(4).

DISCUSSION

The Agency initially inspected Mr. Springman's property on July 7, 1990. At that time, the inspector noted what he considered to be several violations, three of which were cited in the administrative citation. A site sketch and numerous photographs were introduced in support of the inspector's testimony.

The Agency based their allegation of open dumping resulting in litter upon the presence of "white goods", refuse and sewer sludge. According to the inspector's testimony the "white goods", e.g., porcelain coated objects such as refrigerators, stoves and utility items, stood next to an outbuilding (R.39-40) alternately referred to as a rental property. A nearby area contained what the Agency inspector termed an "open dump site" measuring approximately 150 feet by 150 feet. This dump site contained white goods, tires, car parts, a motorcycle, landscape waste, clothes, wire, fencing,

couches, chairs, T.V.s, a piano, toys, paper, cardboard, windows and frames, rugs, glass, pipe, lawn mowers, lumber, dry wall, treated sewage, garbage, used diapers, food containers, bottles, cans and food waste (R.14). A neighbor purportedly told the inspector that Mr. Springman dumped on his property once a week on the average and that the dumping had been going on for 13 years (R.35).

The Agency also charged the Respondent with open dumping resulting in the deposition of refuse in standing or flowing waters. Parts of the waste and debris described above were deposited into standing or flowing water. The standing water was contained in a ravine described as twelve feet deep (R.23). This ravine was located south of a dam in the pond area (R.40-41). Various appliances, plastic, tires, lumber, wind-blown debris and paper were in the water (R.24).

Colantino also testified that treated sewer sludge had been deposited on the premises (R.10). Mr. Cruthis of the Brighton treatment plant told the inspector that approximately 150 tons per year were annually deposited on the Springman property at the owner's request. Mr. Springman does not have a permit to accept such sludge or to operate a sanitary landfill on his property (R.11).

The inspector testified that he was told that the sludge was being used for agronomic purposes as a fertilizer substitute. If applied at agronomic rates, the inspector testified, no permit is required. If incorporated into the ground by "knifing" or injecting, the Agency considers the application to be agronomic, he stated. The inspector testified that this sludge, however, "was just being dumped" (R.13). A subsequent phone conversation with Mr. Springman revealed that Mr. Springman was not incorporating the sludge into the soil at that site as it would destroy the crop necessary for the set-aside program (R.22).

The final charge against Mr. Springman concerned the proliferation of disease vectors. The inspector observed a rat at the site (R.25). The inspector testified that it was the first time he had seen a rat at a facility (R.34). Some of the waste deposited was raw garbage, which could be eaten, and clothing and rags, which could be used for nesting by rats (R.36). The inspector also testified that neighbors complained that the area was infested with rats. (Id.) The neighbors were not produced as witnesses at hearing.

Mr. Alan Woahl, a tenant farmer on the land Mr. Springman owns, testified in Mr. Springman's behalf. He has farmed this site for 14 years. With regard to the Agency's charge concerning disease vectors, he testified that it would not be unusual to see rats on a farm (R.49). Concerning the sludge application, Woahl stated that the sludge was not put on the farm by him and he

suspects "Brighton" did so. In his opinion, knifing in of the sludge would not be good for the crop (R.51).

Woahl also testified concerning the charge that refuse was left in standing or flowing waters. He testified that he has never observed water in the pond (R.54) or in the ravine (R.55). He admitted, however, that he "never got far enough over the edge [of the ravine] to see if there was rubbish in [it] (R.56). Finally Woahl rebutted the allegation that open dumping occurred. He couldn't say if more rubbish is there now than when he began farming the property (Id.). He stated that the refuse in Agency photographs had not been there for 14 years, in his opinion (R.57). Moreover, he had not seen anyone dispose of refuse on the property (R.59-60).

Al Springman testified that he resides at 300 Murray Street, Godfrey, Illinois. He bought the land in question in 1960. He attended the University of Illinois in 1940 and was granted a degree in 1947. He is now retired.

Mr. Springman admitted that the sludge is placed on his property. He stated he does not charge for Brighton to place the sludge there (R.70). He stated that when he began accepting it he told Al Cruthis of the Brighton Water Department he didn't want to make out reports, be subject to inspections or "nothing like that." He expected Brighton to take care of the details (R.70-71).

When examined by the Agency, Mr. Springman stated that the city had delivered sludge for two years. He was not aware that you needed to fill out any forms or permits for it and would not have taken it if he had known (R.77-78). He admitted that nothing was done with the sludge after it was dumped (R.78). He stated that, "after this", he doesn't intend to allow any more sludge to be placed on the ground.

Concerning the charge of open dumping Mr. Springman testified that "most" of the rubbish seen in the pictures was site-generated. The rubbish, he stated, came from tenants. The little rubbish not site-generated came from rental houses (R.82-84). Whatever needs to be disposed of "goes out the door", he testified (R.72).

Regarding the charge concerning refuse in standing water, Springman testified that both the pond and the ravine are dry (R.71). He admitted, however, that the ravine would contain water after a rain (R.80). But, Mr. Springman asserted, only an "item or two" of material was in the ravine, he stated (R.74).

Mr. Springman testified that following the inspection he attempted to remedy the alleged violations. All of the refuse material seen in the pictures was placed under two and a half feet of ground (R.73). Moreover, the sludge has been allowed to dry out and "kicked up over four acres" to remove it (R.75).

Mr. Colantino testified in rebuttal of Mr. Springman. He reiterated his opinion that the dumping of sludge without incorporation constitutes open dumping. He also testified that he revisited the site November 8, 1990 and December 14, 1990 and found exposed refuse on the southwest face of the open dump. The cover dirt appeared to be less than two feet deep and the refuse had been mixed with the dirt to cover the dumping (R.93-94). Dirt had been pushed over the debris. It thinned out until at the far edge no dirt at all covered the refuse (R.98). A tire pile which was present at the original inspection was also not affected by the cover-up.

At hearing upon a Petition for Review of an administrative citation two statutory defenses are available to a Respondent: (a) to prove that the violation did not occur or (b) that it occurred but was due to uncontrollable circumstances. Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1031 (d)(2). Neither has been successfully asserted by Mr. Springman. A subsequent "cleanup" of the site is not a statutory defense.

The evidence adduced at hearing and the photographs submitted as exhibits show that dumping occurred on Mr. Springman's property. Some of this was household trash and rubbish, including white goods and treated sewage or sludge. The record is clear that the sludge was placed on the site at Mr. Springman's request. It was not being used at agronomic rates. While Mr. Springman asserts that he would not have allowed it to be placed there had he known it required a permit, his lack of knowledge does not provide a defense to the administrative citation. Nor is his hope that the City of Brighton sewer plant manager would do so enough to relieve him from a finding that a violation occurred. We find that Mr. Springman caused or allowed open dumping on his property in a manner which resulted in litter, in violation of Section 21(q)(1).

We also find that the Agency has proven that refuse was allowed to accumulate in standing water. The inspector's testimony was that he observed refuse in water in the ravine. Mr. Springman allowed that water may flow through the ravine at times. Mr. Springman's testimony also did not rebut the presence of refuse in the ravine but merely contended that the amount was small. Therefore, the Agency has also proven a violation of Section 21(q)(4).

Finally, we believe that the Agency has proven that the open dumping observed has led to the proliferation of disease vectors. A rat was observed at the site. While we understand that many farms contain rats, the conditions exhibited here are not part of a normal farming operation. Our examination of the documentary evidence and testimony shows that a habitat for reproduction of rats was provided by the dumping of clothing, rags, refuse and white goods. A food supply was supplied by the household trash and

garbage evident in pictures and testimony. Therefore, we find the Agency has proven a violation of Section 21(q)(5) of the Act.

ORDER

1. Respondent is hereby found to have been in violation on July 7, 1990 of Ill. Rev. Stat. 1989, ch. 111 1/2, pars. 1021(q)(1) and (q)(4) and (q)(5).

2. Within 45 days of this Order Respondent shall, by certified check or money order, pay a civil penalty in the amount of \$1,500 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 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 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 hereby closed.

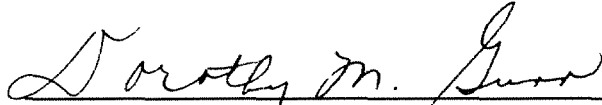
4. Within 30 days of this Order, the Agency shall file a statement of its hearing costs, supported by an affidavit, with the Board and with service upon Al Springman. Within the same 30 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service upon Al Springman. 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 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 9th day of May, 1991 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board