

ILLINOIS POLLUTION CONTROL BOARD

June 6, 2002

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 01-29
	)	(Administrative Citation)
LESSLIE YOCUM, SANDRA YOCUM,	)	(IEPA No. 063-01-AC)
RICK L. YOCUM, and SHAWNA B.	)	
YOCUM (BIRMINGHAM YOCUM #1),	)	
	)	
Respondents.	)	

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ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	AC 01-30
v.	)	(Administrative Citation)
	)	(IEPA No. 062-01-AC)
LESSLIE YOCUM and SANDRA YOCUM	)	(Consolidated)
(BIRMINGHAM/YOCUM #2),	)	
	)	
Respondents.	)	

MICHELLE M. RYAN APPEARED ON BEHALF OF THE AGENCY; and

JOHN R. REHN APPEARED ON BEHALF OF RESPONDENTS.

INTERIM OPINION AND ORDER OF THE BOARD (by N.J. Melas):

On March 6, 2001, pursuant to Section 31.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/31.1(b) (2000) the Illinois Environmental Protection Agency (Agency) filed an administrative citation against Lesslie Yocum, Sandra Yocum, Rick L. Yocum, and Shawna B. Yocum (docket AC 01-29). The Agency alleged that respondents were operating an unpermitted open dump in unincorporated Birmingham, Schuyler County (Yocum #1) in violation of Sections 21(p)(1) and 21(p)(7) of the (Act). 415 ILCS 5/21(p)(1) and 21(p)(7) (2000). The Agency sought a penalty of \$1,500 for each alleged violation of the Act for a total of \$3,000. The administrative citation was based on an inspection by Agency Field Inspector William E. Zierath on January 11, 2001.

On the same date, the Agency filed an administrative citation against Lesslie Yocum and Sandra Yocum alleging that they were operating an unpermitted open dump northeast of unincorporated Birmingham, Schuyler County (Yocum #2). The Agency made the same allegations against the respondents with respect to Yocum #2 as it did in Yocum #1 and demanded an identical penalty. The administrative citation for Yocum #2, docket AC 01-30, was also based on an inspection by Zierath on January 11, 2001.

Since the Agency is claiming that respondents were in violation of Section 21(p)(1) and 21(p)(7) at both Yocum properties, the total penalty demand is \$6,000.

For the reasons stated below, the Board finds that respondents have violated Sections 21(p)(1) and 21(p)(7) of the Act.

### **ADMINISTRATIVE CITATION PROCESS**

Section 31.1 of the Act authorizes the filing of administrative citations (415 ILCS 5/31.1 (2000)), and Part 108 of the Board's procedural regulations explains the administrative citation process before the Board (35 Ill. Adm. Code 108 *et seq.*). Administrative citations are an enforcement tool available to both the Agency and to local units of government under the Act. Administrative citations differ from enforcement actions in several respects. In particular, statutory penalties for administrative citations are set in the Act, and the Board has no leeway to consider mitigating or aggravating factors in determining penalty amounts. *See* 415 ILCS 5/42(b)(4-5) (2000).

### **PROCEDURAL HISTORY**

Administrative citation docket AC 01-29 also listed Laura L. Yocum and Kandy S. Yocum as respondents. However, the Agency failed to serve Laura L. Yocum and Kandy S. Yocum in a timely manner. *See* 415 ILCS 5/31.1(b) (2000). The Agency filed a motion to dismiss these respondents which the Board granted on April 5, 2001.

On April 5, 2001, respondents submitted a petition for review for both dockets. Respondents stated that they did not cause or allow the alleged violations in each matter. In each petition for review, respondents requested that the Board dismiss both administrative citations. However, respondents presented no facts to support their contention that they did not cause or allow the alleged violations. On May 3, 2001, the Board denied respondents' requests to dismiss, but allowed respondents to present evidence at hearing to support their claims.

On May 3, 2001, the Board also consolidated dockets AC 01-29 and AC-01-30. *See* 35 Ill. Adm. Code 101.406.

The hearing in this matter (Tr.) was held on January 22, 2002, in Rushville, Schuyler County before Board Hearing Officer Steven C. Langhoff. Zierath testified on behalf of the Agency and Lesslie Yocum testified on behalf of the respondents. The Agency offered two exhibits at the hearing (Ag. Exh.) and respondents offered two exhibits at hearing. Hearing

Officer Langhoff found both of the witnesses to be credible. Tr. at 47-48. The Agency filed its post-hearing brief on February 19, 2002 (Ag. Br.), and respondents filed their post-hearing brief on March 7, 2002 (Resp. Br.).

### **FACTUAL BACKGROUND**

Zierath has inspected both Yocum properties on several occasions. Tr. at 17, 20-21. The Agency's administrative citation in this matter is based on Zierath's inspection of the Yocum properties on January 11, 2001.

Zierath testified that Yocum #1 is two different fenced off properties visible from nearby public roads. Tr. at 13, 30. He said that many of the vehicles had no tires or flat tires. Tr. at 13-14, 22. The vehicles had been there for some time because they had not moved since a previous inspection and were surrounded by snow.<sup>1</sup> He could see no tire tracks in the snow to indicate that the vehicles had moved. Tr. at 13-14. Zierath also said that there were "car parts" on the site. Tr. at 15.

On January 11, 2001, there were two school buses, several vehicles, and several trucks at Yocum #1. Tr. at 15; Ag. Exh. 1 at Plan and Photo 001. There was also a pile of weathered dimensional lumber (i.e., lumber cut into discrete dimensions such as two-by-fours) which Zierath had observed during previous inspections. Tr. at 14-15, 23-24; Ag. Exh. 1 at Photo 001.

The photographs taken during Zierath's January 11, 2001 inspection show numerous vehicles, weathered dimensional lumber, metal objects, farm equipment, tanks, pipes, and an old mobile home at Yocum #2. Tr. at 18, 24; Ag. Exh. 2. Zierath guessed that the tanks had been small gasoline or water tanks, but not underground tanks. Tr. at 19, 23-24.

Lesslie Yocum testified that he has an ownership interest in both Yocum #1 and Yocum #2 and that he owns the items on both properties that are the subject of this matter. Tr. at 29. According to the Agency, Lesslie Yocum's testimony did not indicate that any party other than he or the other respondents have control over the Yocum properties. Ag. Br. at 2-3.

Lesslie Yocum said that he intends to use the lumber on both of his properties. Tr. at 34, 43. He testified that he was going to build a garage with the lumber at Yocum #1 until his house burned down. Tr. at 29-30. Lesslie Yocum said that he started building a shed but that the wind had knocked some of it down so he had to build it again. Tr. at 44. He testified that he will use the posts pictured in Agency Exhibit 1 to build a fence. Tr. at 41.

Lesslie Yocum purchased all of the vehicles that he now stores on his properties, and he intends to use them. Tr. at 34, 40. He intends to restore some of the vehicles on his properties when he retires in about 10 years, and he now uses the other ones as a source of parts for his truck. Tr. at 33-34, 42, 44-46. Respondents' Exhibit 2 is a folder full of vehicle

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<sup>1</sup> Zierath did not indicate when the previous inspection took place.

titles for the vehicles located on both Yocum properties. Tr. at 37-39. Lesslie Yocum admitted that he may have lost some of the vehicle titles for the vehicles on his property when his house burned down. Tr. at 39-40. He also said that some of the vehicles on his property belong to his friends and that he does not have titles for those. Tr. at 40.

Lesslie Yocum said that he uses the beds of the pickup trucks at Yocum #2 for storage. Tr. at 32. He stated that he is using the buses at Yocum #1 for storage as well. Tr. at 31, 40.

Lesslie Yocum admitted that he stores metal parts outside of the buses such as “pipe or steel gates, hog panels, cow panels.” Tr. at 32. He said that he intends to use the scrap metal on his properties. Tr. at 35, 44. He testified that much of the iron that is stored on his properties will be used as raw material for future projects. In the past, Lesslie Yocum has used the iron to build flatbed trailers. Tr. at 33.

Respondent’s Exhibit 1 is a box full of tickets from sales that Lesslie Yocum claimed are related to items that he stores on his properties. Tr. at 35-37.

Lesslie Yocum testified that he intends to use everything pictured in Agency Exhibit 1. Tr. at 41.

### **STATUTORY BACKGROUND**

Section 21 of the Act states, in pertinent part

No person shall

- a. Cause or allow the open dumping of any waste.

\* \* \*

- p. In violation of subdivision (a) of this 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:

- 1. litter;

\* \* \*

- 7. deposition of

(i) general construction or demolition debris as defined in Section 3.78 of this Act; or . . . .

Open dumping is defined 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 (2000). Refuse is defined as “waste” (415 ILCS 5/3.31 (2000)), and waste includes “any garbage . . . or other discarded material . . .” 415 ILCS 5/3.53 (2000). Disposal is defined as “the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste . . . into or on any land . . . so that such waste . . . or any constituent thereof . . . may enter the

environment or be emitted into the air or discharged into any waters, including ground waters.” 415 ILCS 5/3.08 (2000).

Section 3.78 of the Act provides:

“General construction or demolition debris” means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and piping or metals incidental to any of those materials . . . .

Litter is defined in the Litter Control Act as “any discarded, used or unconsumed substance or waste . . . (and) may include, but is not limited to, any garbage, trash, refuse, debris, rubbish . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.” 415 ILCS 105/3 (2000).

## **OPEN DUMPING OF WASTE**

### **Arguments**

The Agency argues that the material at Yocum #1 and #2 qualifies as discarded material within the definition of the term waste. The Agency also argues that the material is a “consolidation of refuse from one or more sources” within the definition of the term “open dumping”. Ag. Br. at 1-2, 4.

Respondents point to the definition of open dumping at Section 3.24 of the Act and claim that their properties are not “disposal sites” but are storage areas. Resp. Br. at 1.

Respondents also cite to the definition of open dumping and state that there must be disposal. Respondents then point to the definition of disposal and claim that there has been no disposal at the Yocum properties. Respondents state that if materials are cleared away before they dissipate into the environment, then the site in question cannot be a disposal site. If there is no disposal, then no open dumping has occurred. Resp. Br. at 1, 2-3; *citing* IEPA v. PCB, 219 Ill. App. 3d 975, 979 579 N.E. 1215, 1217-1218 (5th Dist. 1991).

The respondents also claim that the material in question is not properly categorized as waste for purposes of the open dumping definition. Resp. Br. at 1. Respondents claim that the Agency must prove that the material was discarded and cites Bliss v. IEPA, 138 Ill. App. 3d 699, 705-706, 485 N.E.2d 1154, 1158-1159 (5th Dist. 1985). Respondents state that since the Agency could not prove that any of the materials were “discarded” (according to the definition in Webster’s Dictionary) there was no open dumping. Resp. Br. at 3-4.

## Discussion

In determining whether open dumping has occurred, the Board looks to the definition which states that it is the consolidation of refuse (meaning waste) at a disposal site that is not a sanitary landfill. Neither Yocum #1 nor Yocum #2 are sanitary landfills. The record also clearly reflects (and Lesslie Yocum admits) that there has been a consolidation of materials on both of the Yocum properties.

The Board must then determine if “disposal” of a “waste” is taking place at the Yocum properties. Respondents cite to IEPA v. PCB and claim that no disposal is taking place. However, the Board does not find IEPA v. PCB to be on point in this matter. In that case, a contractor demolished two buildings and set fire to them on the site of the demolition. The Board found no open dumping there because the demolition, collection of remaining debris, and burning occurred in short order. The appellate court disagreed and found that the site in question became a disposal site (and that open dumping occurred) when the respondent burned the debris at the demolition site instead of moving it away. IEPA v. PCB, 219 Ill. App. 3d at 977, 979, 579 N.E. 2d at 1216, 1218. Here, the Board must determine if disposal is occurring where the material at issue has remained on the Yocum properties for an extended period and is not being burned. Given the facts above, the Board finds that disposal is taking place at the Yocum properties.

Respondents argued that the materials on the Yocum properties are not waste and cited Bliss. Again the Board can factually distinguish the respondent’s cited authority. Bliss involved the spraying of trichloroethylene (TCE)-contaminated oil in a railroad yard. TCE is a hazardous substance. The Board found Bliss guilty of creating a water pollution hazard. The appellate court found that there was “no effort made to establish that this particular quantity or concentration of TCE was likely to create a nuisance . . . .” Bliss, 138 Ill. App. 3d at 704, 485 N.E. 2d at 1157. The appellate court went on to find that the TCE was not a waste, under these circumstances, since “the prior use or origin of a substance must be present to establish that a substance is a ‘waste’”. Bliss, 138 Ill. App. 3d at 706, 485 N.E. 2d at 1159. There are no allegations of spilled oil or hazardous substance contamination here as there were in Bliss. In this matter, Yocum had clearly disposed of materials at Yocum #1 and Yocum #2. The Board finds that the vehicles and other materials at issue on the Yocum properties are properly classified as discarded and therefore constitute waste.

The Board has previously found that a respondent’s accumulation of vehicles, disorderly piles of scrap wood, metal, and other items scattered around a property constituted open dumping. County of Sangamon v. Daily, AC 01-16/01-17, slip op. at 10-12 (Jan. 10, 2002), appeal docketed sub nom. Daily v. County of Sangamon and PCB, No. 4-02-0139 (4th Dist. Feb. 14, 2002); *see also* IEPA v. Hammond, AC 01-5, slip op. at 2, 3 (Nov. 1, 2001); IEPA v. White, AC 00-72, slip op. at 4,6 (Nov. 2, 2000). The material on the respondents’ properties in these cases is similar to the vehicles, weathered dimensional lumber, metal objects, tanks, and pipes located on the Yocum properties. The Board finds that the activities on both Yocum properties constitute open dumping.

### **LITTER - SECTION 21(p)(1)**

The Agency states that the Board has looked to the definition of litter from the Litter Control Act in determining violations of the Act. *See St. Clair County v. Mund*, AC 90-64, slip op. at 4, 6 (Aug. 22, 1991); *St. Clair County v. Fields*, AC 90-65, slip. op. at 6 (Aug. 22, 1991). The Agency argues that the material at Yocum #1 and #2 is properly classified as litter. Ag. Br. at 3. The Board has looked to the 1990 definition of litter in the past. There has been only one change to the definition of litter since 1990, and that change is not relevant to this matter. The Board now chooses to look to the year 2000 definition of litter.

Respondents claim that, in other Board cases, there was no evidence such as auction receipts to prove that the material at issue was not litter. Resp. Br. at 4 citing *Daily* and *Sangamon County v. Miller*, AC 92-37 (Dec. 17, 1992). The Board finds that receipts are not the controlling factor in determining whether or not a material is classified as litter.

The Agency points to *Daily* where the Board held that piled debris, including dimensional lumber and scrap metal, evidenced litter. *See Daily*, AC 01-16/01-17, slip op. at 12-13. The Agency cites both *Daily* and *Miller* where the Board held that materials on those properties were unsightly and thus constituted a violation of the Act. The Agency claims that the materials at Yocum #1 and #2 are similarly unsightly. Ag. Br. at 4.

The Board notes other recent cases where it has found similar accumulations of waste to be litter. *See Hammond*, AC 01-5, slip op. at 3; *White*, AC 00-72, slip op. at 5. Based on the evidence in the record, including the photographs taken during the January 11, 2001 inspection, the Board finds that the material on both of the Yocum properties is unsightly and has been disposed of improperly. The Board finds that the material on both of the Yocum properties, such as the vehicles, weathered dimensional lumber, metal objects, tanks, and pipes, is litter for purposes of Section 21(p)(1) of the Act. The Board therefore finds that respondents have violated Section 21(p)(1) of the Act at both Yocum #1 and Yocum #2.

### **CONSTRUCTION/DEMOLITION DEBRIS - SECTION 21(p)(7)**

The Agency argues that the weathered dimensional wood, piping and other materials at Yocum #1 and #2 constitute “general construction or demolition debris”. Ag. Br. at 4.

The Board finds that the record and the photographs show that there was a pile of weathered dimensional lumber at Yocum #1 on January 11, 2001. The Board is unable to determine if any of the other non-vehicle material is properly classified as construction or demolition material. Nevertheless, the pile of dimensional lumber qualifies as general construction or demolition debris as defined at Section 3.78 of the Act.

The Board finds that the weathered dimensional lumber, metal objects, tanks, and pipes at Yocum #2 clearly fall under the definition of general construction or demolition debris at Section 3.78 of the Act. Respondents have violated Section 21(p)(7) of the Act at Yocum #2.

The Board finds that respondents have violated Section 21(p)(7) of the Act at Yocum #1 and Yocum #2.

### **FUTURE USE**

While the Agency encourages reuse and recycling, it does not condone open dumping of materials “in the anticipation of some future use at some undefined time.” Ag. Br. at 5. The Agency claims that Lesslie Yocum’s intentions to restore his vehicles in ten years do not constitute a valid defense. Ag. Br. at 4, 5. The Agency argues that a party’s intentions to use, sell, or dispose of vehicles or other materials are not dispositive in determining if the materials constitute waste or litter. Ag. Br. at 4, 5; *see Daily*, AC 01-16/01-17, slip op. at 11. In sum, the Agency states that Lesslie Yocum’s management of his materials in the hope of future usefulness is legally impermissible. Ag. Br. at 5.

The Board stands by its holding in *Daily*. Plans for use of material at some point in the distant future are not dispositive in determining if materials are waste or litter.

### **CONCLUSION**

For the reasons stated above, the Board finds that respondents have violated Sections 21(p)(1) and 21(p)(7) of the Act at both Yocum #1 and Yocum #2. This interim opinion constitutes the Board’s interim finding of fact and conclusions of law.

### **ORDER**

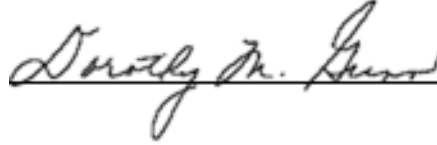
1. The Board finds that respondents have violated Sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act at Yocum #1. 415 ILCS 5/21(p)(1) and 21(p)(7) (2000).
2. The Board finds that respondents have violated Sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act at Yocum #2.
3. The Illinois Environmental Protection Agency must file a statement of its hearing costs within 14 days of the date of this order, or by June 20, 2002. The statement must be supported by affidavit and served on respondents. Within the same 14 days (by June 20, 2002), the Clerk of the Board must file a statement of the Board’s hearing costs supported by affidavit and with service.
4. Respondents are given leave to file a reply to the statements of hearing costs ordered in paragraph 3 of this order within 14 days after receipt of that information.
5. The Board will then issue a final order assessing a statutory penalty of \$1,500 for each violation at Yocum #1. The Board will also assess a statutory penalty of \$1,500 for each violation at Yocum #2. In addition, the Board will award appropriate costs.

IT IS SO ORDERED.

Board Members G.T. Girard and T.E. Johnson dissented.



I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on June 6, 2002, by a vote of 5-2.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board