

ILLINOIS POLLUTION CONTROL BOARD
July 11, 2002

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 02-17
)	(IEPA No. 424-01-AC)
CHARLES GOODWIN,)	(Administrative Citation)
)	
Respondent.)	

MICHELLE M. RYAN APPEARED ON BEHALF OF THE ENVIRONMENTAL PROTECTION AGENCY;

DENNIS G. WOODWORTH APPEARED ON BEHALF OF CHARLES GOODWIN.

OPINION AND ORDER OF THE BOARD (by M.E. Tristano):

On October 22, 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 Charles Goodwin (Goodwin). The Agency alleged respondent was operating an unpermitted open dump in the town of Hull, Pike County, in violation of Section 21 (p)(1) of the Act, 415 ILCS 5/21(p)(1)(2000). The Agency sought a penalty of \$1,500 for the alleged violation of the Act. The administrative citation was based on an inspection by Agency Field Inspector Jan Mier on August 21, 2001.

On November 9, 2001, respondent filed a petition for review of the administrative citation pursuant to Section 31.1(d) of the Act, denying that it was operating an open dump and that the Agency had required a halt to cleanup efforts prior to the citation. The Board finds that Inspector Mier's issuance of the administrative citation of October 19, 2001, was improper, based on Goodwin's reliance on previous directions of another Agency inspector, Alan Grimmett. Accordingly, the Board dismisses the administrative citation. But, the Board also requests that the Agency inspect the property again, to assure that the appropriate cleanup has occurred.

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 factors in determining penalty amounts. *See* ILCS 5/42(b) (4-5)(2000).

PROCEDURAL HISTORY

The Agency served this administrative citation on Goodwin by certified mail on October 19, 2001. On October 21, 2001, the Agency filed the administrative citation with the Board. On November 9, 2001, Goodwin filed a petition to review the administrative citation. A hearing was held on March 27, 2002, at the Pike County Courthouse. At hearing, attorney Michelle M. Ryan appeared and participated on behalf of the complainant; attorney Dennis G. Woodworth appeared and participated on behalf of the respondent. Two witnesses testified during the hearing, Ms. Jan Mier on behalf of the Agency and Mr. Charles Goodwin on behalf of respondent. Based upon the legal judgment, experience and observation at hearing, Hearing Officer Steven Langhoff found that both witnesses were credible in this matter. Tr. at 55.

BACKGROUND

Goodwin purchased the property, which was a former lumberyard, in 1998, while he was living in Hutchinson, Kansas. Tr. at 33-34. At the time he purchased the property, Goodwin had not inspected the property. Tr. at 34. When Goodwin moved to Illinois, he inspected the property and found it to be littered with falling buildings, debris, tires and mattresses. Goodwin stated he had not dumped any used tires or any of the materials or debris nor had he allowed anyone else to do so. Tr. at 34-35.

Goodwin commenced clean up of the property in June of 2000. Tr. at 36. Prior to commencement, Goodwin went to the Pike County Clerks Office and asked what kind of permit he needed to obtain to tear down the buildings. The Pike County Clerk's Office informed Goodwin that he did not need a permit to tear down the buildings. Tr. at 36. Goodwin hired a contractor, John Kindhart, to tear down the buildings and remove the debris. Tr. at 37.

On June 3, 2000, while Mr. Goodwin was in the process of clean up operations, two Agency inspectors visited the property. Tr. at 16, 37. One inspector (not identified by name) was from the Agency's land bureau. The other was Mr. Alan Grimmatt of the Agency's air bureau, the bureau "[i]t was decided. . . would handle the case at that time." Tr. at 17.

During the inspection, Mr. Grimmatt told Goodwin to stop all cleanup and demolition operations until receiving permission from the Agency. Mr. Grimmatt was focused on issues of possible asbestos in the buildings being demolished. Tr. at 16-17. Mr. Grimmatt also provided Mr. Goodwin with a booklet entitled, "Requirements for Owners and Contractors During Renovation or Demolition Activities at Public or Commercial Buildings." Tr. at 38.

As a result of this inspection, Goodwin ceased further cleanup efforts. At first, Mr. Goodwin attempted to fill out the notifications of demolition and renovation himself. He also contacted Klingner & Associates to perform the inspection. Tr. at 39. Goodwin submitted the form and inspection report, and was notified that the inspection was inadequate. Tr. at 41. On two other occasions, Goodwin attempted to obtain permission and submit the appropriate inspection reports and failed. Tr. at 38.

On August 21, 2001, Jan Mier, a field inspector for the Agency's land bureau, inspected the property. Tr. at 11. During the inspection, Mier observed used tires, lumber, shingles, a mattress and debris from the buildings. Tr. at 12. Mier further recalled evidence of open burning. Tr. at 21. Mier also introduced photographs which documented the findings listed within her report. Exh. 1. Specifically, Mier testified that during her inspection she found tires containing water, a pile of lumber with a mattress underneath, 60 feet of shingles which had fallen to the ground, drywall, lumber and old coolers. Tr. at 13-14.

After the inspection, Mr. Goodwin telephoned Inspector Mier as instructed. Mier, in the mean time, had spoken with Mr. Grimmert concerning the asbestos issues. As evidenced by Mier's testimony at hearing, and Mier's own inspection report, Mr. Goodwin told Ms. Mier that he was angry, upset, confused about what to do, and unable to get any cooperation from the Agency. *See, e.g.*, Tr. at 20, 25, 27, 31, 44; Ex. 1 at 3. Mr. Goodwin told Ms. Mier about his contacts with Mr. Grimmert and his attempts to properly complete the asbestos notification and permission process. Mier advised Mr. Goodwin to properly dispose of the tires, and to provide Mr. Grimmert with the information he needed. Ex. 1 at 3.

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;
* * *

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).

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).

ISSUES AND ANALYSIS

The arguments mainly center on two issues: (1) whether the respondent allowed the open dumping of waste; and (2) whether the Agency’s administrative citation of October 19, 2001, was untimely and/or inappropriately issued due to Mr. Grimmatt’s instruction to cease site cleanup.

The first issue before the Board is whether the respondent’s failure to remove waste that accumulated on the site prior to the Goodwin purchase constitutes an allowance of open dumping under Section 21(p) of the Act (415 ILCS 5/21(p) (2000)). Complainant argues that Mr. Goodwin allowed open dumping of waste because the waste was deposited on the site prior to his ownership in 1998. Respondent argues that he could not have allowed open dumping of waste because the waste was deposited on the site prior to his ownership in 1998.

The Board has found in County of Will v. Utilities Unlimited, Inc., AC 97-41 slip op. at 5 (July 24, 1997) that the utilities company did violate Sections 21 (p)(1) and (3) of the Act (415 ILCS 5/21 (p)(1), (3) (2000)) when it did not clean up litter that others had deposited on the site. A person can cause or allow a violation of the Act without knowledge or intent. Utilities Unlimited, AC 97-41, slip op. at 5, citing People v. Fiorini, 143 Ill. 2d 318, 574 N.E. 2d 612 (1991). The Board found that:

[P]resent inaction on the part of the landowner to remedy to dispose of waste previously placed on the site constitutes “allowing” litter in that the owner alleges the illegal situation to continue. In this case, [respondent] Petrekis admitted that [a]s designated agent for this utility company, I’m in charge. Tr. at 60-61. As such Petrekis was the operator of the site and had the ability to control the site. Utilities Unlimited, AC 97-41, slip op. at 5.

In addition, the Board has held that inaction on the part of the owner to remedy the disposal of waste that was previously placed on the site, constitutes “allowing litter in that the owner allows the illegal situation to continue.” IEPA v. Ronald D. Rowe, et al., AC 92-5 (Jan. 21, 1993). A similar situation is present in this case. Since 1998, Mr. Goodwin has owned and controlled the property and has left the litter that had previously been dumped on the site to remain. Such inaction qualifies as an “allowance” under 415 ILCS 5/21 (p)(1) (2000). *See also*, IEPA v. M.K. O’Hara Construction, Inc., et al., AC 94-96, AC 94-97, slip op. at 6 (Ap. 6, 1995).

The second issue is whether the Agency's administrative citation of October 19, 2001, was improperly issued. Goodwin argues that he was taking action to clean up the property and the delay was directly attributable to his reliance on Agency Inspector Grimmatt's directions to cease activities until proper notification and inspection paperwork was completed. Tr. at 38.

One particularly instructive case about improper Agency issuance of an administrative citation is the Board's decision in IEPA v. Jack Wright, AC 89-227 (Aug. 30, 1990), where the Board dismissed an administrative citation as improperly issued where the Agency was pursuing attempting to achieve site clean up simultaneously through both the administrative citation process under Section 31.1 of the Act and the formal enforcement process under Section 31 of the Act. The Board observed that

The communication between the parties during the period from the inspection to the issuance of the administrative citation is most important in administrative citation cases. Communication is important because the citizens who are being cited . . . are often unfamiliar with the Act and enforcement procedures. IEPA v. Jack Wright, AC 89-227 (slip op. at 6) (Aug. 30, 1990).

The Board finds that in this case the Agency improperly issued the administrative citation due to lack of effective communication between the inspectors of the air and land bureaus, and lack of effective communication between them and Mr. Goodwin.

The record clearly demonstrates that since June of 2003 Goodwin had acted in good faith to cleanup his property. He hired a private contractor to clean the site. Tr at 37. Goodwin thought he had satisfied all legal requirements by visiting and obtaining the approval of all appropriate county office. Tr. at 36. Goodwin's contractor had commenced cleanup efforts prior to the visit by Mr. Grimmatt. Tr. at 37. Goodwin was attempting to satisfy Mr. Grimmatt's directions about notification of demolition and renovation and its attendant asbestos inspection. Tr. at 41-43.

The Agency began treating the site as a dichotomous entity in late summer 2001. The only material that could be disposed of without Agency approval at the time of citation were tires, a mattress, and coolers. Tr. at 23. Goodwin stopped his cleanup efforts at the request of the Agency. Tr. at 38. Goodwin's "reaction" was a consequence of confusion and failed attempts at compliance with what appeared to him to be the Agency's conflicting requirements. Tr. at 40.

CONCLUSION

The Board finds that Goodwin allowed open dumping that resulted in litter under 415 ILCS 5/21(p)(1). However, the Board also finds that the administrative citation of October 19, 2001, was improperly issued in that Goodwin relied on Inspector Grimmatt's direction to cease all clean up and demolition operations until receiving a permission from the Agency's air bureau. As a result of this order, Goodwin ceased clean up activities which led to the land bureau's administrative citation of October 19, 2001.

In finding that the administrative citation was improperly issued under these unique circumstances of apparently contradictory directions from two bureaus of the Agency, the Board does not intend to delay clean up of this site. During the course of the process before the Board, Mr. Goodwin has been clearly advised that he must clean up any tires and other litter on site, as well as addressing any asbestos issues that might be posed by the buildings. Under its authority in Section 30 of the Act, the Board therefore requests the Agency to investigate the Goodwin site within 180 days of the date of this order to assure that the appropriate clean up has occurred.

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

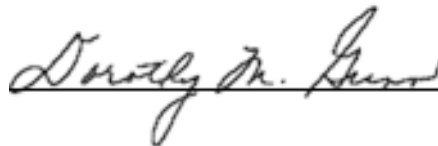
ORDER

1. For the reasons stated in the above opinion, the Board dismisses the administrative citation as improperly issued.
2. The Board requests, pursuant to 415 ILCS 5/30, that the Illinois Environmental Protection Agency investigate the Goodwin property within 180 days of this order to assure that the appropriate clean up has occurred.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 11, 2002, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board