

ILLINOIS POLLUTION CONTROL BOARD

February 18, 1999

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 98-41
)	(IEPA No. 238-98-AC)
BRADLEY G. WHITE,)	(Administrative Citation)
)	
Respondent.)	

ROBERT J. SCHERSCHLIGT, ASSISTANT COUNSEL, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY; and

BRADLEY G. WHITE APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by E.Z. Kezelis):

This matter comes before the Board on an administrative citation issued by complainant, the Illinois Environmental Protection Agency (Agency), to respondent, Bradley G. White (White). In the administrative citation, the Agency alleges that on April 29, 1998, White violated Sections 21(p)(1) and (3) of the Illinois Environmental Protection Act (Act) by causing or allowing open dumping in a manner that resulted in litter and open burning at a site in Cumberland County, Illinois. See 415 ILCS 5/21(p)(1), (3) (1996). After reviewing the record, including the transcript of the hearing held in this matter, the Board finds that White violated the Act as alleged. In this interim order, the Board orders the Agency and the Clerk of the Board to file a statement of hearing costs, to which White is given leave to reply. After the Board receives these statements of hearing costs, we will issue a final order requiring White to pay the total statutory penalty of \$1,000 and any appropriate costs.

PROCEDURAL MATTERS

The Agency served its administrative citation on White by personally delivering a copy to him on June 18, 1998. The Agency filed the administrative citation with the Board on June 24, 1998. An affidavit attesting to the personal service of the administrative citation on the respondent was filed on June 29, 1998. In the citation, the Agency alleges that White caused or allowed open dumping in a manner that resulted in the occurrences of (1) litter in violation of Section 21(p)(1) of the Act and (2) open burning in violation of Section 21(p)(3) of the Act. See 415 ILCS 5/21(p)(1), (3) (1996).

Subsections (p)(1) and (p)(3) of Section 21 are enforceable by administrative citation under Section 31.1 of the Act. See 415 ILCS 5/31.1(a) (1996). White elected to contest the citation pursuant to Section 31.1(d)(2) by filing a petition for review with the Board on July 23, 1998. See 415 ILCS 5/31.1(d)(2) (1996).¹

By hearing officer order dated September 14, 1998, a copy of which was served on all parties, a hearing was scheduled for October 14, 1998. The hearing took place as scheduled before Board Hearing Officer Amy L. Jackson.² Kent Johnson (Johnson), an environmental protection specialist with the Agency, testified on behalf of the Agency. Tr. at 8-70. The complainant also called White as a witness. Tr. at 71-77. Respondent was sworn in by the court reporter and gave testimony on his own behalf. Tr. at 78-80. No other witnesses testified. The Agency made a closing argument on the record. Tr. at 82-84. White opted to reserve his closing argument for a post hearing brief. Tr. at 84. White's post hearing brief was due on or before November 15, 1998. Tr. at 84. The Agency's reply brief, if any, was due on or before November 30, 1998. Tr. at 84. No post hearing briefs were submitted by either party.

FINDINGS OF FACT

Johnson has been an environmental protection specialist with the Agency since May 1992. Tr. at 9. As an environmental protection specialist, his duties include performing inspections for the Agency's Bureau of Land and Division of Land Pollution Control of solid waste sites, hazardous waste sites, tire disposal, and tire storage sites. Tr. at 9.

White owns the property which is the subject of the administrative citation. Tr. at 72. Johnson first inspected White's property in November 1994. Tr. at 11. The November 1994 inspection was performed in response to complaints alleging the open dumping and open burning of waste. Tr. at 11. A fire damaged home is located on the property. Tr. at 16. The home was lost to a fire in 1994. Tr. at 79. Johnson prepared a report in connection with the November 22, 1994 inspection. Tr. at 12.; Exh. 1. As a result of the November 22, 1994 inspection, Johnson cited White for violations of Sections 21(a), 21(p)(1), and 21(p)(3) of the Act. See 415 ILCS 5/21(a), 21(p)(1), (3) (1996). Tr. at 14. These violations were cited due to the evidence of waste being dumped and burned. Tr. at 14. An administrative warning notice was sent to White following the November 1994 inspection. Tr. at 23; Exh. 2.

The next inspection of White's property took place on April 29, 1998. Tr. at 25.; Exh. 3. Johnson inspected the property on April 29, 1998, in order to ascertain compliance and to investigate complaints regarding open dumping and open burning. Tr. at 26. The site is neither a permitted land disposal facility, nor a permitted burn site. Tr. at 27. On April 29, 1998, Johnson observed an area of burned debris in a pit. Tr. at 29. The burned debris included what appeared to be tire bead, mattress springs, remnants of shingles, and other ash residue. Tr. at 29. Johnson corroborated his testimony with a photographs of the burn pit. Tr. at 29-32; Exh. 3.

¹ Respondent's petition for review is cited as "Pet. at ___."

² The transcript of the hearing is cited as "Tr. at ___." Hearing exhibits are cited as "Exh. ___."

Johnson had a telephone conversation with White on May 5, 1998. Tr. at 36. During the telephone call, White admitted burning wood and a mattress in the burn pit. Tr. at 37. White also admitted, during his testimony, to digging a hole and burning wood in it. Tr. at 72 and 79; Pet. at 1. White did not realize that it was illegal to burn in a pit. Tr. at 79. White was using the burn pit to clean up debris from the fire damaged home. Tr. at 72-73.

DISCUSSION

The administrative citation alleges that White caused or allowed open dumping that resulted in litter and open burning in violation of subsections (p)(1) and (p)(3) of Section 21 of the Act, which provide as follows:

No person shall:

* * *

(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;

3. open burning. 415 ILCS 5/21(p)(1), (3) (1996).

Section 21(a), to which Section 21(p) refers, provides:

No person shall:

(a) Cause or allow the open dumping of any waste. 415 ILCS 5/21(a) (1996).

Subsections (p)(1) and (p)(3) each require the Agency to show, as a threshold matter, that White caused or allowed open dumping. "Open dumping" means "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 (1996). "Refuse" means "waste," 415 ILCS 5/3.31 (1996), and "waste" includes "any garbage . . . or other discarded material." 415 ILCS 5/3.53 (1996).

The record shows that White both removed debris from inside the fire damaged home and brought debris onto the property from another site for disposal. The record also shows that White burned the debris in a burn pit located on the property. The Board finds that the wood, mattress springs, shingles, and other miscellaneous material found in the burn pit constitute "discarded material" within the meaning of the term "waste." Thus, the wood, mattress springs, shingles, and other ash debris are "waste" and "refuse" as defined in the Act. The Board also finds that the burned debris in the burn pit constitutes a "consolidation of refuse from one or more sources" within the meaning of the term "open dumping." In addition, the Board finds that the burn pit on respondent's property is "a disposal site that does not fulfill the requirements of a

sanitary landfill.” Accordingly, the Board finds that White caused or allowed the open dumping of waste.

The next question is whether the open dumping of the wood and other debris resulted in “litter” under Section 21(p)(1) of the Act. The Act does not define “litter,” but in similar cases, the Board has looked to the definition of “litter” in the Litter Control Act. See 415 ILCS 105/1 *et seq.* (1996)

“Litter” means any discarded, used or unconsumed substance or waste. “Litter” 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(a) (1996); see, *e.g.*, St. Clair County v. Mund (August 22, 1991), AC 90-64, slip op. at 4, 6.

Using this definition, the Board finds that the pile of debris in the burn pit constitutes “litter” under Section 21(p)(1) and that White has therefore violated that section.

Finally, the Board considers whether White’s open dumping also resulted in “open burning” as prohibited by Section 21(p)(3). “Open burning” is “the combustion of any matter in the open or in an open dump.” 415 ILCS 5/3.23 (1996). The Board finds that White combusted matter in the open when he burned the wood, mattress, and shingles in the open burn pit on the site. Accordingly, the Board also finds that White violated Section 21(p)(3).

Penalty and Costs

Section 42(b)(4) of the Act provides for penalties in an administrative citation action as follows:

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (o) or (p) 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 the Environmental Protection Trust Fund Act; 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. 415 ILCS 5/42(b)(4) (1996).

The Board will assess White the statutory penalty of \$500 for violating Section 21(p)(1) and \$500 for violating Section 21(p)(3). The Board and the Agency are also entitled to their hearing costs under Section 42(b)(4) of the Act, but no information on those costs is included in the record. Therefore, the Clerk of the Board and the Agency are ordered to file with the Board a statement of hearing costs, supported by affidavit, with service on White, within 14 days of the date of this order.

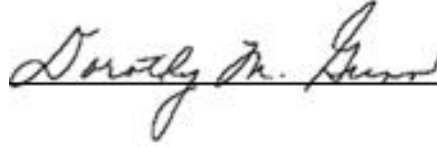
This interim order constitutes the Board's interim findings of fact and conclusions of law in this case.

ORDER

1. The Board finds that respondent, Bradley G. White, violated Section 21(p)(1) and (3) of the Illinois Environmental Protection Act. See 415 ILCS 5/21(p)(1), (3) (1996).
2. The Agency must file a statement of its hearing costs, supported by affidavit, with the Board and with service on White, within 14 days of the date of this order. Within the same 14 days, the Clerk of the Board must file a statement of the Board's hearing costs, supported by affidavit and with service on White.
3. White is given leave to file a reply to the filings ordered in paragraph 2 of this order within 14 days after receipt of that information, but in no event later than 40 days after the date of this order.
4. No earlier than 40 days after the date of this order, the Board will issue a final order assessing a statutory penalty of \$500 for each violation, for a total civil penalty of \$1,000, and awarding appropriate costs.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the 18th day of February 1999 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board