

ILLINOIS POLLUTION CONTROL BOARD
May 7, 1998

COUNTY OF WILL,)
)
 Complainant,)
)
 v.) AC 98-8
) (Administrative Citation)
 WILLIAM HUNTER,)
)
 Respondent.)

DAWN R. UNDERHILL, ASSISTANT STATE'S ATTORNEY, APPEARED ON BEHALF OF THE COUNTY OF WILL.

INTERIM OPINION AND ORDER OF THE BOARD (by K.M. Hennessey):

This matter comes before the Board on an administrative citation issued by complainant, the County of Will (County), to respondent, William Hunter (Hunter). The administrative citation alleges that on July 21, 1997, Hunter violated the Illinois Environmental Protection Act (Act), 415 ILCS 5/1 *et seq.* (1996). After reviewing the record, including the transcript of the hearing held in this matter, the Board finds that Hunter violated the Act. In this interim order, the Board orders the County and the Clerk of the Board to file a statement of hearing costs, to which Hunter is given leave to reply. After it receives these pleadings, the Board will issue a final order requiring Hunter to pay the total statutory penalty of \$1,000 and any appropriate costs.

PROCEDURAL MATTERS

The County served this administrative citation on Hunter by certified mail on August 9, 1997. The County filed the administrative citation with the Board on August 12, 1997. The citation alleges that Hunter 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) and (3). 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). Hunter elected to contest the citation under Section 31.1(d)(2) by filing a petition for review with the Board on September 15, 1997. See 415 ILCS 5/31.1(d)(2) (1996).

By hearing officer order of February 9, 1998, which was served on all parties, the hearing officer scheduled a hearing for March 31, 1998. The hearing took place as scheduled.¹ At the hearing, Edward Overturf (Overturf), a deputy sheriff of the County,

¹ The transcript of the hearing is cited as "Tr. at _." Hearing exhibits are cited as "Exh. _."

testified on behalf of the County.² Tr. at 7-13. No other witnesses testified. Neither Hunter nor his attorney appeared at the hearing. Tr. at 4-5, 13-14. The County waived its opportunity to file a post-hearing brief. Tr. at 15.

FINDINGS OF FACT

Overturf is a deputy sheriff in the patrol division of the Will County Sheriff's Office. Tr. at 7. He has been with that office for 14 years. Tr. at 8. His duties include patrolling Will County to enforce laws and ordinances and to respond to incidents. Tr. at 7-8.

On July 21, 1997, at approximately 2:00 p.m., a truck driver flagged down Overturf. The truck driver told Overturf that he thought a house was on fire because he saw smoke coming from inside it. In response, Overturf went to 721 Patterson Road (site) in Joliet and observed a large smoke plume rising from behind the site's residence. Overturf walked behind the residence into the backyard. He saw that the smoke was actually coming from a ground fire behind the house. Tr. at 8-9; Exh. 1; Report at 1-2. Overturf saw Hunter, who identified himself with a driver's license, burning insulation off of a pile of copper wire near a shed. Tr. at 9; Exh. 1; Report at 1-2. Hunter stated that he obtained the wire from a Cook County demolition site and from Johansson Air Conditioning in Plainfield. Report at 2. Overturf instructed Hunter to extinguish the fire, and Hunter did so immediately. Tr. at 13. Overturf corroborated his testimony with a photograph of the extinguished pile and a sample of the material that was burning when he arrived at the site. Tr. 9-12; Exh. 1, 2.

DISCUSSION

Section 21(p)(1) and (3)

The administrative citation alleges that Hunter caused or allowed open dumping that resulted in litter and open burning at the site in violation of subsections (p)(1) and (p)(3) of Section 21, respectively. Those provisions read:

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;

* * *

² In its August 12, 1997, filing, the County included a copy of a Will County Sheriff's Incident Report (Report) and a sworn affidavit of Overturf. Overturf states in the affidavit that he completed the Report and that it is accurate to the best of his knowledge and belief.

3. open burning. 415 ILCS 5/21(p)(1) and (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 County to show, as a threshold matter, that Hunter 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 Hunter obtained copper wire from a demolition site and Johansson Air Conditioning. It also shows that Hunter burned the insulation off of a pile of the wire on the ground behind the house at the site. The Board finds that the wire insulation constitutes "discarded material" within the meaning of the term "waste." Thus, the wire insulation is "waste" and "refuse" as defined in the Act. The Board also finds that the pile of wire insulation 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 location behind the house constitutes "a disposal site that does not fulfill the requirements of a sanitary landfill." Accordingly, the Board finds that Hunter caused or allowed the open dumping of waste.

The next question is whether the open dumping of the wire insulation 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:

"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. Louis I. Mund (Aug. 22, 1991), AC 90-64, slip op. at 4, 6.

Using this definition, the Board finds that the pile of wire insulation on the ground constitutes "litter" under Section 21(p)(1) and that Hunter therefore violated that section.

Finally, the Board considers whether Hunter's open dumping also resulted in "open burning" under 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 Hunter combusted matter in the open when he burned the wire insulation at the site. Accordingly, the Board also finds that Hunter 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 Hunter the statutory penalty of \$500 for violating Section 21(p)(1) and \$500 for violating Section 21(p)(3). The Board and the County also are 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 County are ordered to file with the Board a statement of hearing costs, supported by affidavit, with service on Hunter, within 14 days.

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

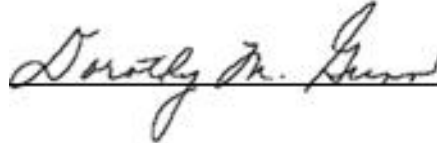
ORDER

1. The Board finds that respondent, William Hunter (Hunter), violated Section 21(p)(1) and (3) of the Illinois Environmental Protection Act, 415 ILCS 5/21(p)(1) and (3) (1996).
2. The County of Will must file a statement of its hearing costs, supported by affidavit, with the Board and with service on Hunter, 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 Hunter.
3. Hunter 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 7th day of May 1998 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board