

ILLINOIS POLLUTION CONTROL BOARD
September 16, 2004

CITY OF CHICAGO DEPARTMENT OF ENVIRONMENT,)	
)	
Complainant,)	
)	
v.)	AC 04-13
)	(CDOE No. 03-02-AC)
EDDIE GREER,)	(Administrative Citation)
)	
Respondent.)	

CHARLES A. KING OF THE OFFICE OF THE CORPORATION COUNSEL APPEARED ON BEHALF OF THE CITY OF CHICAGO; and

EDDIE GREER APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

Today, the Board decides whether respondent Eddie Greer (Greer) violated the Environmental Protection Act (Act) by causing or allowing the open dumping of waste resulting in litter and in the deposition of general or clean construction or demolition debris at 609 West 59th Street, Chicago, Cook County. For the reasons below, the Board finds that Greer violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and (p)(7) (2002)) as alleged by the City of Chicago (City) in the administrative citation. The Board assesses the statutory civil penalty of \$3,000 and finds Greer liable for hearing costs incurred by the Board and the City.

ADMINISTRATIVE CITATION PROCESS

Section 31.1 of the Act authorizes the Agency and units of local government to enforce specified provisions of the Act through an administrative citation. 415 ILCS 5/31.1 (2002). Part 108 of the Board's procedural rules provides the process of a citation before the Board. 35 Ill. Adm. Code 108 *et seq.* Unlike other environmental enforcement proceedings in which the Act prescribes a maximum penalty, *see, e.g.*, 415 ILCS 5/42(b)(1), the Act sets specific penalties for administrative citations. 415 ILCS 5/42(4, 4-5) (2002). In cases such as this, the Board has no authority to consider mitigating or aggravating factors when determining penalty amounts. *Id.* "[I]f the Board finds that the person appealing the [administrative] citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty." 415 ILCS 5/31.1(d)(2) (2002).

PROCEDURAL HISTORY

On September 18, 2003, the City issued an administrative citation to Greer alleging violations of the Act at 609 West 59th Street, Chicago, Cook County.¹ The citation specifically alleges that Greer violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2002)) by causing or allowing the open dumping of waste resulting in litter, and violated Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2002)) by causing or allowing the open dumping of waste resulting in deposition of general or clean construction or demolition debris. AC at 2.

As required, the City served the administrative citation on Eddie Greer within 60 days after the date of the observed violation, perfecting service on October 3, 2003. On October 17, 2003, Greer timely filed a petition to contest the administrative citation asserting that he did not cause any pollution of any kind. Pet. at 1. On November 6, 2003, the Board issued an order that accepted the petition for hearing.

On April 5, 2004, Board Hearing Officer Bradley Halloran conducted a hearing at the James R. Thompson Center, 100 West Randolph Street, Room 11-512 in Chicago. At the hearing, Charles King appeared and participated on behalf of the City and respondent Greer appeared and participated *pro se*. Linda Kelly of the City and Greer testified at the hearing. Hearing Officer Halloran found that credibility was not an issue in regards to either witness. Tr. at 66. Only one exhibit was offered at the hearing. Hearing Officer Halloran accepted into evidence the City's offered Administrative Citation dated September 18, 2003, with the attached inspection report.

The hearing officer set a briefing schedule requiring the City's post-hearing brief to be filed on or before May 14, 2004; Greer's post-hearing brief to be filed on or before June 18, 2004; and the City's reply, if any, to be filed on or before July 9, 2004. On May 14, 2004, the City filed its post-hearing brief in this matter. The Board has not received a brief from Greer.

FACTS

On August 14, 2003, City inspector Linda Kelly inspected property located at 601-609 West 59th Street in Chicago (site). Ex. 1 at 3; Tr. at 10. Kelly took four photographs depicting the condition of the site that are attached to the inspection report. Ex. 1. Kelly is the project coordinator for the City's Department of Environment and the permitting and enforcement division. Tr. at 7. She has held that position for six years. Tr. at 8. As such, she supervises and inspects the south side of the City of Chicago – from 35th Street to 138th Street. *Id.* In the course of her duties, Kelly conducts approximately 40 inspections per month. Tr. at 9.

Kelly became familiar with the site as a result of complaints indicating that stolen cars were being stripped near the site. Tr. at 10. Kelly was also informed that material from another site was being taken to the site in question, and wanted to see the extent of material involved. Tr. at 11. During the inspection of August 14, 2003, no one was present at the site. Ex. 1 at 12. The

¹ The Board cites the administrative citation as "AC at _."; the hearing transcript as "Tr. at _."; and the City's hearing exhibit as "Ex. 1 at _."

site was secured by fencing. *Id.* Kelly observed construction material, such as wood and other debris, mixed with bricks and other items on the ground. Tr. at 18. The waste was mounded with autos, auto parts, rubbish, and waste scrap metal and was all mixed up and mounded to the west. *Id.* The litter was scattered all over the site and included paper, rubber tubing, metal embedded in the ground, cans, garbage, tires, waste auto parts, and tools. Tr. at 18. Waste was dumped in front of the gate entrance in the street. Ex. 1 at 12.

The City issued the administrative citation to Greer after his name was discovered as a result of a title search performed on the site. Tr. at 22. Greer acknowledged receipt of the citation. Tr. at 34-35. Greer has not denied ownership of the property, and has indicated to Kelly that he acquired the property from a previous owner. Tr. at 23. The site was never permitted as a waste disposal or waste handling facility. Tr. at 44-45.

The majority of the material at the site referenced in the administrative citation does not belong to Greer, but to a person known by various names including Don King, Columbus Don or Columbus Dan (Columbus Don). Tr. at 24-26, 43. Greer allowed Columbus Don to move his material to the site, receiving rent for the use of the site. Tr. at 27. Among the items in the photographs attached to the inspection report, Greer owns only a truck and a payloader. Tr. at 24-25, 36. The items in the inspection photographs have been removed, and the site is now 75% clean. Tr. at 49. At least some of the litter on the site was the result of fly dumping by unknown persons that occurred outside the fence in the street adjacent to the site. Tr. at 37. Greer has taken steps to eliminate the fly dumping, including having someone periodically monitoring the area, and has cleaned up much of what was dumped in the street. Tr. at 37-38, 59-61, 64.

STATUTORY BACKGROUND

Section 3.160 of the Act provides that:

(a) “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.

General construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any general construction or demolition debris or other waste. 415 ILCS 5/3.160(2002).

* * *

Section 3.305 of the Act defines “open dumping” as:

“[T]he consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a landfill.” 415 ILCS 5/3.305 (2002).

Section 3.385 of the Act defines “refuse” as “waste.” 415 ILCS 5/3.385 (2002).

Section 3.535 of the Act provides that:

“Waste” means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto. 415 ILCS 5/3.535 (2002).

Section 21(a) of the Act provides that no person shall:

Cause or allow the open dumping of any waste. 415 ILCS 5/21(a) (2002).

Section 21(p) of the Act provides that no person shall, in violation of subsection (a) of this Section:

Cause or allow the open dumping if any waste in a manner that 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 3.160(a) of this Act; or

(ii) clean construction or demolition debris as defined in Section 3.160(b) of this Act. 415 ILCS 5/21(p) (2002).

Section 31.1(d)(2) of the Act provides that:

“[I]f the Board finds that the person appealing the [administrative] citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.” 415 ILCS 5/31.1(d)(2) (2002).

Section 42(b)(4-5) of the Act provides that:

“In an administrative citation under Section 31.1. of this Act, any person found to have violated any provision of subsection (p) of Section 21 of this Act shall pay a civil penalty of \$1,500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency” 415 ILCS 5/42(b)(4-5).

DISCUSSION

The Board must first determine whether Greer caused or allowed the open dumping of waste at the site. The Act defines “open dumping” as “the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a landfill.” 415 ILCS 5/3.305 (2002). The term “refuse” means “waste.” 415 ILCS 5/3.385 (2002). The Act defines “waste” to include “any garbage . . . or other discarded material.” 415 ILCS 5/3.535 (2002).

The Board finds that the material on the site is refuse as defined in the Act, and that the site does not have a permit to operate as a landfill. It is evident, then, that open dumping occurred at the site. The Board must next determine whether Greer “caused or allowed” the open dumping. Greer has argued that the material on the site was brought there by someone other than himself – either by Columbus Don or by persons unknown who dumped in the street outside the gate. Tr. at 24-26, 37.

The Board has previously held that passive conduct amounts to acquiescence sufficient to find a violation of open dumping. Sangamon County Dept. of Public Health v. Hsueh, AC 92-79 (July 1, 1993). The record shows that Greer owns the property, and Greer has submitted no evidence to show that he does not own the site or that he does not exercise control over it. Although the majority of the waste on the site appears to have been placed on the site by Columbus Don, Greer allowed Columbus Don access to the site. The Board finds that Greer did allow the open dumping of waste when he allowed Columbus Don to bring waste to the site.

To find a violation for the fly dumping, however, the City “must show that the alleged polluter has the capability of control over the pollution or that the alleged polluter was in control of the of the premises where the pollution occurred.” People v. A.J. Davinroy Contractors, 249 Ill. App. 3d 788, 793, 618 N.E.2d 1282, 1286 (5th Dist. 1993) citing Phillips Petroleum Co. v. PCB, 72 Ill. App. 3d 217, 390 N.E.2d 620, 28 Ill. Dec. 453. The City did not prove that Greer owned or exercised control over that portion of the street where the dumping occurred. Accordingly, the Board cannot hold Greer liable for the open dumping of waste in the street outside his fenced in site, but does find that he caused or allowed the open dumping of waste at the site as otherwise alleged in the administrative citation.

Now that the Board has found that open dumping of waste occurred at the site, it must be determined whether that open dumping resulted in litter and general construction or demolition debris as alleged in the citation.

Although the Act does not define the term “litter,” *see* 415 ILCS 5/3.105-3.555 (2002), the Board in other administrative citation cases has looked to the definition provided by the Litter Control Act, 415 ILCS 105/1 *et seq.* St. Clair County v. Louis I. Mund, AC 90-64 (slip op. at 7) (Aug. 22, 1991). Under the Litter Control Act, “litter” means:

[A]ny discarded, used, or unconsumed substance or waste. “Litter” may include but is not limited to, any garbage, trash, refuse, debris, rubbish, grass clippings, or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned vehicle (as defined in the Illinois Vehicle Code), motor vehicle parts, furniture, . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned, or otherwise disposed of improperly. 415 ILCS 105/3 (2002).

City inspector Kelly testified that litter, including garbage, rubber tubing, waste auto parts, scrap metal and tools, was scattered all over the ground at the site. Tr. at 18. The Board finds that even excluding the material dumped outside of the fence, Greer caused or allowed open dumping of waste and that litter has resulted from that dumping in violation of Section 21(p)(1) of the Act.

The definition of “general construction or demolition debris” specifically includes items such as:

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. 415 ILCS 5/3.160 (2002).

The waste at the site included wood, bricks and other debris. Thus, the Board finds that Greer has violated Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2002)) as a result of the waste dumped at the site.

At hearing, Greer argued that he has substantially cleaned up the site. While a review of the record reveals that, at best, the site is 75% clean (Tr. at 49), the issue is substantially irrelevant to the issue of whether a violation as alleged in the administrative citation has occurred. The Board has held that, “even in the context of a contested violation, post-citation activities of the citation recipient are not material” to whether a violation has occurred or to the Board’s review of the citation. Lincoln Chamber of Commerce, AC 89-26 (slip op. at 2) (May 25, 1989). Specifically, the Board has stated that “[t]he Act, by its terms, doe not envision a properly issued citation being dismissed or mitigated because a person is cooperative or

voluntarily cleans-up the site.” IEPA v. Jack Wright, AC 89-227 (slip op. at 14) (Aug. 30, 1990). Further, “the administrative citation process is structured to provide an inherent incentive to people to comply with the Act. It is clear that if the recipient of an administrative citation does not correct an ongoing violation, the Agency can issue subsequent citations to that person.” Lincoln Chamber of Commerce, AC 89-26 (slip op. at 4) (May 25, 1989). In light of the Board’s precedents and the policies underlying the administrative citation process, the Board will not dismiss this citation because Greer has initiated clean-up.

PENALTY

In an administrative citation proceeding, any person found to have violated subsection (p) of Section 21 of the Act must pay a penalty of \$1,500 for each violation of each provision of the section and \$3,000 for each violation of each provision that is a second or subsequent offense, plus any hearing costs incurred by the Board and the Agency. 415 ILCS 5/42(b)(4-5) (2002). Because the Board finds that Greer has violated two subsections of Section 21 and that these are first offenses, in its final order the Board will order Greer to pay a civil penalty of \$3,000, plus costs.

CONCLUSION

After reviewing the record in this case and the relevant portions of the Act, the Board finds that Greer caused or allowed the open dumping of waste resulting in litter and the deposition of general construction or demolition debris.

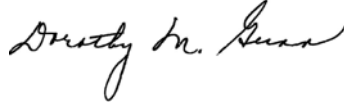
The Board further finds that none of the issues raised by Greer constitute “uncontrollable circumstances” that justify dismissing the administrative citation. Consequently, the Board finds that Greer has violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and 21(p)(7) (2002)) and in its final order will order him to pay a civil penalty of \$3,000. As set forth below, the Board directs the City and the Clerk to document hearing costs, after which the Board will issue a final order. This interim opinion constitutes the Board’s interim findings of fact and conclusions of law.

ORDER

1. The Board finds that Eddie Greer (Greer) violated Sections 21(p)(1) and 21(p)(7) of the Act. 415 ILCS 5/21(p)(1) and 21(p)(7) (2002).
2. The City of Chicago (City) must file a statement of its hearing costs within 14 days of this order, on or before September 30, 2004. The statement must be supported by affidavit and served on Greer. Within the same 14-day period, the Clerk of the Illinois Pollution Control Board must also file and serve on Greer a statement of the Board’s hearing costs supported by affidavit. Greer may file any objections to those statements within 14 days of service.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on September 16, 2004, by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board