

ILLINOIS POLLUTION CONTROL BOARD  
October 20, 2005

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	AC 05-20
v.	)	(IEPA No. 412-04-AC)
	)	(Administrative Citation)
JOHN GROFF,	)	
	)	
Respondent.	)	

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

On August 20, 2004, the Illinois Environmental Protection Agency (Agency) filed this administrative citation against Mr. Robert Groff and Mr. John Groff, alleging violations of Section 21(p)(1), (p)(3), and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), and (p)(7) (2004)). The Agency further alleges that John Groff and Robert Groff violated these provisions by causing or allowing the open dumping of waste in a manner that resulted in (1) litter, (2) open burning, and (3) deposition of general construction or demolition debris or clean construction or demolition debris at 2503 Barton Road, Junction City, Marion County. The allegations arose from a July 29, 2004 inspection of Mr. Groff's property.

On October 8, 2004, the Agency moved the Board to dismiss this administrative citation against respondent Mr. Robert Groff because the Agency failed to timely serve him. *See* 415 ILCS 5/31.1(c) (2004); 35 Ill. Adm. Code 108.202(c). On October 21, 2004, the Board granted the Agency's motion and dismissed Mr. Robert Groff.

For the reasons set forth below, the Board finds that Mr. John Groff has violated all three provisions of Section 21(p) of the Act.

**ADMINISTRATIVE CITATION PROCESS**

Section 31.1 of the Act authorized the filing of administrative citations (415 ILCS 5/31.1 (2004)), 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) (2004).

A respondent issued an administrative citation may pay the civil penalty or challenge the administrative citation by filing a petition with the Board. If a violation is proven, the only

statutory defense to an administrative citation is that the violation resulted from “uncontrollable circumstances.” If a respondent does not succeed at hearing, the Board must impose on the respondent the civil penalty and the hearing costs of the Board and the complainant. *See* 415 ILCS 5/31.1, 42(b)(4), (4-5) (2002); 35 Ill. Adm. Code 108.

### **PROCEDURAL HISTORY**

On October 4, 2004, John Groff timely filed a petition to contest the administrative citation. The Board accepted John Groff’s petition for hearing on October 7, 2004. On October 8, 2004, the Agency moved to dismiss Robert Groff as not timely served. On October 21, 2004, the Board granted the Agency’s motion and dismissed Robert Groff from this action.

A hearing was held on July 18, 2005 before Hearing Officer Carol Webb. At hearing Mr. Cahnovsky, on behalf of the Agency, and Mr. Groff, on his own behalf, both testified. The hearing officer found both witnesses credible. The Agency filed a post-hearing brief on August 15, 2005.

### **FACTUAL BACKGROUND**

The violations alleged in this administrative citation arise from an inspection of Mr. Groff’s property conducted by Agency inspector, Mr. James Balmer, on June 29, 2004. Comp. at 1; Tr. Exh. 1. At the inspection, Mr. Balmer was accompanied by Mr. Chris Cahnovsky. Tr. at 16. In his inspection report, Mr. Cahnovsky indicated he last inspected the site on May 25, 2004. Tr. Exh. 1. The Agency sent Mr. Groff an Administrative Citation Warning Notice (ACWN) on June 8, 2004. Tr. Exh. 2.

During his July 29, 2004 follow-up inspection, Mr. Balmer noticed that most of the tires reported in the previous inspection were gone, but that 7 used tires on rims, steel parts and rolls of fencing remained on a flatbed trailer in the southwest corner of the property. Tr. Exh. 2. An abandoned Jeep was located near the flatbed trailer. Mr. Balmer also observed new evidence that tires, lumber, tarpaper, Styrofoam and a fibrous material were burned in the same burn area found during the first inspection. *Id.* Slightly to the east, Mr. Balmer noticed more evidence of tire, lumber and plastic burning.

At hearing, Mr. Cahnovsky, Regional Manager for the Collinsville Regional Field Office for the Agency, testified regarding Mr. Balmer’s inspection because Mr. Balmer was on disability leave at the time. Tr. at 8. At hearing, Mr. Cahnovsky presented photos showing tires, rolls of fencing, a Jeep vehicle, burned debris consisting of wood, painted wood, tires, landscape material, Styrofoam, and other burned or partially burned materials. Tr. at 11-12. According to Mr. Cahnovsky, the pictures also showed tire wire, which is the metal debris that is left when all the rubber is burned away. Tr. at 12.

Mr. Groff stated he burned stumps out of the ground, materials from a shed he tore down, trees that he cut down. Tr. at 19. Mr. Groff stated at hearing that he continued cutting down and burning trees.

## STATUTORY BACKGROUND

Section 21(p)(1), (3) and (7) of the Act state:

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;

\*\*\*

(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)(1), (3), and (7) (2004).

Section 3.300 of the Act defines “open burning” as “the combustion of any matter in the open or in an open dump.” 415 ILCS 5/3.300 (2004).

Section 3.305 of 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 sanitary landfill.” 415 ILCS 5/3.305 (2004).

Section 3.53 of the Act defines “waste” as, among other things, “garbage . . . or other discarded material . . .” 415 ILCS 5/3.53 (2004).

It is well established that the Board accepts the definition of litter as that found in the Litter Control Act. St. Clair County v. Louis I. Mund, AC 90-64 (Aug. 22, 1991). Section 3 of the Illinois Litter Control Act provides:

“Litter” means any discarded, used or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, refuse, debris . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned, or otherwise disposed of improperly. 415 ILCS 105/3(a) (2004).

## ANALYSIS

In order to seek enforcement by way of the administrative citation process for violations of Section 21(p)(1), (3) and (7), the Agency must show that Mr. Groff caused or allowed open dumping, and the open dumping was of waste, that resulted in litter, open burning, and the deposition of demolition debris. 415 ILCS 5.21(p)(1), (3), and (7)(2004).

### **Allowance of Open Dumping**

The Agency states that Mr. Groff caused or allowed open dumping because the inspection photos presented at hearing show that wood, painted wood, tires, landscape waste, Styrofoam, tarpaper, plastic and metal remaining from burning, had accumulated at the site. The Agency states that the Act defines open dumping as the consolidation of refuse at a site not permitted as a sanitary landfill. 415 ILCS 5/3.305(2004). Under the Act, “refuse” means “waste,” (415 ILCS 5/3.385(2004), and “waste” includes “any garbage . . . or other discarded material” (415 ILCS 5/3.535 (2004). The Agency states that the materials depicted in the photos constitute discarded materials within the meaning of the term “waste.” The Agency further points out that Mr. Groff admitted he placed the materials in the photos on his property. For these reasons, the Board finds Mr. Groff caused or allowed the open dumping of waste observed at the inspection.

### **Resulting in Litter**

Next, the Agency argues that Mr. Groff’s open dumping of these wastes observed on April 7, 2004, resulted in litter under Section 21(p)(1) of the Act. 415 ILCS 5/21(p)(1) (2004). The Agency states it is well-established that the Board looks to the definition of “litter” in the Litter Control Act, which defines litter as:

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 (2004).

Under this definition, argues the Agency, the materials found on Mr. Groff’s property constitute litter under Section 21(p)(1) of the Act. The Board finds Mr. Groff caused or allowed open dumping of wastes on his property that resulted in litter.

### **Resulting in Open Burning**

The Agency also states Mr. Groff’s open dumping of wastes observed on April 7, 2004, resulted in open burning under Section 21(p)(3) of the Act. 415 ILCS 5/21(p)(3) (2004). The Agency contends that open burning is defined in Section 3.300 of the Act as: “the combustion of any matter in the open air or in an open dump.” 415 ILCS 5/3.300 (2004).

The Agency states that Mr. Groff admitted at hearing that he burned tires and wood from a shed he tore down at the site. Br. at 2; citing Tr. at 19-21. Further, the inspection report shows that Mr. Balmer observed burn piles on the site during his inspection. Accordingly, the Agency contends that Mr. Groff’s open dumping of wastes on the site resulted in open burning under

Section 21(p)(3) of the Act. The Board is persuaded by the Agency's arguments and finds a violation of Section 21(p)(3) of the Act.

### **Resulting in Deposition of Demolition Debris**

Finally, the Agency contends that part of the materials found on Mr. Groff's property was construction or demolition debris resulting in a violation of Section 21(p)(7) of the Act. 415 ILCS 5/21(p)(7) (2004). The Agency states that, and Mr. Groff admits, some of the waste burned onsite was from a former shed on the property. The shed material meets Act's definition of "construction or demolition debris," argues the Agency. The Act defines "construction or demolition debris" as:

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 . . . 415 ILCS 5/3.160(a) (2004).

The Agency states that the material from the shed located on the site constitutes "construction or demolition debris" as that term is defined in the Act and for the purposes of Section 21(p)(7) of the Act. The Board finds that the open dumping of wastes on Mr. Groff's property resulted in the deposition of construction or demolition debris in violation of Section 21(p)(7) of the Act.

### **Mr. Groff's Arguments**

#### **The Administrative Citation Warning Notice**

Mr. Groff argued at hearing that "papers" he received, as well as Inspector Balmer, both indicated that if he cleaned up his property, "everything would have been taken care of." Tr. at 15. The Agency states in its post-hearing brief that Mr. Groff must have been referring to the ACWN (Tr. Exh. 2) sent to Mr. Groff on June 8, 2004, subsequent to Mr. Balmer's first inspection of his property.

The ACWN identified the violations that the Agency inspector observed during the May inspection. The ACWN gave Mr. Groff until July 5, 2004, to remove all waste from his property and until July 11, 2004 to provide documentation to the Agency of the waste removal. Tr. Exh. 2. The ACWN also stated that regarding any violations of 21(p) cited in the inspection report, "the Agency may, without further notice and regardless of any future activities to achieve compliance, file an Administrative Citation before the Illinois Pollution Control Board . . ." Tr. Exh. 2.

The Agency contends that, as stated at hearing and as depicted in inspection photos, waste remained on Mr. Groff's property at the time of the July 29, 2004 inspection. Therefore, argues the Agency, the ACWN informed Mr. Groff of the potential for an administrative citation

and that the Agency would reinspect the site to verify compliance, yet violations were again observed during the July 29, 2004 inspection.

The Board finds, as the Agency argued, that Mr. Groff failed to comply with the deadlines provided in the ACWN and that violations continued on Mr. Groff's property as of the July 29, 2004 inspection.

### **Lack of Knowledge**

Mr. Groff also stated at hearing that he did not know there was a law prohibiting burning trees and wood on his own property and that no burning took place after he received papers from the Agency. Tr. at 19. The Agency states that not knowing the law is not a defense. Rather, a person can cause or allow a violation of the Act even without knowledge or intent. Br. at 4; citing County of Will v. Utilities Unlimited, Inc., et al., AC 97-41, slip op. at 5 (July 24, 1997); citing People v. Fiorini, 143 Ill. 2d 318, 574 N.E.2d 612 (1991).

The Board agrees with the Agency that lack of knowledge is not a defense to violations of Section 21(p) of the Act. The Illinois Supreme Court has established that one may "cause or allow" a violation of the Act without knowledge or intent. Fiorini, 574 N.E.2d 612.

That the violation is not continuing is also not a defense. Although Mr. Groff claims that he stopped open burning materials on his property, it does not change the fact that it occurred. Specifically, the Board has stated: "the Act, by its terms, does 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, Mr. Balmer's July 29, 2004 inspection report indicates he observed "new evidence that tires, lumber, tarpaper styrofoam and fibrous material were burned." Tr. Exh. 2.

The Board finds the violations as alleged.

### **CONCLUSION**

Based on the record before the Board, the Board finds that the Mr. Groff violated Section 21(p)(1), (3) and (7) of the Act by causing or allowing the open dumping of wastes on his property resulting in litter, open burning, and the deposition of construction or demolition debris.

The civil penalty for violating Section 21(p) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense, plus any hearing costs incurred by the Board and the Agency. 415 ILCS 5/42(b) (4-5) (2004); 35 Ill. Adm. Code 108.500(a). Because there are 3 violations of Section 21(p) and these violations are first offenses, the total civil penalty is \$4,500, plus hearing costs.

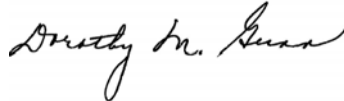
This interim opinion constitutes the Board's findings of fact and conclusions of law. A final order will be issued pursuant to the interim order that follows.

**ORDER**

1. The Board finds that respondent Mr. John Groff violated Section 21(p)(1), (3) and (7) of the Environmental Protection Act at his property in Junction City, Marion County. 415 ILCS 5/21(p)(1), (3), (7) (2004).
2. The Illinois Environmental Protection Agency and the Clerk of the Board must each file a statement of their hearing costs within 14 days of the date of this order, or by November 3, 2005. Each statement must be supported by affidavit and served on Mr. Groff.
3. The Board gives Mr. Groff leave to respond to the statements of hearing costs ordered in paragraph 2 of this order within 21 days after service of that information. 35 Ill. Adm. Code 108.506(a). The Agency may then file a reply to Mr. Groff response within 14 days after service of the response. 35 Ill. Adm. Code 108.506(b).
4. The Board will then issue a final order assessing a statutory penalty of \$4,500 for the violation and awarding appropriate hearing costs. 35 Ill. Adm. Code 108.500(b).

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 October 20, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board