

ILLINOIS POLLUTION CONTROL BOARD
April 3, 2014

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 12-48
) (IEPA No. 89-12-AC)
RUTH WHITE,) (Administrative Citation)
)
Respondent.)

INTERIM OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

The Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Ruth White (respondent) alleging that respondent violated Sections 21(p)(1), 21(p)(3) and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (p)(3), 55(k)(1) (2012)) by causing or allowing open dumping in a manner resulting in litter and open burning and causing or allowing water to accumulate in used or waste tires. The administrative citation concerns respondent's property located on Charles Street, south of Illinois Route 75, in Freeport, Stephenson County (the Site). The property is commonly known to the Agency as the "Freeport/White Property" and designated with Site Code No. 1770205230. For the reasons discussed below, the Board finds that respondent violated Sections 21(p)(1), 21(p)(3), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (p)(3), 55(k)(1) (2012)) and that a fine of \$4,500 is proper. Further, the Agency and the Board are directed to file statements of hearing costs within 14 days of this order so that those costs may also be assessed against respondent.

PROCEDURAL HISTORY

On April 17, 2012, the Agency timely filed with the Board an administrative citation (AC) against respondent. AC at 1. The Agency served respondent with the AC on April 17, 2012. The Agency filed Proof of Service on Ruth White on April 24, 2012.

On May 18, 2012, respondent timely filed a petition (Pet.) with the Board to contest the AC. Pet. at 1. In the petition, respondent requested time to resolve the situation at the Site and stated that she "had no knowledge of what was taking place on the site" until after she had received correspondence from the Agency in September 2011 regarding an inspection of the Site. *Id.* The Board accepted the petition for review on June 7, 2012. IEPA v. Ruth White, AC 12-48, slip op. (June 7, 2012).

A hearing (Tr.) took place on January 14, 2014 at the James R. Thompson Center in Chicago, Cook County. Tr. at 1. Special Assistant Attorney General Michelle Ryan appeared on behalf of the complainant, and respondent failed to appear. *Id.* at 2, 4, 5. Kaare Jacobsen, an Environmental Protection Specialist for the Agency's Bureau of Land, testified on behalf of the

Agency. *Id.* at 6. The complainant offered the Open Dump Inspection Checklist, dated February 22, 2012, as an exhibit (Exh. 1), which was admitted into the record. *Id.* at 13. The Agency timely filed a post-hearing brief (Brief) on February 4, 2014. While allowed, by hearing officer order, to file a brief on or before February 25, 2014, respondent has failed to do so.

FACTS

Respondent owns property in Stephenson County known to the Agency as “Freeport/White Property” and designated with site code number 1770205230. AC at 1. The Agency characterizes the Site as an open dump operating without a permit. *Id.* On February 22, 2012, Kaare Jacobsen, of the Agency’s Rockford Regional Office, inspected the Site. *Id.*; Exh. 1 at 1.

The February 2012 inspection was performed following a complaint received by the Agency’s Rockford Regional Office on May 5, 2011 and numerous other inspections of the Site. Exh. at 3. On January 13, 2012, respondent notified the Agency that respondent intended to begin removing the open dumped waste from the Site, as the weather permitted. In his narrative inspection report, Jacobsen stated that at the time of each inspection leading up to the February 2012 site visit, “open dumping of municipal waste and building debris [was] viewed strewn throughout the vacant lot.” *Id.* He also noted a row of “neatly stacked uncovered used/waste tires” and burning activity at the Site during prior visits. *Id.*

During the February 2012 inspection, Jacobsen observed “burning of solid waste inside a burn barrel” and stated that “building debris, carpeting, municipal refuse, recyclable metals and burnt remains of solid waste remain [] present at the site.” Exh. at 3. Jacobsen, again, observed the row of uncovered waste tires on the property and took eleven photographs of the various wastes at the Site. *Id.* at 3-10.

At the January 14, 2014 hearing, Jacobsen used the photos taken during the February 22, 2012 inspection to guide his testimony. Tr. at 10-13. Jacobsen described photograph 1, for example, as depicting a row of tires, a pile of building debris, and “a smoking 55-gallon drum that was burning some debris.” *Id.* at 10; Exh. at 5. Respondent failed to appear at the Board hearing. *Id.* at 4.

STATUTORY BACKGROUND

Sections 21(p)(1) and 21(p)(3) of the Act prohibit any person from causing or allowing open dumping of any waste in a manner which results in litter or open burning, respectively. 415 ILCS 5/21(p)(1), (p)(3) (2012).

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 (2012). Section 3.385 of the Act defines “refuse” as “waste.” 415 ILCS 5/3.385 (2012). Section 3.535 of the Act, in pertinent part, defines “waste” as, “garbage . . . or other discarded material.” 415 ILCS 5/3.535 (2012).

It is well established that the Board accepts the definition of litter found in the Litter Control Act. *St. Clair County v. Louis I. Mund*, AC 90-64 (Aug. 22, 1991); *see* 415 ILCS 105 (2012). Section 3 of the Illinois Litter Control Act provides:

‘Litter’ means any discarded, used or unconsumed substances 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) (2012).

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 (2012).

Section 55(k)(1) of the Act prohibits any person from causing or allowing “water to accumulate in used or waste tires.” 415 ILCS 5/55(k)(1) (2012). Section 54.13 of the Act defines “used tire” as “a worn, damaged, or defective tire that is not mounted on a vehicle” and Section 54.16 of the Act defines “waste tire” as “a used tire that has been disposed of.” 415 ILCS 5/54.13, 54.16 (2012).

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) (2012). 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) (2012).

DISCUSSION

The Agency alleges that the respondent violated Sections 21(p)(1), 21(p)(3) and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (p)(3), 55(k)(1) (2012)) by causing or allowing the open dumping of waste resulting in both litter and open burning and causing or allowing water to accumulate in used or waste tires. AC at 2. The respondent’s purported defenses to the alleged violation are that she had no knowledge of the violations, and that the operator of the Site did not have permission to operate a dump at the Site. Pet. at 1.

As a threshold matter, to prove a violation of Sections 21(p)(1) and 21(p)(3), the Agency must first prove a violation of Section 21(a) of the Act (415 ILCS 5/21(a) (2012)). Section 21(a) provides that “[n]o person shall: (a) Cause or allow the open dumping of any waste.” 415 ILCS 5/21(a) (2012). The photos included in Jacobsen’s inspection report, along with his testimony at hearing, provide evidence that open dumping occurred at the Site. Exh. 5-10.

The Board finds that the pile of building debris, the open dumped furniture and carpeting, and other materials at the Site were discarded, and therefore are considered waste. Mr. Jacobsen’s testimony and photographs establish that the Site contained substantial amounts of discarded materials. Exh. at 5-10. Specifically, Jacobsen’s photographs depict the burned remains of open dumped solid waste, open dumped building debris, and open dumped municipal waste. *Id.* at 6-8. The Board finds that the materials depicted in Jacobsen’s photographs were

“discarded” and therefore constitute “waste” under the Act. Also, the Agency alleges, and it is undisputed, that the Site does not meet the requirements for a sanitary landfill. AC at 1. Therefore, the Board finds that in bringing the materials to his property and depositing them there, respondent “open dumped” the waste.

As noted above, the Board has adopted the definition of “litter” provided in the Litter Control Act for purposes of Section 21 of the Act. *See St. Clair County*, AC 90-64, slip op. at 4, 6. Consistent with the discussion above, the Board finds that the discarded material on respondent’s property falls within the definition of “litter.” Thus, the Board finds that respondent’s open dumping of waste resulted in litter in violation of Section 21(p)(1) of the Act. 415 ILCS 5/21(p)(1) (2012). Jacobsen’s photographs depict a smoking barrel of waste on the Site, supporting the Agency’s allegation of open dumping that resulted in open burning at the Site in violation of Section 21(p)(3) of the Act. 415 ILCS 5/21(p)(3) (2012). Thus, the Board finds that respondent’s open dumping of waste resulted in open burning in violation of Section 21(p)(3) of the Act. 415 ILCS 5/21(p)(3) (2012).

A number of the photographs taken by Jacobsen on February 22, 2012 depict auto tires at the Site arranged in a row and exposed to the elements. Exh. at 5-6. In addition, Jacobsen testified that the tires pictured in the photos accompanying his inspection report did contain water. Tr. at 11. The Board finds that the apparently worn tires, not attached to a vehicle, meet the definition of “used tires” provided in the Act. 415 ILCS 5/54.13 (2012). In addition, the Board finds that the tires were disposed of in a way that allowed the accumulation of water inside the used tires in violation of Section 55(k)(1) of the Act. 415 ILCS 5/55(k)(1) (2012).

The respondent argues that she had no knowledge of the violations and that the operator of the Site caused the violations without respondent’s permission. Pet. 1-2. Respondent also alleges that she would be cleaning the Site in the future. *Id.* Because knowledge is not an element of a violation of the Act, lack of knowledge is not a defense. *See Caseyville Sport Choice, LLC v. Erma I. Sieber, et al.*, PCB 08-30, slip op. at 9 (Feb. 3, 2011). In order for a violation to be found, “it is not necessary to prove guilty knowledge or *mens rea*.” *People v. A.J. Davinroy Contractors*, 249 Ill. App. 3d 788, 793 (5th Dist. 1993). To prove a violation, the Agency only needs to show that “the alleged polluter has the capability of control over the pollution or that the alleged polluter was in control of the premises where the pollution occurred.” *Id.*, citing *Phillips Petroleum Co. v. IEPA*, 72 Ill. App. 3d 217, 220-21 (2d Dist. 1979). Here, respondent does not dispute that she is the owner of the property and admits that she gives direction to the operator of the Site. *See* Pet. 1-2. Respondent also does not dispute that she is responsible for the Site. *Id.* In respondent’s petition for review, she indicates that she is “working to take care of the situation,” and that she owns the property, illustrating that she has control and ownership of the Site. *Id.* The Board finds that respondent’s argument that she had no knowledge of the violations occurring on the property is not a defense to alleged open dumping violations. Accordingly, the Board cannot find that her claim is a valid defense to the violations alleged by the Agency.

Lastly, if the Board finds that uncontrollable circumstances caused an alleged violation of the Act, the Board issues a finding of no violation. 415 ILCS 5/31.1(d)(2) (2012). A party can claim uncontrollable circumstances as a defense only when unpredictable conditions make it

nearly impossible to come into compliance at the time a violation is observed. City of Chicago, Dept. of Environment v. City Wide Disposal, Inc., PCB 03-11, slip op. at 9-10 (Sept. 4, 2003). Here, respondent merely asserts that she failed to clean up the Site “because of transportation and money issues.” Pet. at 1. Further, while respondent alleged that “transportation and money issues” prevented compliance at the Site, respondent has not provided the Board with any evidence as to why the Board should consider the transportation and money issues as “uncontrollable circumstances” causing the violations pursuant to Section 31.1(d)(2) of the Act. 415 ILCS 5/31.1(d)(2) (2012). Therefore, the Board finds that respondent failed to show uncontrollable circumstances caused the alleged violations of the Act.

The Board finds that respondent caused or allowed the open dumping of waste resulting in both litter and open burning. The Board also finds that respondent caused or allowed water to accumulate in used or waste tires at the Site. Finally, the Board finds that respondent did not establish a valid defense to the alleged violations. Therefore, the Board finds that respondent violated Sections 21(p)(1), 21(p)(3) and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (p)(3), 55(k)(1) (2012)).

Civil Penalty and Hearing Costs

The Agency seeks the statutory \$4,500 civil penalty for the three violations that are the subject of the AC. AC at 2. Because the Board finds respondent violated Sections 21(p)(1), (p)(3) and 55(k)(1) of the Act, the Board must now address the issue of civil penalties and hearing costs. Both are addressed in Section 42(b)(4-5) of the Act:

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) of Section 21 . . . or subsection (k) of Section 55 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, except that the civil penalty shall be \$3,000 for each violation of any provision of subsection (p) of Section 21 . . . or subsection (k) of Section 55 that is the person’s second or subsequent adjudicate[ed] violation of that provision. 415 ILCS 5/42(b)(4-5) (2012).

In this case, the Board finds respondent violated Sections 21(p)(1), 21(p)(3), and 55(k)(1) of the Act. The Agency has provided no evidence that these are second or subsequent adjudicated violations of the Act for respondent. Therefore, the Board will assess a total penalty of \$4,500 in its final opinion and order.

In addition, by unsuccessfully contesting the AC at hearing, the respondent must pay the hearing costs of the Agency and the Board. *See* 415 ILCS 5/42(b)(4-5) (2012); 35 Ill. Adm. Code 108.500(b)(3). The Agency and the Clerk of the Board are each directed to file a statement of costs, supported by affidavit, and to serve the filing on respondent. The respondent will have an opportunity to respond to the requests for hearing costs, as provided in the order below.

CONCLUSION

The Board finds that respondent violated Sections 21(p)(1), 21(p)(3), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (p)(3), 55(k)(1) (2012)) by causing or allowing the open dumping of waste resulting in both litter and open burning and by causing or allowing water to accumulate in used or waste tires. Respondent must pay a civil penalty of \$4,500 and the hearing costs of the Agency and the Board. As set forth in the order below, the Board directs the Agency and the Clerk of the Board to file hearing costs documentation, to which respondent may respond. After the time for filings on hearing costs have expired, the Board will issue a final opinion and order imposing the civil penalty on respondent and assessing against her any appropriate hearing costs.

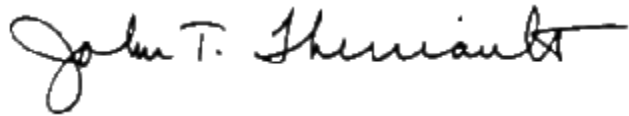
This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board finds that Respondent Ruth White violated Sections 21(p)(1), 21(p)(3), and 55(k)(1) of the Act (415 ILCS 5/21(p)(1), (p)(3), 55(k)(1) (2012)).
2. By April 17, 2014, the Agency and Clerk of the Board must each file a statement of hearing costs, supported by affidavit, with service on respondent.
3. By May 1, 2014, respondent Ruth White may file a response with the Board to the filings required by this order, with service on the Agency.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 3, 2014, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board