

ILLINOIS POLLUTION CONTROL BOARD
December 6, 2007

COUNTY OF JACKSON,)
)
Complainant,)
)
v.) AC 07-43
) (Site Code 0778105047)
BOB OSINGA) (Administrative Citation)
)
Respondent.)

DANIEL BRENNER APPEARED ON BEHALF OF THE COMPLAINANT; and

BOB OSINGA APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by G.T. Girard):

The County of Jackson (County) timely filed an administrative citation against Bob Osinga (respondent) alleging that respondent violated Sections 21(p)(1) and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) and (p)(7) (2006)). The administrative citation was issued for alleged violations occurring in rural Jackson County. For the reasons discussed below, the Board finds that respondent did violate Sections 21(p)(1) and (p)(7) of the Act (415 ILCS 5/21(p)(1) and (p)(7) (2006)) and that a fine of \$3,000 must be assessed. Further, the County and the Board are directed to file statements of hearing costs within 14 days of this order so that those costs too may be assessed against respondent.

PROCEDURAL HISTORY

On February 14, 2007, the County timely filed an administrative citation (AC) against Bob Osinga. On March 12, 2007, respondent filed a petition to contest the administrative citation. The Board accepted the petition for review on March 15, 2007.

A hearing was held before Board Hearing Officer Carol Webb on July 19, 2007 (Tr.). At that hearing Mr. Don Terry, an inspector with the County, and Mr. Bob Osinga testified. Tr. at 6, 12. The hearing officer set a schedule for filing briefs, requiring the County to file a brief by September 14, 2007, and a reply if any by October 31, 2007. Tr. at 14. The Hearing Officer directed respondent to file a brief by October 15, 2007. *Id.* The County timely filed a brief that the Board received on August 16, 2007. Respondent has not filed a brief.

FACTS

Respondent owns a facility located in Jackson County known to the Illinois Environmental Protection Agency as “Murphysboro/Bob Osinga site” and designated with site

code number 0778105047. AC at 1. The facility is an open dump without a permit. *Id.* On January 9, 2007, Mr. Terry inspected the site. *Id.*; Tr. at 7.

Mr. Terry inspected the site because of a citizen complaint received in 2004 regarding possible open dumping on the site. Tr. at 8-9. Although a cloudy day, Mr. Terry testified that there was no vegetation or leaves on trees and visibility was good. Tr. at 8. Upon his arrival at the site, Mr. Terry observed materials that appeared to be disposed of at the site. *Id.* The materials were in piles and strewn about. *Id.* Mr. Terry testified that the materials consisted of construction and demolition type materials as well as barrels and a collapsing mobile home, open at one end. *Id.* Mr. Terry stated that none of the materials he observed appeared to be protected for future use. *Id.*

Mr. Terry took photos of the site during his inspection. Tr. at 9; Exh. 1. The photos show materials such as lumber, plastic containers, scrap metal, and air-conditioning covers and units. Tr. at 10; Exh. 1. The photos also depict barbecue grills and building materials. *Id.* Also shown in the photos is the collapsing mobile home, with one end open and falling, which allows the elements to get inside. *Id.* Mr. Terry opined that given the type and amount of debris, the materials came from offsite. Tr. at 10. Mr. Terry also stated that he did not believe the violations were a result of uncontrollable circumstances. Tr. at 11

Mr. Osinga testified on his own behalf. Mr. Osinga conceded that in January there was scrap metal on the site, but he has been recycling and cleaning up the site since then. Tr. at 12. Mr. Osinga testified that he had asked for a postponement due to the death of his brother and his need to go to Wisconsin and take care of his brother's affairs. *Id.* Mr. Osinga stated that he had some materials under a tarp he was saving and that he had put up a storage building. *Id.*

Mr. Osinga testified that he did not realize that he had not been concentrating on the mobile home. Tr. at 13. Mr. Osinga had removed some of the siding from the mobile home and was planning on removing the north end and closing that end off for storage. *Id.* He had been using that area for tire storage to keep tires out of the weather. *Id.* Mr. Osinga conceded that there were tires on the site in the mobile home area. *Id.*

STATUTORY BACKGROUND

Section 21(p) of the Act prohibits any person from causing or allowing open dumping in a manner which results in the following occurrences at the dump site:

- (1) litter;

- (7) deposition of general construction or demolition debris as defined in Section 3.160(a) of this Act; or clean construction or demolition debris as defined in Section 3.160(b) of this Act. 415 ILCS 5/21(p)(1), (7) (2006).

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 (2006).

Section 3.53 of the Act defines “waste” as, among other things, “garbage . . . or other discarded material” 415 ILCS 5/3.53 (2006).

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) (2006).

Section 3.160(a) defines “general 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; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed or other 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(a) (2006)

Section 3.160(b) defines “clean construction debris” as:

uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities 415 ILCS 5/3.160(b) (2006)

Section 31.1 of the Act allows the respondent to appeal the County’s issuance of an administrative citation within 35 days of the service of the administrative citation. 415 ILCS 5/31.1 (2006). Under Section 31.1(d)(2) of the Act, if the Board finds that the violations occurred and were not the result of uncontrollable circumstances, the Board must enter an order finding the violation and assessing the statutory penalty. 415 ILCS 5/31.1(d)(2) (2006). 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) (2006).

DISCUSSION

Respondent’s initial petition and testimony at hearing is the only evidence presented by respondent in defense of the alleged violations of Sections 21(p)(1) and (7) of the Act (415 ILCS 5/21(p)(1) and (7) (2006)). The Board finds that respondent’s evidence is insufficient to support a finding for respondent in this case.

The only statutory defense to an administrative citation is that the violations were the result of uncontrollable circumstances (*see IEPA v. John Groff*, AC 05-20 (Oct. 20, 2005)). The only other defense is that the violations did not occur (*see IEPA v. Omer Thomas*, AC 89-215 (Jan. 23, 1992)). In *Thomas*, the Board stated:

Pursuant to Section 31.1(d)(2) of the Act, if the record demonstrates that such violation occurred then the Board must adopt an order finding a violation and impose the specified penalty. Respondent has two defenses to an administrative citation. The first is to show that the violation did not occur; the second that it occurred but was due to uncontrollable circumstances. [415 ILCS 5/31.1(d)(2)]. *Thomas*, AC 89-215 (Jan. 23, 1992).

The Board has consistently held that absent one of these two defenses a violation must be found. *See, e.g., IEPA v. Bencie*, AC 04-77 (Feb. 16, 2006); *see also* 35 Ill. Adm. Code 108.206.

A review of the record definitively establishes that the violations did occur and were not the result of uncontrollable circumstances. Mr. Osinga concedes that there were discarded materials on the site, although he insists some were for reuse. Tr. at 12-13. A review of the photos of the site and the testimony of Mr. Terry clearly establishes that the site contained substantial amounts of materials that were discarded. The photos also depict the state of the mobile home on the site and the materials around that collapsing structure. The materials obviously include construction debris and litter. Therefore, the Board finds that respondent violated Sections 21(p)(1) and (7) of the Act (415 ILCS 5/21(p)(1) and (7) (2006)).

CONCLUSION

Based on the record before the Board, the Board finds that respondent violated Sections 21(p)(1) and (7) of the Act (415 ILCS 5/21(p)(1) and (7) (2006)) by causing or allowing the open dumping of wastes on his property resulting in litter and the deposition of general construction or demolition debris or clean construction or demolition debris.

The civil penalty for violating Section 21(p) of the Act (415 ILCS 5/21(p) (2006)) is \$1,500 for a first offense and \$3,000 for a second or subsequent offense, plus hearing costs. 415 ILCS 5/42(b)(4-5) (2006); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(p) of the Act (415 ILCS 5/21(p) (2006)) and these violations are the first offense, based on the record, the total civil penalty is \$3,000. Further, because a hearing was held in this proceeding, respondent is also liable for hearing costs. Therefore, the Board and the County must file a statement of costs with the Clerk within 14 days of this order.

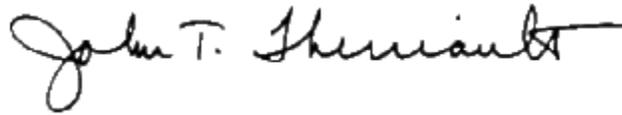
This interim opinion constitutes the Board's findings of fact and conclusions of law. A final order will be issued pursuant to the interim order that follows

ORDER

1. The Board finds that respondent Mr. Bob Osinga violated Sections 21(p)(1) and (7) of the Environmental Protection Act (415 ILCS 5/21(p)(1) and (7) (2006)) at his property located in rural Jackson County.
2. The County of Jackson and the Clerk of the Board must each file a statement of their respective hearing costs within 14 days of the date of this order, or by December 20, 2007. Each statement must be supported by affidavit and served on Mr. Osinga.
3. The Board gives Mr. Osinga 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 County may then file a reply to Mr. Osinga's 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 \$3,000 for the violations and awarding appropriate hearing costs. 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 6, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board