

ILLINOIS POLLUTION CONTROL BOARD
November 1, 2001

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 01-5
)	(IEPA No.323-00-AC)
BILLY HAMMOND, SR.,)	(Administrative Citation)
)	
Respondent.)	

MICHELLE M. RYAN AND JOHN J. KIM, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, APPEARED ON BEHALF OF COMPLAINANT.

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

This matter comes before the Board on an administrative citation issued by complainant, the Illinois Environmental Protection Agency (Agency), to respondent, Billy Hammond, Sr. (Hammond). The administrative citation alleges that on June 30, 2000, Hammond violated Sections 21(p)(1) and (7) of the Environmental Protection Act (Act), 415 ILCS 5/21(p)(1),(7) (2000). The Agency alleges that Hammond violated these provisions by causing or allowing the open dumping of waste in a manner resulting in litter and the deposition of construction demolition debris at a facility located in West City, Franklin County.

A hearing was held on August 14, 2001, in West Frankfort, before Board Hearing Officer Steven C. Langhoff. The complainant appeared; the respondent did not. The complainant filed a post-hearing brief on September 10, 2001. The respondent failed to file a post-hearing brief.

Based on the evidence presented in this proceeding, the Board finds that Hammond violated Sections 21(p)(1) and (7) of the Act, (415 ILCS 5/21(p)(1),(7) (2000)), and orders the Agency and the Clerk of the Board to file a statement of hearing costs, to which Hammond is given leave to reply. Once these pleadings are received, the Board will issue a final order requiring Hammond to pay the total statutory penalty of \$3,000 plus any appropriate costs.

PROCEDURAL MATTERS

The Agency served this administrative citation on Hammond by certified mail on July 24, 2000. On the same date, the Agency filed the administrative citation with the Board. On August 14, 2000, Hammond filed a petition to review the administrative citation and a motion to dismiss. The Board denied the motion to dismiss in a December 7, 2000 Board order. On February 26, 2001, Hammond's attorney filed a notice of withdrawal. A hearing was held on

August 14, 2001.¹ At hearing, Kent Johnson (Johnson) testified on behalf of the Agency. No other witnesses testified. As stated, Hammond did not appear at the hearing.

FINDINGS OF FACT

Johnson is a field inspector for the Agency's Bureau of Land. He has been with the Agency since May of 1992, and has inspected hundreds of facilities. Tr. at 7. His duties include the inspection of solid waste, hazardous waste and tire facilities. *Id.*

On June 30, 2000, Johnson inspected property located at the intersection of Clay and Mason Streets in West City, Illinois. Tr. at 8. During the inspection, Johnson observed debris intermingled in soil and water. Tr. at 9. Johnson also observed demolition debris, including concrete, wood and metal, intermingled with soil and vegetation. Tr. at 9-12. After the inspection, Johnson performed a deed search and determined that Hammond was the owner of the facility via a contract for deed. Tr. at 11. An inspection report summarizing the inspection and containing photographs found by the hearing officer to fairly and accurately depict the facility at the time of Johnson's inspection was admitted at hearing. Tr. at 13.

DISCUSSION

Section 21(p)(1) and (7)

The administrative citation alleges that Hammond caused or allowed open dumping resulting in litter and open burning at the site in violation of Sections (p)(1) and (p)(7) of Section 21, respectively. Those provisions provide:

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;

* * *

7. deposition of:

(i) general construction or demolition debris as defined in Section 3.78 of this Act;
or

(ii) clean construction or demolition debris as defined in Section 3.78a of this Act.
415 ILCS 5/21(p)(1),(7) (2000).

Section 21(a), to which Section 21(p) refers, provides:

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

No person shall:

(a) Cause or allow the open dumping of any waste. 415 ILCS 5/21(a) (2000).

As a threshold matter, Sections (p)(1) and (p)(7) of the Act each require the Agency to show that Hammond caused or allowed open dumping. Open dumping is defined 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 5/3.24 (2000). Pursuant to the Act, “Refuse means waste.” 415 ILCS 5/3.31 (2000). Waste includes any garbage or other discarded material. 415 ILCS 5/3.53 (2000).

The record shows that Hammond is the owner of the facility. The record also shows that on June 30, 2000, debris including concrete, wood and metal was intermingled with soil and vegetation at Hammond’s facility. The Board finds that the debris at the facility constitutes garbage or other discarded material within the meaning of waste as defined by the Act. The Board also finds that the debris constitutes a consolidation of refuse at a disposal site not fulfilling the requirements of a sanitary landfill. Thus, the Board finds that Hammond caused or allowed open dumping of waste.

Next, the Board considers whether the open dumping of waste resulted in litter under Section 21(p)(1) of the Act. The Board has found that litter is defined as any discarded, used or unconsumed substance or waste, and may include garbage, trash, refuse, debris, rubbish or anything else of an unsightly or unsanitary nature. County of Will v. Hunter, AC 98-8 (May 7, 1998), slip op. at 3. Under this definition, the debris at the facility constitutes litter, and the Board finds that Hammond violated Section 21(p)(1) of the Act.

Finally, the Board addresses whether Hammond’s open dumping also resulted in the deposition of general or clean construction or demolition debris at the facility. General construction or demolition debris is defined as “materials resulting from construction, remodeling, repair and demolition . . . limited to the following: bricks, concrete, and other masonry materials; soil rock; wood” 415 ILCS 5/3.78 (2000). Clean construction or demolition debris is defined as “uncontaminated broken concrete without protruding metal bars, bricks, rock, stone” 415 ILCS 5/3.78a (2000).

The Board finds that the debris at the facility constitutes general or clean construction or demolition debris, and that as a result, Hammond violated Section 21(p)(7) of the Act.

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 (p) of Section

21 of this Act shall pay a civil penalty of \$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. The penalties shall be deposited into the Environmental Protection Trust Fund, to be used in accordance with the provision of the Environmental Protection Trust Fund Act. 415 ILCS 5/42(b)(4) (2000).

The Board will assess Hammond the statutory penalty of \$1,500 for violating Section 21(p)(1) and \$1,500 for violating Section 21(p)(7). The Board and the Agency are also entitled to their hearing costs under Section 42(b)(4) of the Act, but no information on these costs is included in the record. Therefore, the Clerk of the Board and the Agency are ordered to file a statement of hearing costs within 14 days of this order. The statement must be supported by affidavit, and served on Hammond.

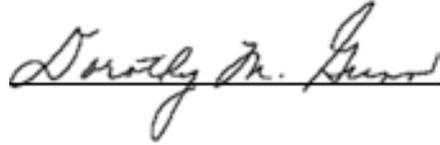
This interim opinion constitutes the Board's interim finds of fact and conclusions of law.

ORDER

1. The Board finds that the respondent, Billy Hammond, Sr. (Hammond), violated Section 21(p)(1) and (7) of the Environmental Protection Act. 415 ILCS 5/21(p)(1),(7) (2000).
2. The Illinois Environmental Protection Agency must file a statement of its hearing costs within 14 days of the date of this order. The statement must be supported by affidavit and served on Hammond. 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 Hammond.
3. Hammond is given leave to file a reply to the statements of hearing costs 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 \$1,500 for each violation, for a total civil penalty of \$3,000, and awarding the appropriate costs.

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 November 1, 2001, by a vote of 6-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board