

ILLINOIS POLLUTION CONTROL BOARD
September 22, 2016

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 16-7
)	(IEPA No. 344-15-AC)
JAMES REICHERT LIMITED FAMILY)	(Administrative Citation)
PARTNERSHIP,)	
)	
Respondent.)	

MICHELLE M. RYAN APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

RONALD E. OSMAN APPEARED ON BEHALF OF JAMES REICHERT LIMITED FAMILY PARTNERSHIP.

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

The James Reichert Limited Family Partnership (Reichert) owns property in Marion that it leases in two parcels to two commercial tenants. During the fall of 2015, the Illinois Environmental Protection Agency (IEPA) observed evidence of improper waste disposal and open burning at the property. On December 18, IEPA filed an administrative citation (AC) alleging that on November 4, 2015 Reichert violated the Act by causing or allowing the open dumping of waste in a manner resulting in: 1) litter, 2) open burning, and 3) deposition of general construction or demolition debris or clean construction or demolition debris. 415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2014).

As discussed below, the Board finds Reichert violated Section 21 of the Act. 415 ILCS 5/21 (2014). The Board directs IEPA and the Clerk of the Board to file documentation of hearing costs by October 24, 2016. Reichert may respond to any request for costs by November 21, 2016.

BACKGROUND

On October 1, 2015, IEPA conducted an inspection which resulted in a Non-Compliance Advisory letter for the Reichert property located at 1406 Cornell Street, Marion, Williamson County, referred to as the Marion/Reichert, James LFP-Cornell St site with IEPA Site No. 1990555290 (Reichert Site) in the inspection report. On November 4, IEPA conducted a follow-up inspection. AC at 1; AC Exh. at 3. IEPA used the November 4 inspection report as a basis for filing this AC. The November 4 inspection report and attached picture show “solid waste and general construction demolition debris in the form of charred remains of dimensional lumber,

nails, and various metals similar to those used in the installation of TV satellite dishes” left at the Reichert Site. AC Exh at 3, 4.

During the same time period when IEPA was conducting the inspections at the Reichert Site, IEPA and Reichert spoke about the alleged violations by telephone. Tr. at 24, 37, 39, 49-50. Following these conversations, Mr. Reichert cleaned up the Reichert Site in December 2015. R. Br. at 14. Reichert filed its petition for review of the AC on January 18, 2016 asserting that it did not cause or allow the alleged violation. The Board accepted the petition for hearing on February 4, 2016. Illinois Environmental Protection Agency v. James Reichert Limited Family Partnership, AC 16-7, (Feb. 4, 2016). The Board hearing was held in Marion, Williamson County on June 8, 2016 (Tr.). IEPA filed its post-hearing brief (IEPA Br.) on July 6, 2016. Reichert filed a post-hearing brief (R. Br.) on August 10, 2016.

BOARD DISCUSSION

Reichert Caused or Allowed Open Dumping Resulting in Litter, Open Burning, and Deposition of Construction and Demolition Debris

IEPA alleges that Reichert violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act by causing or allowing the open dumping of waste in a manner resulting in: 1) litter; 2) open burning; and 3) deposition of construction or demolition debris. 415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2014). To prove a violation of Section 21(p) of the Act, IEPA must first prove that Reichert violated Section 21(a) of the Act by causing or allowing open dumping of waste. *See IEPA v. Ray Newingham*, AC 11-13, slip op. at 4 (Feb. 16, 2012).

“Waste” is defined as “any garbage . . . or other discarded material.” 415 ILCS 5/3.535 (2014). IEPA’s inspection report shows items observed on the Reichert Site during the November 4, 2015 inspection. These include “charred remains of dimensional lumber, nails, and various metals.” AC Exh. at 3. IEPA argues that these items meet the definition of “waste” in the Act and that Reichert caused or allowed the open dumping of this waste, resulting in “litter” under Section 21(p)(1) of the Act. IEPA Br. at 1-2. The photo attached to the AC depicts the charred remains of metal pieces and wood chunks as described above. AC Exh. at 4. The charred nature of the items supports IEPA’s argument that the items were discarded. Reichert made no argument that it intended to reuse the materials depicted in IEPA’s inspection report. Therefore, the Board finds that the items at the Reichert Site are discarded material and “waste” as defined in the Act.

“Open dumping” is “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 (2014). “Refuse” means “waste”. 415 ILCS 5/3.385 (2014). No argument has been made that the Reichert Site is a permitted sanitary landfill. Having found that the material is waste, the Board concludes that the waste has been open-dumped at the Reichert Site.

Litter: 21(p)(1)

Under Section 21(p)(1) of the Act, no person shall cause or allow the open dumping of any waste in a manner resulting in litter. 415 ILCS 5/21(p)(1) (2014). The Act does not define “litter”, and the Board instead looks to 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(a) (2014).

As stated above, during the October and November 2015 inspections the Reichert Site contained various discarded items that the Board has found to be waste. These items constitute “litter” as defined by the Litter Control Act.

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 violations and assessing the statutory penalty. 415 ILCS 5/31.1(d)(2) (2014). Knowledge is not an element of a violation of the Act, nor is lack of knowledge a defense. *See Caseyville Sport Choice, LLC v. Erma I. Sieber, et al.*, PCB 08-30, slip op. at 9 (Feb. 3, 2011). To the contrary, to prove a violation, IEPA 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.” *People v. A.J. Davinroy Contractors*, 249 Ill. App. 3d 788, 793 (5th Dist. 1993). The only statutory defenses to an administrative citation are that the violations were the result of uncontrollable circumstances or that the violations did not occur. *See e.g. IEPA v. John Groff*, AC 05-20, slip op. at 1-2 (Oct. 20, 2005); *IEPA v. Omer Thomas*, AC 89-215 (Jan. 23, 1992).

In his petition for review, Reichert argued that he “did not cause or allow the alleged violation to occur.” Pet. at 1. In his post hearing brief, Reichert argues that, “the State must 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,” in order for a polluter or landlord to be held liable. R. Br. at 9 (citations omitted). IEPA, on the other hand, argues that “[p]roperty owners are responsible for environmental violations on their property, unless the facts establish that they have no capability to control the source of the problem or that they have taken ‘extensive precautions’ against such violations.” IEPA Br. at 5.

Mr. Reichert has acknowledged that he is the owner of the Reichert Site and that he is the manager. R. Br. at 1; Tr. at 48. Reichert asserts that as manager, he “negotiate[s] the lease, collect[s] the rent, and leave[s] [the leasee] alone so that they can enjoy the peace of the space they occupy.” *Id.* Further, in his post hearing brief, Reichert acknowledged control of the property by stating that he cleaned up the property in December 2015. R. Br. at 14. The Board finds that subsequent efforts to clean up the Reichert Site are not relevant to the alleged violations of open dumping, but those efforts do illustrate control over the premises. The Board therefore finds respondent caused or allowed the open dumping of waste in a manner resulting in litter, in violation of Section 21(p)(1) of the Act.

Open Burning: 21(p)(3)

“Open burning” is defined by statute as “the combustion of any matter in the open or in an open dump.” 415 ILCS 5/3.300 (2014). The November 4, 2015 inspection report includes a photo that shows “charred remains of dimensional lumber, nails, and various metals similar to those used in the installation of TV satellite dishes.” AC Exh. at 3, 4. The report also states, “[t]he larger pieces of metal . . . were originally coated with a plastic that was burned off, leaving the metal acceptable for recycling.” *Id.* At hearing, the IEPA inspector described the photo as showing “charred metals and a lot of nails and . . . burnt material that (sic) looked like wood.” Tr. at 11.

Section 21(p) of the Act prohibits causing or allowing “the open dumping of any waste in a manner which results in . . . (3) open burning.” The Board found, above, that Reichert caused or allowed open dumping on the Reichert Site. The IEPA documented that the open dumped waste was burned at the Reichert Site. Therefore, the Board finds that Reichert violated Section 21(p)(3) of the Act. 415 ILCS 5/21(p)(3) (2014).

Deposition of Construction or Demolition Debris: 21(p)(7)

The Act defines “construction or demolition debris” to include wood, metal, bricks and rock materials. 415 ILCS 5/3.160(a) (2014). IEPA observed charred “dimensional lumber, nails, and various metals similar to those used in the installation of TV satellite dishes,” at the Reichert Site during the November 4, 2015 inspection. AC Exh. at 3. The Board finds that Reichert’s open dumping of waste resulted in the deposition of construction or demolition debris in violation of Section 21(p)(7) of the Act. 415 ILCS 5/21(p)(7) (2014).

Civil Penalty and Hearing Costs

The Board finds that Reichert violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act. 415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2014). The civil penalty in an administrative citation for a violation of Section 21(p) is \$1,500 for a person’s first violation, for each section that is violated. There has been no evidence introduced in this case indicating that this is a second or subsequent violation of the Act for Reichert. Reichert is therefore subject to a total civil penalty of \$4,500.

If IEPA proves a violation at hearing, a respondent will also be held liable for hearing costs of the Board and IEPA. 415 ILCS 5/42(b)(4-5) (2014). The Board directs IEPA and the Clerk of the Board to file hearing cost documentation, to which Reichert may respond. 35 Ill. Adm. Code 108.506(a). After the time periods for the filings on hearing costs have run, the Board will issue a final opinion and order imposing civil penalties and assessing appropriate hearing costs.

CONCLUSION

The Board finds that Reichert caused or allowed the open dumping of waste in a manner resulting in litter, open burning, and the deposition of construction or demolition debris in

violation of Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act. 415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2014). The Board directs IEPA and the Clerk of the Board to file hearing costs by October 24, 2016. Reichert may respond to any requests for costs by November 21, 2016.

ORDER

1. The Board finds that the James Reichert Limited Family Partnership (Reichert) violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act. 415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2014).
2. The Illinois Environmental Protection Agency must file a statement of hearing costs by October 24, 2016, which is the first business day after the 30th day from this order. 35 Ill. Adm. Code 108.502. Within the same 30-day period, the Clerk of the Illinois Pollution Control Board must also file and serve upon respondents a statement of the Board's hearing costs supported by affidavit. 35 Ill. Adm. Code 108.504, 108.506(a).
3. Reichert may file any objections to those statements by November 21, 2016. 35 Ill. Adm. Code 108.506(a)
4. After the time for filing statements of hearing costs and objections has run, the Board will issue a final order assessing a statutory penalty of \$4,500 for the violations and awarding appropriate hearing costs. 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion order on September 22, 2016, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board