

ILLINOIS POLLUTION CONTROL BOARD
September 5, 2013

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 12-53
)	(IEPA No. 123-12-AC)
THOMAS E. PORTER, BEVERLY J. BIBLE,)	(Administrative Citation)
and TODD AND TABITHA BOOTEN d/b/a)	
C & T RECYCLING,)	
)	
Respondents.)	

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

THOMAS E. PORTER, BEVERLY J. BIBLE and TODD AND TABATHA BOOTEN APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by D. Glosser):

The Illinois Environmental Protection Agency (Agency) timely filed an administrative citation (AC) against Thomas E. Porter (Porter), Beverly J. Bible (Bible), and Todd and Tabatha Booten (Bootens) (collectively, respondents) alleging that respondents violated Section 21(p)(1) and (p)(3) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) and (3) (2012))¹. The AC was issued for alleged violations occurring at a facility located at 3302 Water Tower Road, Marion, Williamson County. For the reasons discussed below, the Board finds that respondents did violate Sections 21(p)(1) and (p)(3) of the Act and that a fine of \$3,000 must be assessed. Furthermore, 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 the respondents.

ADMINISTRATIVE CITATION PROCESS

Section 31.1 of the Act authorizes the Agency and units of local government to enforce specified provisions of the Act through an administrative citation. 415 ILCS 5/31.1 (2012). The Agency or delegated authority must serve the AC on the respondent within “60 days after the date of the observed violation,” (415 ILCS 5/31.1(b) (2012)) and must file a copy of the AC with the Board no later than ten days after serving the respondent. 415 ILCS 5/31.1(c) (2012). To contest the AC, the respondent must file a petition with the Board no later than 35 days after

¹ All citations to the Act will be to the 2012 compiled statutes, unless the provision at issue has been substantively amended in the 2012 compiled statutes.

being served with the AC. If respondent fails to do so, the Board must find that the respondent committed the violations alleged and impose the corresponding civil penalty. *See* 415 ILCS 31.1(d)(2) (2012); 35 Ill. Adm. Code 108.204(b), 108.406.

If the respondent timely contests the AC, but the complainant proves the alleged violations at hearing, the respondent will be held liable for the civil penalty as well as the hearing costs of the Board and the complainant. 415 ILCS 5/42(4, 4-5) (2012). Unlike other environmental enforcement proceedings in which only a maximum penalty is prescribed, (*e.g.* 415 ILCS 5/42(b)(1-3)), Section 42 sets specific penalties for administrative citations. 415 ILCS 5/42(4, 4-5) (2012). Thus, in cases such as this, the Board has no authority to consider mitigating or aggravating factors in its determination of penalty amounts. *Id.* However, “if 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 that makes no finding of violation and which imposes no penalty.” 415 ILCS 5/31.1(d)(2) (2012).

PROCEDURAL HISTORY

On May 17, 2012, the Agency filed with the Board an AC against the respondents. The Agency served the AC on respondents on May 21, 2012. The AC alleges violations of Section 21(p)(1) and (p)(3) of the Act in that respondent caused or allowed open dumping of waste resulting in litter and open burning. According to the AC, this matter is based on an inspection that the Agency conducted at the respondents’ property on March 22, 2012. The Agency served the AC on respondents within “60 days after the date of the observed violation,” as required by the Act. 415 ILCS 5/31.1(b) 2010; *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b).

On June 11, 2012, respondents Mr. Porter and Ms. Bible filed a petition (Pet.) with the Board to contest the AC. Similarly, on June 18, 2012, Bootens also filed a petition (Pet. 2) with the Board to contest the AC. Because the filing date of the petitions was within the 35-day appeal period, the petition was timely filed. *See* 35 Ill. Adm. Code 101.300(b)(2). On July 12, 2012, the Board accepted the respondents’ petitions as timely.

On May 21, 2013, a hearing took place before Hearing Officer Carol Webb, at Marion City Hall, Marion, Williamson County (Tr.). Respondents all appeared *pro se*. Three witnesses testified: Maggie Stevenson, Specialist, III, for the Agency; Ms. Bible; and Mr. Booten. Hearing Officer Webb found the witnesses credible, based on her legal judgment and experience. The complainant offered one exhibit. Exhibit 1 consisted of the open dump inspection checklist and photos of the open dump. The exhibit was admitted into the record.

The complainant filed its post-hearing brief (Br.) with the Board on June 18, 2013. The Respondents did not file an answer to the complainant’s brief.

FACTS

The property that is the subject of this dispute has been owned by Ms. Bible since 1996. Tr. at 19. Along with her disabled husband, Mr. Porter, Ms. Bible has rented the property to the Bootens without a formal lease since 2006. *Id.* at 20. According to Ms. Bible, the Bootens

failed to pay rent, keep the premises free and clear of any debris, mow the premises, conduct the recycling business with proper permits or in compliance with the law, or repair damages on the premises. *Id.* at 20-21. In 2010, Ms. Bible filed a petition for forcible entry and detainer against the Bootens; however, at that point the Bootens began to pay rent. *Id.* at 22. Ms. Bible further contends that she knew nothing of the burning or waste that accumulated on the property. *Id.* at 19. However, according to the record, Ms. Bible had already received a previous AC regarding the same property she was renting to the Bootens. *Id.* at 20; *see IEPA v. Marion Metal & Roofing and C & T Recycling*, AC 11-7 (dismissed on request of IEPA on October 7, 2010). The Bootens were also the tenants at the time of the issuance of the 2010 AC. *Id.*

The Bootens claim that they were not aware that burning of trash or other waste was being conducted on the property they were renting. Tr. at 24. They contend that their employees were specifically instructed not to burn anything on the property, and that most of the accumulation of waste and other material on the property was due to nearby residents that throw trash and recycling materials onto the property. *Id.* at 24. Moreover, the Bootens claim that the unused recycling compactor was stagnant because they were waiting for a part to come in to complete repairs on the machine. *Id.*

On March 22, 2012, Ms. Stevenson inspected the property. Tr. at 10. This was the most recent of several inspections conducted by Ms. Stevenson on the property. *Id.* Ms. Stevenson collected 14 photographs while on the property; these photographs were admitted into evidence as Exhibit 1. *Id.* at 18. Ms. Stevenson testified that several of the photographs show large stacks of wet cardboard, garbage bags full of trash, broken pallets, whole pallets, general miscellaneous waste, and 2 different semitrailers. *Id.* at 11-12. Moreover, other photographs display broken down equipment, a compactor packed with various metals and oil that was not being used, and a large burn barrel that shows evidence of charred metal and the remains of cardboard and lumber that had been burned. *Id.* at 13-17; Exh. 1.

STATUTORY BACKGROUND

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 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 3.535 of the Act defines “waste” as:

any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits

under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.” 415 ILCS 5/3.535 (2012).

Section 21(p) of the Act states that it is a violation to “cause or allow the open dumping of any waste in a manner which results in:

(1) litter

* * *

(3) open burning.” 415 ILCS 5/21(p)(1) and (3) (2012).

The Act also states that prohibitions specified in subsection (p) shall be enforceable by the Agency either by administrative citation or as otherwise provided in the Act, and that specific prohibitions in this subsection do not limit the power of the Board to establish regulations or standards applicable to open dumping. 415 ILCS 5/21(p) (2012).

Section 21(a) of the Act, which is referred to in Section 21(p), provides that “[no] person shall [c]ause or allow the open dumping of any waste.” 415 ILCS 5/21(a) (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 or violation and which imposes no penalty.” 415 ILCS 5/31.1(d)(2) (2012).

Section 42(b)(4-5) of the Act provides that “[i]n an administrative citation 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 each violation of each such provision, plus any hearing costs incurred by the Board and the Agency . . .” 415 ILCS 5/42(b)(4-5) (2012).

DISCUSSION

The Agency issued the AC to Mr. Porter, Ms. Bible, and the Bootens, alleging open burning and open dumping violations. The respondents petitioned to contest the AC and the Board held a hearing. Below, the Board discusses the alleged violations and the respondents’ claimed defenses before rendering the Board’s legal conclusion on whether the respondents violated the Act. The Board then discusses the applicable civil penalties and hearing costs.

Alleged Violations

The Agency alleges that the respondents violated Sections 21(p)(1) and 21(p)(3) of the Act (415 ILCS 5/21(p)(1) and (3) (2012)) by causing or allowing open dumping of waste resulting in litter and open burning. The Agency served the AC on the respondents within 60

days after the date of the observed violation. 415 ILCS 5/31.1(b) (2012); *see also* 35 Ill. Adm. Code 101.300(c), 108.202(b). The civil penalty for violating any provision of subsection (p) of Section 21 is \$1,500 for each violation, except that the penalty amount is \$3,000 for each violation that is the person's second or subsequent adjudicated violation of that provision. *See* 415 ILCS 5/42(b)(4-5) (2012); 35 Ill. Adm. Code 108.500(a). Because the Agency alleges two violations, it requests that the respondents be fined \$3,000.

Respondents Claimed Defenses

Respondents each raise various issues in their defense. Ms. Bible claims that she did not have any knowledge of or responsibility for any of the problems at C & T Recycling. Tr. at 19. Ms. Bible claims that the Bootens failed to keep the premises free and clear of debris and failed to conduct the recycling business in compliance with the law (*see* Petition for Review, filed June 12, 2012). She claims that she had taken photos each year of the poorly managed property, and had even replaced a garage door herself on a number of occasions. Tr. at 33-34. Although Ms. Bible did file a Forcible Entry and Detainer action against the Bootens, they were not evicted because they began to pay rent.

Mr. Booten admitted responsibility for the material in and around the rolloff containers; however, he denied responsibility for the waste that nearby residents threw onto the property and the waste that was not part of his recycling business. *Id.* at 25-27. He further contends that because his machine that was used to bale recycling material was down, he was unable to sufficiently move, bale, and send the material for manufacturing. *Id.* at 24.

Agency Arguments

The Agency argues that the material that was left in and around the facility constitutes "discarded material" within the meaning of the term "waste" under Section 3.535 of the Act. Br. at 2. The Agency claims that because Porter and Bible have owned the same site since 1996, the Bootens have conducted business on the site since 2006, and the property has been in essentially the same condition since then, the respondents caused or allowed open dumping of waste on their property. *Id.* at 2. Moreover, although the Act does not define "litter", the Agency claims that based on similar cases in which the Board has defined "litter", respondents violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2012)). The Agency points out that the Board has followed the Litter Control Act definition of "litter" that states:

"Litter" means 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) (2012); *see St. Clair County v. Louis I. Mund*, AC 90-64, slip op. at 4, 6 (Aug. 22, 1991).

The Agency also argues that the open dumping of waste on the property resulted in open burning in violation of Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2012)). Based on the

photographs in Exhibit 1, the waste in the burn barrel and on the ground near the burn barrel show sufficient evidence that proves an open burning violation occurred. *Id.* at 3; Exh. 1. Although respondents deny any knowledge of the burning activity, the Agency argues that the Act prohibits “open dumping of waste in a manner that *results in*...open burning.” 415 ILCS 5/21(p)(3), *emphasis added*. Because respondents were responsible for allowing the open dumping, they are also responsible for the result of open burning, regardless of how the burning occurred. *IEPA v. Alan Smith*, AC 01-42 slip op. at 7 (June 6, 2002). Therefore, the Agency claims that respondents violated Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2012)). Br. at 3.

Board Analysis

The AC alleges violations of Section 21(p)(1) and (3) of the Act in that respondents caused or allowed open dumping of waste resulting in litter and open burning. Below, the Board discusses the elements of a violation of Sections 21(p)(1) and (3), civil penalties for violations, and that respondents are in violation of these Sections.

Open Dumping of Waste

As a threshold matter, to prove a violation of Section 21(p)(1), the Agency must 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 [c]ause or allow the open dumping of any waste.” 415 ILCS 5/21(a) (2012). “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 5/3.05 (2012). “Waste” includes “garbage . . . or other discarded material.” 415 ILCS 5/3.535 (2012).

The Board finds that the open dumping of waste occurred at the respondents’ property. According to the numerous photographs that were taken by Ms. Stevenson, it is clear that excessive amounts of cardboard, metal, and other discarded material were scattered around the property. Exh. 1. Under the definition of “open dumping” in Section 3.300 and “waste” in Section 3.535 of the Act, this discarded material documented in the photographs is a violation of Section 21(a) of the Act. Moreover, as the record indicates, Mr. Booten and Ms. Bible both admit that there was a significant amount of waste on the premises. Tr. at 21-24.

The facts establish that there was an “open dumping of waste” under the Act; therefore, the Board finds that open dumping of waste did occur.

Cause or Allow

The next element of a potential violation of Section 21(p) of the Act is to determine if the respondents either allowed or were the cause of the open dumping of waste. The Board finds that respondents caused or allowed the open dumping of waste as a result of their interests in the property and their acknowledgement of violations on the property.

The record shows that the respondents Mr. and Mrs. Booten began leasing the property from respondents Bible and Porter in 2006, and respondents Bible and Porter had owned the

property since 1996. Tr. at 20. The record also indicates that respondent Bible had received a previous AC from the Agency while the Bootens were leasing the property. *Id.* It is clear from the record that all of the respondents were aware of the waste around the property, and still did not remedy the problem. Although respondent Bible sought a Forcible Entry and Detainer against the Bootens, she did not proceed with the threat, thus is responsible for allowing the waste to continue to build up on the property.

Respondent Bootens argue that local residents threw material onto the property and that a lot of the waste did not belong to them. Tr. at 27-28. This argument fails under the Board's application of "cause or allow". The Board has repeatedly stated that a current owner or operator can be found to have "allowed" the open dumping of waste by failing to remove an accumulation of waste for which that person was not initially liable. IEPA v. William Shrum, AC 05-18, slip op. at 8 (March 16, 2006) (stating that "present inaction on the part of a current landowner to remedy past illegal disposal of waste previously placed on [a] site constitutes 'allowing' open dumping, [because] the owner allows the illegal situation to continue"); Sangamon County v. Lee Hsueh, AC 92-79 slip op. at 4-5 (July 1, 1993). Moreover, Booten admits that a large portion of the waste on the site was in fact a product and property of their business conducted on the land. Tr. at 21-24. By allowing the waste to accumulate on the property after each of the respondents had ample opportunities to properly dispose of the waste, the Board finds that the respondents caused or allowed the open dumping of waste as defined under Section 21(p) of the Act.

Litter

The Board finds that respondents did cause or allow the open dumping of waste that resulted in litter, and that respondents violated Section 21(p)(1) of the Act.

Although the Act does not define "litter", previous Board decisions defined litter using the statutory definition found in the Illinois Litter Control Act, wherein litter is "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 or an unsightly or unsanitary nature, which has been discarded, abandoned, or otherwise disposed of improperly." St. Clair County v. Louis I. Mund, PCB 90-67, (Aug. 22, 1991); *see also* 415 ILCS 105/3(a) (2012).

The record is clear that on March 22, 2012, the site contained discarded materials such as cardboard, metal, pallets, broken down machines, semitrailers, carpet, glass, paper, plastics, lumber, and other miscellaneous waste. Tr. at 14-17; Exh. 1. The Board finds that these materials fall within the definition of "litter" (415 ILCS 105/3(a) (2012)) and that the respondents violated Section 21(p)(1) of the Act.

Open Burning

The Board also finds that respondents violated Section 21(p)(3) of the Act by causing or allowing the open dumping of waste resulting in open burning. 415 ILCS 5/21(p)(3) (2012).

“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 (2012). “Waste” is defined as “any garbage ...or other discarded material.” (415 ILCS 5/3.535 (2012)), including litter. The record shows that the site contained visual evidence of burning, including a burn barrel with charred remains inside. Tr. at 12; Exh. 1. By burning metal and other waste in a burn pit, respondents violated Section 21(p)(3) of the Act.

Conclusion

After reviewing the record in this case and the relevant portions of the Act, the Board finds that the respondents caused or allowed the opening dumping of waste resulting in litter and open burning. Therefore, the Board finds that the respondents have violated Sections 21(p)(1) and 21(p)(3) of the Act. 415 ILCS 5/21(p)(1), (p)(3) (2012). In its final order, the Board will order respondents to pay a civil penalty of \$3,000.00. As set forth below, the Board directs the Clerk and the Agency to document hearing costs and serve them upon respondent, after which the Board will issue a final order. See 35 Ill. Adm. Code 108.502, 108.504, 108.506.

This interim opinion and order constitutes the Board’s finding of fact and conclusions of law.

PENALTY

The civil penalty for violating any provision of subsection (p) of Section 21 is \$1,500 per violation, except that the penalty amount is \$3,000 for each violation that is the person’s second or subsequent adjudicated violation of that provision. The Board is also directed to assign hearing costs incurred by the Board and the Agency to the respondent. 415 ILCS 5/42(b)(4-5) (2012); 35 Ill. Adm. Code 108.500(a). Because there are two violations of Section 21(p) and they are respondents’ first adjudicated violations, in its final order the Board will order respondents to pay a total civil penalty of \$3,000 plus hearing costs.

ORDER

1. The Board finds that Thomas E. Porter, Beverly J. Bible, and Todd and Tabatha Booten violated Sections 21(p)(1) and (p)(3) of the Act (415 ILCS 5/21(p)(1) and (p)(3) (2012)).
2. The Illinois Environmental Protection Agency must file a statement of its hearing costs within 30 days of this order, on or before October 7, 2013, the first business day after the 30th day after this order. The statement must be supported by affidavit and served upon respondents. 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. See 35 Ill. Adm. Code 108.504, 108.506(a).
3. Respondent may file any objections to those statements within 21 days of service of those statements, by a date on or about October 28, 2013. 35 Ill. Adm. Code

108.506(a). The Agency may then file a reply to the respondents response within 14 days of service of that response. 35 Ill. Adm. Code 108.506(b).

4. The Board will then issue a final order assessing a statutory penalty of \$3,000.00 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 order on September 5, 2013, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board