

ILLINOIS POLLUTION CONTROL BOARD  
November 5, 2015

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 11-22  
 ) (IEPA No. 50-11-AC)  
KYLE E. PRITCHETT, ) (Administrative Citation)  
 )  
Respondent. )

MICHELLE M. RYAN, ATTORNEY, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY; AND

KYLE E. PRITCHETT APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by J.A. Burke):

The Illinois Environmental Protection Agency (Agency) filed an administrative citation against Kyle E. Pritchett (respondent). *See* 415 ILCS 5/31.1(c) (2014); 24 Ill. Adm. Code 101.300(b), 108.202(c). The administrative citation concerns respondent’s property located at 411 1/2 West 1st Street in Mt. Carmel, Wabash County. The property is known to the Agency as the “Mt. Carmel/Pritchett, Kyle E.” site and is designated with Site Code No. 1850205035.

The Board’s hearing officer held a hearing on September 2, 2015, in Mt. Carmel, and the transcript (Tr.) was received on September 9, 2015. The Agency filed its post-hearing brief on September 24, 2015 (Agency Br.). Respondent did not file a post-hearing brief. For the reasons below, the Board finds that respondent violated Section 21(p)(1) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) (2014)). The Board directs the Agency and the Clerk of the Board to file hearing cost documentation by December 7, 2015. Respondent may respond to any requests for costs by January 6, 2016.

**ADMINISTRATIVE CITATION**

The Agency filed this administrative citation (AC) on March 16, 2011, alleging that respondent violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2014)) by causing or allowing open dumping of waste resulting in litter. Specifically, at a January 27, 2011 inspection, an Agency inspector observed various items that “were overgrown in vegetation and did not appear to have been used for some time.” Open Dump Inspection Checklist (Report) (attached to AC) at 3. Items included tires, a grey General Motors pickup truck, a Chevrolet pickup truck, metal, lawn mowers, metal tanks, vehicle parts, scattered debris, appliances, two piles of domicile waste, large rolls of insulation, metal siding, and a large metal tank. *Id.* The inspection was performed as a follow-up to a June 21, 2010 inspection. *Id.*

## **BOARD DISCUSSION**

The Agency alleges that respondent violated Section 21(p)(1) of the Act by causing or allowing open dumping of waste resulting in litter. To prove a violation of Section 21(p) of the Act, the Agency must first prove that respondent 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).

The Agency inspector’s report and attached photos show various items observed on respondent’s property. These include tires (photographs 2 and 7) that contained water and others cut up in quarters, vehicles with overgrown vegetation (photographs 4 and 13), a boat (photograph 2), metal and vehicle parts (photograph 5), appliances (photograph 6), various pieces of debris (photograph 9), two piles of garbage (photographs 11 and 12), and large rolls of insulation (photograph 13). The Agency contends that these items constitute “discarded material” within the meaning of the term “waste,” and that respondent’s causing or allowing the open dumping of these wastes resulted in “litter” under Section 21(p)(1) of the Act. Agency Br. at 1, 2; Tr. at 8-9.

The photographs depict various items such as the quartered tires containing water, vehicles with vegetation growing over them, appliances that appear to be washing or drying machines set out on the ground, as well as garbage piles that appear to have been burned. In similar factual scenarios, the Board has found that such visual evidence is proof of a lack of intent to use the materials in the future. *IEPA v. Stutsman*, AC 05-70, slip op. at 7 (Sept. 21, 2006). This leads the Board to find that the materials found at the property constitute “garbage . . . or other discarded material,” and are therefore “waste.”

“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). The Agency inspector stated that “additional waste items had been hauled to the site” since the prior inspection on June 21, 2010. Report at 3. Respondent did not contend that the property was a permitted sanitary landfill. Having found that the material is waste, the Board concludes that the waste has been open-dumped at respondent’s property.

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, the property contains various discarded items that are waste. These items constitute “litter” as defined at 415 ILCS 105/3(a) (2014). The Board therefore finds that 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.

Respondent filed a petition for review on April 15, 2011, stating that the violation was a result of uncontrollable circumstances. Pet. at 2. At hearing, respondent stated that there are “plenty of places around town that are way worse than mine and I complied.” Tr. at 12. Ed Pritchett, father of respondent, offered a public comment at hearing, stating that “we have done cleaned everything up, done what you wanted.” *Id.* at 14.

Cleanups performed by a respondent generally are not a defense to the alleged violations. See IEPA v. Wright, AC 89-227, slip op. at 7 (Aug. 30, 1990) (“The Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative or voluntarily cleans up the site.”). Respondent agreed that the photographs depicted his property on January 27, 2011, the day of the inspection. Tr. at 13. The Board finds that the alleged violations were not the result of uncontrollable circumstances, and that respondent violated Section 21(p)(1) of the Act. 415 ILCS 5/21(p)(1) (2014).

### **Civil Penalty and Hearing Costs**

The Board finds that respondent violated Section 21(p)(1) of the Act, and that the violation was not a result of uncontrollable circumstances. The civil penalty in an administrative citation for a violation of Section 21(p)(1) is \$1,500 for a person’s first violation. Respondent is therefore subject to a penalty of \$1,500.

If the Agency proves a violation at hearing, a respondent will also be held liable for hearing costs of the Board and the Agency. 415 ILCS 5/42(b)(4-5) (2014). The Board directs the Agency and the Clerk of the Board to file hearing cost documentation, to which respondent 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**

After reviewing the record in this case, the Board finds that Kyle E. Pritchett caused or allowed the open dumping of waste in a manner resulting in litter, in violation of Section 21(p)(1) of the Act. 415 ILCS 5/21(p)(1) (2014). The Board directs the Agency and the Clerk of the Board to file hearing costs by December 7, 2015. Respondent may respond to any requests for costs by January 6, 2016.

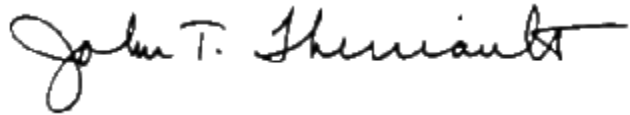
### **ORDER**

1. The Board finds that Kyle E. Pritchett (Respondent) violated Section 21(p)(1) of the Act. 415 ILCS 5/21(p)(1) (2014).

2. The Illinois Environmental Protection Agency must file a statement of hearing costs by Monday, December 7, 2015, which is the first business day after the 30th day of 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 respondent a statement of the Board's hearing costs supported by affidavit. 35 Ill. Adm. Code 108.504, 108.506(a).
3. Respondent may file any objections to these statements by January 6, 2016. 35 Ill. Adm. Code 108.506(a).
4. The Board will then issue a final order assessing a statutory penalty of \$1,500 for the violation 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 and order on November 5, 2015 by a vote of 5-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board