

ILLINOIS POLLUTION CONTROL BOARD
July 13, 1989

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 89-10
) (IEPA Docket No. 9363-AC)
) Docket A
JIM LANDERS,)
)
Respondent.)

MR. WILLIAM SELTZER, ESQ., APPEARED ON BEHALF OF THE PETITIONER,
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

MR. JIM LANDERS APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by M. Nardulli):

This matter comes before the Board from a January 24, 1989 request for review of an administrative citation filed by Mr. Jim Landers ("Landers") on his own behalf. Mr. Landers seeks review of an administrative citation filed by the Illinois Environmental Protection Agency ("Agency") on January 11 1989. In the administrative citation, the Agency alleged that the Respondent caused or allowed open dumping at a facility that he owned and operated, resulting in violation of Section 21(q)(1) and 21(q)(3) of the Environmental Protection Act ("Act"). Both filings are pursuant to paragraph 1031.1 of the Act.

Hearing was held in this matter on April 26, 1989 in the Clinton County Building. Two witnesses were called by the Agency. The first was the Agency's field inspector, Dale Elenberger (R.4). The other was Terry Schumann, the DeWitt County Deputy Sheriff (R.22). Mr. Landers testified on his own behalf. At the conclusion of the hearing, the hearing officer established a schedule for filing post-hearing briefs. The brief for the Agency was due on May 24, 1989 (R.38), however the Agency has not filed a brief to date. The Respondent was given until June 7, 1989, or fourteen days after filing of the Agency's brief to file his post-hearing comments. The Respondent indicated at hearing that he had no intention to make any post-hearing comments (R.38).

BACKGROUND

Mr. Jim Landers is the owner and operator of a facility commonly known as the Kenney/Landers facility in DeWitt County. On November 16, 1988, S. Dale Elenberger of the Agency inspected this facility. On the basis of the inspection, the Agency determined the Respondent had operated the site in violation of paragraph 1021(q)(1) and (q)(3) of the Act, to wit:

Section 21

No person shall:

- a. Cause or allow the open dumping of any waste.
- q. In violation of subdivision (a) of Section 21, cause or allow open dumping of any waste in a manner which results in any of the following occurrences at the dump site:
 - 1. litter;
 - 2. scavenging;
 - 3. open burning;
 - 4. deposition of waste in standing or flowing waters;
 - 5. proliferation of disease vectors;
 - 6. standing or flowing liquid discharge from the dump site.

Accordingly, on January 11, 1989, the Agency issued an administrative citation to respondent in which a civil penalty of \$500 was assessed for each of the two violations for a total of \$1000, pursuant to Section 42(b)(4) of the Act.

Respondent now contests before this Board the Agency's determination of the two violations. Alternatively, if the Agency's determination of violation are upheld, the violations could be found to have resulted from uncontrollable circumstances, thus invoking the "uncontrollable circumstances" provision of the Act:

If the Board finds that the person appealing the citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.

1031.1(d)(2) of Act.

DETERMINATION OF VIOLATION

In support of its determination that the respondent caused or allowed open dumping and open burning, the Agency submitted photographs (Ex. 1 through 21) taken by Mr. Elenberger during his site investigation on November 16, 1988. Mr. Elenberger testified that the inspection revealed a number of "smelting" and open-burning operations at the facility (R. 9-12, 17, 19-21, 22). The inspection also revealed a number of areas where materials, including batteries, had been dumped or improperly stored (R. 13-15, 18, 21, 22). Mr. Elenberger's testimony was substantiated by the testimony of Officer Schumann as well as by the photographic evidence. Mr. Elenberger further testified that he spoke with Mr. Landers about the open burning during the inspection and that Mr. Landers referred to burning operations for smelting aluminum and for burning insulation off of wire (R. 25-26). In his own testimony, Mr. Landers stated that he burned tires to burn weeds on the property and that he "burned copper" (R.33).

Mr. Landers did not present an argument that the violations resulted from uncontrollable circumstances. He did, however, argue that much of the improper storage of batteries and the burning of insulation were an unavoidable part of the scrap business and that the burning of tires was necessary to his efforts to clean up the existing mess (R. 33-34). These statements do not represent an uncontrollable circumstances based on the Board's interpretation of this language.

The Board finds that the Agency has shown that the Respondent was in violation of paragraph 1021(q)(1) and (q)(3) of the Act on November 16, 1988. The Respondent failed to refute the proof presented by the Agency and failed to make any argument of uncontrollable circumstances that resulted in the violations. Therefore, the Board finds that the Agency's determination of violations of the provision against causing or allowing open dumping and open burning were correct and hereby upholds the administrative citation and the penalty imposed.

PENALTIES

Penalties in administrative citation actions of the type here brought are prescribed by Section 42(b)(4) of the Act, to wit:

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provisions of subsection (p) of Section 21 of this Act shall pay civil penalty of \$500 for each violation of each such provision, plus any hearing costs

incurred by the Board and the Environmental Protection Agency. Such penalties shall be made payable to the Environmental Protection Trust Fund to be used in accordance with the provisions of "an act creating the Environmental Protection Trust Fund", approved September 22, 1979.

Respondent will therefore be ordered to pay a civil penalty of \$1,000, based on the two violations as herein found. For purposes of review, today's action (Docket A) constitutes the Board's final action on the matter of the civil penalty.

Respondent is also required to pay hearing costs incurred by the Board and the Agency. The Clerk of the Board and the Agency will therefore be ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon respondent. Upon receipt and subsequent to appropriate review, the Board will issue a separate final order in which the issue of costs is addressed. Additionally, Docket B will be opened to treat all matters pertinent to the issue of costs.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

- 1) Respondent is hereby found in violation, as alleged of Ill. Rev. Stat. 1986 Supp., Ch: 111 $\frac{1}{2}$, par. 1021(q)(1) and (q)(3).
- 2) Within 45 days of this Order of July 13, 1989, respondent shall, by certified check or money order, pay a civil penalty in the amount of \$1,000 payable to the Environmental Protection Trust Fund. Such payment shall be sent to:

Illinois Environmental Protection Agency
Fiscal Service Division
2200 Churchill Road
Springfield, IL 62706

- 3) Docket A in this matter is hereby closed.
- 4) Within 30 days of this Order of July 13, 1989, the Environmental Protection Agency shall file a statement of its hearing costs, supported by affidavit, with the Board and with service upon Respondent. Within the same 30 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and

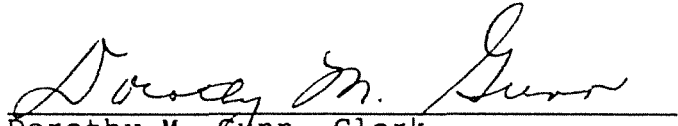
with service upon Respondent. Such filings shall be entered in Docket B of this matter.

- 5) Respondent is hereby given leave to file a reply/objection to the filings as ordered in 4) within 45 days of this Order of July 13, 1989.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1985, ch. 111 $\frac{1}{2}$, par. 1041, provides for appeal of Final Orders of the Board within 35 days of the issuance of Final Orders. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 13th day of July, 1989, by a vote of 7-0.


Dorothy M. Gunn, Clerk,
Illinois Pollution Control Board