

ILLINOIS POLLUTION CONTROL BOARD

April 1, 2004

ILLINOIS ENVIRONMENTAL,	)	
PROTECTION AGENCY	)	
Complainant,	)	
	)	
v.	)	AC 03-27
	)	(IEPA No. 144-03-AC)
VINCE HARVEY,	)	(Administrative Citation)
	)	
Respondent.	)	

MICHELLE RYAN APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMETNAL PROTECTION AGENCY; and

VINCE HARVEY APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by J.P. Novak):

The Board today decides whether the presence of materials observed on January 31, 2003, on property owned by respondent Vince Harvey constituted the open dumping of waste resulting in litter and in the deposition of demolition debris in violation of the Environmental Protection Act (Act). 415 ICLS 5/1 *et seq.* (2002). For the reasons provided below, the Board finds that the presence of those materials at that site on that date violated Sections 21(p)(1) and 21(p)(7) of the Act. 415 ILCS 5/21(p)(1) and (p)(7) (2002). The Board assesses Mr. Harvey the statutory penalty of \$3,000 as well as costs as described below.

In this interim opinion, the Board first describes the administrative citation process and the procedural history and background of this case. The Board then sets forth pertinent provisions of the Act. Next, the Board analyzes the issues and makes its conclusions of law regarding the alleged violations before addressing the question of penalties.

**ADMINISTRATIVE CITATION PROCESS**

Section 31.1 of the Act authorizes the Illinois Environmental Protection Agency (Agency) and units of local government to enforce specified provisions of the Act through an administrative citation. 415 ILCS 5/31.1 (2002). Part 108 of the Board's procedural rules provides the process of a citation before the Board. 35 Ill. Adm. Code 108 *et seq.* Unlike other environmental enforcement proceedings in which the Act prescribes a maximum penalty, *see, e.g.,* 415 ILCS 5/42(b)(1), the Act sets specific penalties for administrative citations. 415 ILCS 5/42(4, 4-5) (2002). In cases such as this, the Board has no authority to consider mitigating or aggravating factors when determining penalty amounts. *Id.*

**PROCEDURAL HISTORY**

On March 26, 2003, the Agency issued to the respondent an administrative citation alleging violations of the Act at the respondent's facility located at 1458 North East Street, Kewanee, Henry County, Illinois. The citation specifically alleges that the respondent violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2002)) by causing or allowing the open dumping of waste in a manner resulting in litter. Comp. at 2. The citation further alleges that the respondent violated Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2002)) by causing or allowing the open dumping of waste in a manner resulting in deposition of general construction or demolition debris or clean construction or demolition debris. Comp. at 2.

On May 1, 2003, the respondent filed a request for an extension, which the Board construed as a Petition for Review. On May 9, 2003, the respondent filed an amended Petition for Review. The Board accepted the amended petition for hearing on May 15, 2003.

On November 12, 2003, Board Hearing Officer Carol Sudman conducted a hearing in Kewanee. At hearing, Special Assistant Attorney General Michelle M. Ryan appeared and participated on behalf of the complainant; and respondent Vince Harvey appeared and participated *pro se*. Two witnesses testified during the hearing: Mr. Jeffrey A. Port of the Illinois Environmental Protection Agency (Agency) on behalf of the complainant, and Vince Harvey on his own behalf. Based upon her legal judgment and experience, Hearing Officer Carol Sudman found that both witnesses testified credibly in this matter. On January 7, 2004, the complainant filed its post-hearing brief in this proceeding (Comp. Br.). The respondent filed a one-page post-hearing brief on January 14, 2004 (Resp. Br.).

### **FACTS**

On January 31, 2003, Agency field inspector Jeff Port inspected property located at 1458 North East Street, Kewanee owned by Vince Harvey. Tr. at 8-9; Exhibit 1. In the course of that inspection, Mr. Port observed twelve piles of material, eleven of which had been generated at the former Kewanee Steel and Iron site and brought to the Harvey property. Tr. at 12. Those 11 piles consisted of materials including dirt, branches and roots, gravel, rocks, metal slag, bricks, pieces of plastic, and pieces of wood and processed wood. Tr. at 10-11; Exhibit 1. The twelfth pile consisted of materials including a cabinet and pieces of wood that remained from a burned home on the site and that had been removed from its basement or foundation. Tr. at 11; Exhibit 1. Mr. Port took a number of photographs of the Harvey site on January 31, 2003, and documented its appearance on that date. Exhibit 1.

Mr. Harvey is the owner of the property at issue at 1458 North East Street in Kewanee. Tr. at 8. He had brought materials from the former Kewanee Steel and Iron property (Tr. at 12), including dirt (Tr. at 9, 17; Exhibit 1, photograph 3), branches and roots (Exhibit 1), rocks (Exhibit 1), metal slag (Tr. at 10; Exhibit 1, photograph 3), scrap metal (Exhibit 1, photograph 1), bricks (Tr. at 9-10; Exhibit 1, photographs 1 and 3), pieces of plastic (Tr. at 10; Exhibit 1, photograph 3), and pieces of wood and processed wood (Tr. at 10-11; Exhibit 1, photographs 1, 5, 8, 11, and 14) to the site on January 31, 2003. Tr. at 9-12, 17-18; Exhibit 1

### **STATUTORY BACKGROUND**

Section 21(a) of the Act provides that no person shall:

Cause or allow the open dumping of any waste. 415 ILCS 5/21(a) (2002).

Section 21(p) of the Act provides that no person shall, in violation of subsection (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 3.160(a) of this Act; or

(ii) clean construction or demolition debris as defined in Section 3.160(b) of this Act. 415 ILCS 5/21(p) (2002).

Section 3.160 of the Act provides that:

(a) “General construction or demolition debris” means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and piping or metals incidental to any of those materials.

General construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any general construction or demolition debris or other waste. 415 ILCS 5/3.160(2002).

\* \* \*

Section 3.305 of the Act defines “open dumping” as:

“[T]he consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a landfill.” 415 ILCS 5/3.305 (2002).

Section 3.385 of the Act defines “refuse” as “waste.” 415 ILCS 5/3.385 (2002).

Section 3.535 of the Act provides that:

“Waste” means 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 (2002).

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 of violation and which imposes no penalty.” 415 ILCS 5/31.1(d)(2) (2002).

### **ISSUES AND ANALYSIS**

Mr. Harvey raises two issues on his own behalf. First, he states that he did not intend to violate the Act (Resp. Br.), and that he did not know he was violating the Act (Tr. at 16). Second, he states that he has removed materials from the site. (Tr. at 16). Specifically, he states that the last of 146.81 tons of material was removed from the site on December 31, 2003. (Resp. Br.) Mr. Harvey has not claimed that any violation of the Act resulted from uncontrollable circumstances (415 ILCS 5/31.1(d)(2) (2002)). Tr. at 16-18; Resp. Br.

With regard to the first issue, the Board has previously stated that “[a] person can cause or allow a violation of the Act without knowledge or intent.” IEPA v. Charles Goodwin, AC 02-17, slip op. at 8 (July 11, 2002), citing County of Will v. Utilities Unlimited, Inc., AC 97-41 (Sept. 18, 1997). In fact, the Board has compared an administrative citation to a traffic ticket. See Lincoln Chamber of Commerce, AC 89-26, slip op. at 2 (May 25, 1989). The Board finds that Mr. Harvey’s intention and knowledge are not elements of the violation. Therefore, the Agency does not have the burden of proving either that he knew he violated the Act or that he intended to do so.

With regard to the second issue, the Board has held that, “even in the context of a contested violation, post-citation activities of the citation recipient are not material” to whether a violation has occurred or to the Board’s review of the citation. *Id.* Specifically, the Board has

stated that “[t]he Act, by its terms, does not envision a properly issued citation being dismissed or mitigated because a person is cooperative or voluntarily cleans-up the site.” IEPA v. Jack Wright, AC 89-227, slip op. at 14 (Aug. 30, 1990). “The administrative citation process is structured to provide an inherent incentive to people to comply with the Act. It is clear that if the recipient of an administrative citation does not correct an on-going violation, the Agency can issue subsequent citations to that person.” Lincoln Chamber of Commerce, AC 89-26, slip op. at 4 (May 25, 1989). It appears that the risk of subsequent citations for on-going violations has in this case provided its intended incentive for compliance. *See id.* Although Mr. Harvey states that he has completed clean-up of his site, (Resp. Br.), “such actions are not a mitigating factor under the administrative citation program.” IEPA v. Dennis Grubaugh, AC 92-3, slip op. at 6 (Oct. 16, 1992). In light of Board precedent and the policies underlying the administrative citation process, the Board will not dismiss this citation, and it does not have authority to reduce the penalty in this case. *See* 415 ILCS 5/42(4, 4-5) (2002).

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 landfill.” 415 ILCS 5/3.305 (2002). Because “refuse” means “waste,” 415 ILCS 5/3.385 (2002), and because the Act defines “waste” to include “any garbage . . . or other discarded material,” 415 ILCS 5/3.535 (2002), the Board finds that Mr. Harvey has caused or allowed the open dumping of waste on January 31, 2003.

Although the Act does not define the term “litter,” *see* 415 ILCS 5/3.105-3.555 (2002), the Board in other administrative citation cases has looked to the definition provided by the Litter Control Act. St. Clair County v. Louis I. Mund, AC 90-64 (Aug. 22, 1991) (slip op. at 7). Under the Litter Control Act definition, “litter” means:

[A]ny discarded, used or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned vehicle (as defined in the Illinois Vehicle Code), motor vehicle parts, furniture, . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly. 415 ILCS 105/3 (2002).

Because Mr. Harvey caused or allowed open dumping of waste including dirt, branches and roots, gravel, rocks, metal slag, bricks, pieces of plastic, and pieces of wood and processed wood, the Board finds that his activities resulted in litter in violation of Section 21(p)(1) of the Act. 415 ILCS 5/21(p)(1) (2002).

Likewise, because the definition of “general construction or demolition debris” specifically includes items such as:

[B]ricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed asphalt pavement; glass; [and]

plastics that are not sealed in a manner that conceals waste (415 ILCS 5/3.160 (2002));

the Board also finds that Mr. Harvey has violated Section 21(p)(7) of the Act. 415 ILCS 5/21(p)(7) (2002).

### **PENALTY**

In an administrative citation proceeding, any person found to have violated subsection (p) of Section 21 must pay a penalty of \$1,500 for each violation of each provision of the section and \$3,000 for each violation of each provision that is a second or subsequent offense, plus any hearing costs incurred by the Board and the Agency. 415 ILCS 5/42(b)(4-5) (2002). Because the Board finds that Mr. Harvey has violated two subsections of Section 21 and that these are first offenses, Mr. Harvey is ordered to pay a civil penalty of \$3,000, plus costs.

### **CONCLUSION**

After reviewing the record in this case and the relevant portions of the Act, the Board finds that Mr. Harvey caused or allowed the open dumping of waste resulting in litter. The Board also finds that Mr. Harvey caused or allowed the open dumping of waste resulting in the deposition of general construction or demolition debris. The Board further finds that none of the issues raised by Mr. Harvey justify dismissing the administrative citation. While the Board in rare cases will dismiss an administrative citation without finding uncontrollable circumstances, see IEPA v. Jack Wright, AC 89-227 slip. op at 14 (Aug. 30, 1990), the record in this case does not lead to that result. Consequently, the Board finds that Mr. Harvey violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and 21(p)(7) (2002)) and will order him to pay a civil penalty of \$3,000. As set forth below, the Board directs the Agency and the Clerk to document hearing costs, after which the Board will issue a final order.

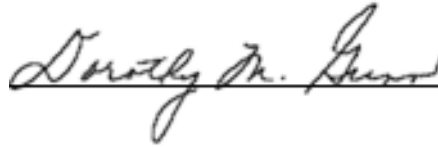
This interim opinion constitutes the Board's interim finding of fact and conclusions of law.

### **ORDER**

1. The Board finds that Vince Harvey violated Sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act. 415 ILCS 5/21(p)(1) and 21(p)(7) (2002).
2. The Illinois Environmental Protection Agency must file a statement of its hearing costs within 14 days of the date of this order, on or before April 15, 2004. The statement must be supported by affidavit and served on Mr. Harvey. Within the same 14 days, the Clerk of the Board must file and serve a statement of the Board's hearing costs supported by affidavit. Respondent may file any objections to those statements within 14 days of service, on or about April 29, 2004.

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 April 1, 2004, by a vote of 4-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board