

ILLINOIS POLLUTION CONTROL BOARD  
November 4, 2004

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 04-46
	)	(IEPA No. 35-04-AC)
CHRISTOPHER COLEMAN,	)	(Administrative Citation)
	)	
Respondent.	)	

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

CHRISTOPHER COLEMAN APPEARED *PRO SE*.

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

The Board today decides whether respondent Christopher Coleman violated Sections 21(p)(1) and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) and (p)(7) (2002)) by causing or allowing the open dumping of waste resulting in litter and in the deposition of general construction or demolition debris at a site in Alto Pass, Union County. For the reasons below, the Board finds that Mr. Coleman violated these provisions by causing or allowing the open dumping of waste resulting in litter and in the deposition of general construction or demolition debris, as alleged by complainant Illinois Environmental Protection Agency (Agency) in an administrative citation.

Mr. Coleman is therefore subject to a statutory penalty of \$1,500 civil penalty per violation, for a total civil penalty of \$3,000, and must pay the hearing costs of the Agency and the Board. After finding the violations in this interim opinion and order, the Board directs the Agency and the Clerk of the Board to provide documentation of their hearing costs, to which Mr. Coleman may respond. After the deadlines for these hearing costs filings pass, the Board will issue a final opinion and order assessing the statutory civil penalty of \$3,000 and any appropriate hearing costs.

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

**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 (2002). Part 108 of the Board's procedural rules provides the process of a citation before the Board. 35 Ill. Adm. Code 108.100 *et seq.* Unlike other environmental enforcement proceedings in which the Act prescribes a maximum penalty (*see, e.g.,* 415 ILCS 5/42(b)(1) (2002)), 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.* "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 which makes no finding of violation and which imposes no penalty." 415 ILCS 5/31.1(d)(2) (2002).

### **PRELIMINARY MATTER**

On October 8, 2004, the People filed a Post-Hearing Brief of Complainant and with it a Motion to File Instanter (Pet Mot.). In their motion, the People state that, primarily because of an organizational error, their brief was filed one day after an October 6, 2004 deadline. Pet Mot. at 1. The People note that granting the motion would result in no prejudice to the Board because the Board does not face a statutory decision deadline in this case. *Id.*; *see* 35 Ill. Adm. Code 108.400-406 ("Board Decisions"). The People also note that granting the motion would result in no prejudice to Coleman, who did not participate in the hearing and was not then expected to file a post-hearing brief. Pet. Brief at 2. Finally, the People state that they have no objection to a similar extension of the due date for Coleman's post-hearing brief (*id.*), although the Board has received no request of that nature.

The Board's procedural rules allow it to extend the time for filing a post-hearing brief, either before or after the expiration of time, with good cause shown. 35 Ill. Adm. Code 101.522. The Board's rules also provide that, "[w]ithin 14 days of service of a motion, a party may file a response to the motion." 35 Ill. Adm. Code 101.500(d). "If no response is filed, the party will be deemed to have waived objection to the granting of the motion . . . ." *Id.* The Board has received no response from Coleman to the People's Motion to File Instanter. Accordingly, the Board grants the People's Motion and accepts the Post-Hearing Brief of Complainant (Pet. Brief) as timely filed.

### **PROCEDURAL HISTORY**

On January 30, 2004, the Agency filed with the Board an administrative citation (AC) alleging violations of the Act at a facility located directly northwest of the intersection of Route 127 and Main Street in Alto Pass, Union County. AC at 1-2. 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 resulting in litter. AC at 2. The Agency 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 resulting in deposition of general construction or demolition debris or clean construction or demolition debris. *Id.*

On February 23, 2004, the respondent filed with the Board a petition for review (Pet.) of the citation. In that petition, the respondent stated that the site is used to sort general merchandise and denied that storage, treatment, or disposal of waste had ever occurred at the site. Pet. at 1.

On September 15, 2004, Board Hearing Officer Carol Sudman conducted a hearing (Tr.) in Jonesboro. At the hearing, Special Assistant Attorney General Michelle M. Ryan appeared and participated on behalf of the complainant. Tr. at 4-5. The respondent Christopher Coleman did not appear. Tr. at 5. One witness testified during the hearing: Ms. Sheila Williams of the Agency on behalf of the complainant. Tr. at 6-10. The Agency offered one exhibit at hearing: an Open Dump Inspection Checklist dated January 13, 2004, which was admitted into the record as Exhibit 1 (Exh.). Tr. at 10. Based on her legal judgment and experience, Hearing Officer Carol Sudman found that the witness testified credibly in this matter. Tr. at 11. On October 8, 2004, the complainant filed its post-hearing brief in this matter. Although the parties agreed to a schedule making the respondent's brief due October 20, 2004 (Tr. at 11), the Board has not received a post-hearing brief from the respondent.

### **FACTS**

On January 13, 2004, Agency field inspector Sheila Williams inspected property located at the intersection of Route 127 and Main Street in Alto Pass. Exh. at 1, 3; Tr. at 7. Christopher Coleman received the tax bills for this property (Exh. at 4), and was responsible for operating it. Tr. at 7-8. At the time of this inspection, Agency files did not show that any party had applied for or been issued a permit allowing the development or operation of waste activities at this site. Exh. at 5.

At the time of her inspection, Ms. Williams had been employed approximately 12 years by the Agency as an environmental protection specialist with the Bureau of Land. Tr. at 6. During her tenure with the Agency, she had performed more than 1,000 inspections of open dumps and other sites. Tr. at 6-7. Ms. Williams had inspected this particular property twice before January 13, 2004. Tr. at 8. On August 29, 2003, she observed 21 cubic yards of material there. Exh. at 3. On the same date, Mr. Coleman was informed of apparent violations. *Id.* By January 13, 2004, two portable structures that had been at the site during the August 29, 2003 inspection were no longer there. *Id.*

In the course of her January 13, 2004 inspection, Ms. Williams identified seven distinct areas (which she designated A-G) that appeared to constitute violations. Exh. at 3. The first, designated Area A, contained approximately 13 cubic yards of material including clothes, books, a computer monitor, debris from demolition, and general refuse. *Id.* at 3, 6-8 (map and photographs 2, 3). Area A also included a number of windows, some of which were broken. Tr. at 9. Some of the window frames had splintered or separated, and Ms. Williams observed that they had not recently been painted. *Id.*; Exh. at 8 (photograph 3).

Area B contained three computer monitors, eight computer power units, an encyclopedia, furniture, ten empty buckets labeled "Fibrous Roof and Foundation Coating," debris from demolition, and general refuse. Exh. at 3-4, 6, 8-9 (map and photographs 4, 5). Area B

contained approximately seven cubic yards of this material. *Id.* at 4. Area C included approximately 14 cubic yards of materials such as books, clothing, stereo equipment, three computer monitors, furniture, dishes, debris from demolition, and general refuse. *Id.* at 4, 6, 9-10 (map and photographs 6-8). This area also contained pieces of wood that had been removed from their original structure. Tr. at 9 (referring to exhibit photograph 8).

Area D included approximately one cubic yard of metal, debris from demolition, and general refuse. Exh. at 4, 6, 11 (map and photograph 9). Area E included approximately five cubic yards of carpeting, plastics, clothing, debris from demolition, and general refuse. *Id.* at 4, 6, 11-12 (map and photographs 10, 11). The area also included scattered pieces of wood. Tr. at 9. The material in Area E spread down into an adjacent wooded area and appeared to be same waste materials as noted in an earlier inspection. Exh. at 4, 11-12 (photographs 10, 11).

Area F contained approximately seven cubic yards of waste, including four tires, furniture, various metal items, debris from demolition, and general refuse. Exh. at 4, 6, 12 (map and photograph 12). Area G included approximately three cubic yards of waste materials including furniture, clothing, pieces of wood, a rusty washing machine drum and other appliances, debris from demolition, and general refuse. Exh. at 4, 6, 13-14 (photographs 14, 16); Tr. at 9-10. During her inspection, Ms. Williams took seventeen photographs of the site. Tr. at 8-9; Exh. at 7-15.

### **STATUTORY BACKGROUND**

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(a) (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 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 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).

Section 42(b)(4-5) of the Act provides that:

In 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) (2002).

## **ARGUMENT**

### **People's Argument**

The People argue that their exhibit and testimony show that materials including old and broken windows and window frames, bottles, clothing, paper, computer and stereo equipment, furniture, dishes, tires, wood, and metal and plastic items, had accumulated on a site operated by Coleman. Pet. Brief at 1-2. Because these materials had been discarded at the site, the People argue that they constitute "waste." Pet. Brief at 2; *see* 415 ILCS 5/3.385 (2002). The People also argue that, because these materials were arranged in piles on the site, they represent the consolidation of refuse or waste within the meaning of the term "open dumping." Pet. Brief at 2. Accordingly, the People conclude that Coleman has caused or allowed the open dumping of waste. *Id.*

Because these dumped materials included clothing, books, electronics, furniture, dishes, and other items, the People argue that this open dumping resulted in litter as defined by the Litter Control Act. The People thus argue that Coleman violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2002)). Pet. Brief at 2. Because these dumped materials also included wood, windows, and metal, the People also argue that this open dumping resulted in deposition of construction and demolition debris. The People thus argue that Coleman has also violated Section 21(p)(7) (2002) of the Act (415 ILCS 5/21(p)(7) (2002)). Pet. Brief at 3.

## **BOARD ANALYSIS**

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). "Refuse" means "waste," (415 ILCS 5/3.385 (2002)) and the Act defines "waste" to include "any garbage . . . or other discarded material." 415 ILCS 5/3.535 (2002). Because the Coleman site contained a substantial number of similar items such as windows, computers, books, furniture, and clothing, the Board finds that Mr. Coleman has caused or allowed the open dumping of waste on January 13, 2004. Also, the Board finds that Mr. Coleman's site does not have a permit to operate as a waste facility of any kind. *See* Exh. at 5.

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 (415 ILCS 105/1 *et seq.* (2002)). St. Clair County v. Louis I. Mund, AC 90-64, slip op. at 6-7 (Aug. 22, 1991). Under the Litter Control Act, "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(a) (2002).

Because Mr. Coleman caused or allowed open dumping of waste including furniture, metal, tires, and general refuse, the Board finds that litter has resulted from that open dumping in violation of Section 21(p)(1) of the Act.

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

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 (415 ILCS 5/3.160 (2002));

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

Mr. Coleman has made a number of claims on his own behalf. First, he stated that “[m]any items previously noted to have been ‘dumped’ on the property are no longer present . . . and waste disposed of.” Pet. at 1. With regard to this issue, the Board has held that, “[e]ven 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. IEPA v. Lincoln Chamber of Commerce, AC 89-26, slip op. at 3 (May 25, 1989). 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).

[T]he 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 ongoing violation, the Agency can issue subsequent citations to that person. Lincoln Chamber of Commerce, AC 89-26, slip op. at 4.

While Mr. Coleman indicates that he has begun to clean his site (Pet. at 1, 2), “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 the Board’s precedent and the

policies underlying the administrative citation process, the Board will not dismiss this citation despite Mr. Coleman's assertion that he has initiated clean-up.

Second, Mr. Coleman appears to imply that the materials present in Areas A, B, and C may have resulted from "uncontrollable circumstances." Pet. at 1; *see* 415 ILCS 5/31.1(d)(2) (2002). Specifically, he states that shelters containing merchandise had been situated in those three areas. Pet. at 1. According to Mr. Coleman, those shelters were removed from the site after a wind and snowstorm destroyed them, leaving exposed various materials that had been contained inside them. *Id.*; *see* Exh. at 7-10, 12 (photographs 2, 4-8, 11).

Portable structures present at the site on August 29, 2003, were no longer present at the time of Ms. Williams' January 13, 2004 inspection. Exh. at 3. However, Mr. Coleman does not explicitly argue that these are "uncontrollable circumstances," and the record does not support a finding that they are. Mr. Coleman did not appear at hearing. Without any evidence indicating whether or when a storm destroyed these shelters, the Board has no basis to find that their destruction constitutes "uncontrollable circumstances." Even if the Board concluded that materials in Areas A, B, and C resulted from uncontrollable circumstances, the furniture, clothing, tires, appliances, debris from demolition, and general refuse in the other four areas would still lead to a finding that Mr. Coleman had violated Sections 21(p)(1) and 21(p)(7) of the Act. While the Board in very 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 warrant that result.

Also, Mr. Coleman stated that Area D included gravel and a barrel used by the CW3M Company that had been situated on the property before Mr. Coleman purchased it. Pet. at 1-2. He further stated that "they should be removed when they complete their work." By these statements, it appears that Mr. Coleman is claiming that he did not "cause or allow" open dumping in Area D under Section 21(a) of the Act. 415 ILCS 5/21(a)(2002).

Mr. Coleman received the tax bill for this property (Exh. at 4) and also operated the site. Tr. at 7-8. Mr. Coleman's petition addresses a July 15, 2003 inspection, showing that he exercised control over this site approximately six months before the January 13, 2004 inspection that culminated in this citation. Pet. at 2. The Board has held that it can find a violation of Section 21(p)(1) based on the inaction of a current owner or operator to remedy a violation caused by a previous owner or operator. *IEPA v. Dan Cadwallader*, AC 03-13, slip op. at 6 (May 20, 2004), citing *IEPA v. Rawe*, AC 92-5, slip op. at 6 (Oct. 16, 1992). Even if another person placed materials in Area D, Mr. Coleman's lack of action to remove those materials allowed litter in that he allowed a violation to continue. *Rawe*, AC 92-5, slip op. at 6. Moreover, even if the Board concluded that Mr. Coleman did not cause or allow the presence of the materials in Area D, the furniture, clothing, tires, appliances, debris from demolition, and general refuse in the other areas would still lead to a finding that Mr. Coleman had violated Sections 21(p)(1) and 21(p)(7) of the Act.

Mr. Coleman also states that "[he has] been harassed by a select few neighbors that have an interest in the property for their own benefit and have now used the EPA and other government agencies to harass me by continuing to make false complaints." Pet. at 2.



Specifically, he states that a Mr. Austin, a business competitor, and a Mr. Renzaglia, an adjoining property owner, “would benefit from myself (sic) moving out and selling the property.” *Id.* The record contains no evidence of any kind supporting these claims, and the Board will not consider them as a basis to dismiss the complaint.

### **PENALTY AND HEARING COSTS**

In an administrative citation proceeding, any person found to have violated subsection (p) of Section 21 of the Act 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. Coleman has violated two subsections of Section 21 and that these are first offenses, in its final order the Board will order Mr. Coleman to pay a civil penalty of \$3,000, plus costs as described below.

### **CONCLUSION**

After reviewing the record in this case and the relevant portions of the Act, the Board finds that Mr. Coleman caused or allowed the open dumping of waste resulting in litter. The Board also finds that Mr. Coleman 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. Coleman constitute “uncontrollable circumstances” that justify dismissing the administrative citation. Consequently, the Board finds that Mr. Coleman has violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and (p)(7) (2002)) and in its final order 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 Mr. Coleman may file any objections to these claimed costs. The Board’s final order will assess any appropriate hearing costs.

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

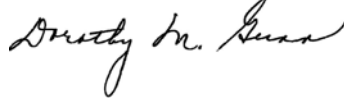
### **ORDER**

1. The Board finds that Christopher Coleman violated Sections 21(p)(1) and 21(p)(7) of the 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 this order, on or before November 18, 2004. The statement must be supported by affidavit and served on Mr. Coleman. Within the same 14-day period, the Clerk of the Illinois Pollution Control Board must also file and serve on Mr. Coleman a statement of the Board’s hearing costs supported by affidavit.

3. Respondent may file any objections to the hearing cost statements described in paragraph 2 of this order within 14 days of service, by a date on or about December 2, 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 November 4, 2004, by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board