

ILLINOIS POLLUTION CONTROL BOARD
May 5, 1994

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Petitioner,)
)
v.) AC 92-86
) (IEPA No. 658-92-AC)
AL SEAMAN,) (Administrative Citation)
)
Respondent.)

CONCURRING OPINION (by G. T. Girard):

I agree with the outcome and general line of reasoning expressed in the majority opinion. The used tires placed in a barn by Mr. Seaman do not warrant finding of violation of Section 21(p)(1) of the Environmental Protection Act (Act). (415 ILCS 5/21(p)(1) 1992.) Section 21(p)(1) prohibits open dumping resulting in litter. However, I concur because the majority opinion does not give the Illinois Environmental Protection Agency (Agency) enough guidance on what constitutes "litter". A clear definition of litter is key to deciding this case.

The majority opinion states on page 4: "[t]he Agency has charged only that the used tires in this case resulted in litter. Yet, the Agency has failed to provide evidence demonstrating how this waste constitutes litter". The majority opinion fails to mention several past Board opinions that found used tires as components of litter. (See generally, Sangamon County v. Ruth Ann Sheppard (November 4, 1994) AC 93-6, ___ PCB ___; IEPA v. Sickles, (September 17, 1992) AC 92-47, 136 PCB 83; IEPA v. Sickles, (July 30, 1992) AC 92-47, 135 PCB 223; IEPA v. Hillebrenner, (May 21, 1992), AC 92-16, 133 PCB 559; and IEPA v. Springman, (May 9, 1991) AC 90-79, 122 PCB 147.) The instant case must be distinguished from past cases to give Agency field inspectors more specific guidance.

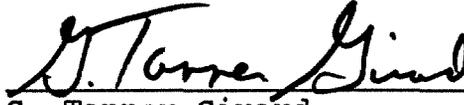
The instant case can be distinguished because the used tires were contained inside a barn. There have been no prior Board findings of violations of Section 21(p)(1) inside a structure including all the prior Board opinions cited above which found tires as components of litter.

The first line of argument should be based on a careful study of the term "litter". The majority opinion cites the definition of litter first articulated in St. Clair County v. Mund which derives from the Litter Control Act. (415 ILCS 105.) If the Board is looking to the Litter Control Act for an authoritative definition of litter, the Board needs to read that definition within the entire context of 415 ILCS 105. Reading the entire Litter Control Act leads to the conclusion that the

definition of litter at 415 ILCS 105/3 was not meant to be applied inside structures. Littering is an outdoor event.

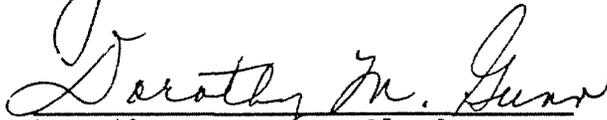
Therefore, the Board can find that there is no violation of Section 21(p)(1) since all the tires are within the barn and, therefore, there is no litter. If there is no litter, there cannot be a violation of Section 21(p)(1).

Therefore, I respectfully concur.



G. Tanner Girard
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was filed on the 19th day of May, 1994.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board