

ILLINOIS POLLUTION CONTROL BOARD
October 16, 1992

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Petitioner,)
)
v.) AC 92-3
) (Dockets A & B)
) (Administrative Citation)
DENNIS GRUBAUGH,)
)
Respondent.)

RICHARD C. WARRINGTON, JR., APPEARED ON BEHALF OF PETITIONER.

DENNIS GRUBAUGH APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by G. T. Girard):

On January 27, 1992, the Illinois Environmental Protection Agency (Agency) filed an administrative citation alleging that on November 21, 1991, an on-site inspection of respondent's property disclosed violations of Section 21(p)(1) and 21(p)(3) of the Illinois Environmental Protection Act (Act). (Ill. Rev. Stat. 1991, ch. 111 1/2 par. 1021.) On February 25, 1992, the Board received a letter from the respondent which the Board construed as a request to review the issuance of the citation. Hearing was held on May 22, 1992 in Vandalia, Illinois. No members of the public attended.

APPLICABLE LAW

Section 31.1(d)(2) of the Act provides that if a petition for review is filed a hearing shall be held. Section 31.1(d)(2) further states:

If, based on the record, the Board finds that the alleged violation occurred, it shall adopt a final order which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) of Section 42. However, if the Board finds 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.

Section 21(p) of the Act prohibits any person from causing

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or allowing open dumping which leads to:

(1) litter

* * *

(3) open burning

BACKGROUND

On November 25, 1991, Mr. Kenneth Mensing arrived at respondent's property to inspect the site. Mr. Mensing testified at hearing that:

Well, what I saw was an area behind a metal storage building, an area approximately twenty-five feet by fifteen feet, probably a maximum height of somewhere between three and four feet, mainly a large pile of ashes intermixed, and amongst the ashes were partially remnants [sic]. Within this pile there was wood, plastic, metal, bricks, kind of a combination of building demolition waste, business or shop type waste, and some materials that would be characterized as household type waste. (Tr. at 6-7)

Mr. Mensing also took several pictures which depict the site. (See Complainant Exh. 1 at 6-8.)

Mr. Grubaugh does not deny that waste was present and that burning had occurred at the site. However, Mr. Grubaugh maintains that the materials burned on the site were domicile waste. Mr. Grubaugh stated that he believed that such burning was acceptable under the Board's regulations and the Act.

Mr. Mensing testified that he had "no problem stating that some of the material there was of a household nature and was generated on site." (Tr. at 12.) However, Mr. Mensing further testified that his observation and statements made by Mr. Grubaugh led him to believe that some of the waste was from a demolition project. (Tr. at 12.)

DISCUSSION

The sole defense set forth by Mr. Grubaugh in this matter is whether or not the materials on Mr. Grubaugh's property were domicile waste. Domicile waste is defined at 35 Ill. Adm. Code 237.101 of the Board's rules as "any refuse generated on single-family domiciliary property as a result of domiciliary

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activities. The term excludes landscape waste, garbage and trade waste." (35 Ill. Adm. Code 237.101).

The Board notes that Section 237.120(b) allows for domicile waste to be burned in unrestricted areas on the site where the waste is generated. The Board further notes that the Agency does not maintain that the area in which Mr. Grubaugh lives is a restricted area. However, Mr. Mensing testified that the wood at the site "appeared to be old construction type lumber". (Tr. at 33.) He further testified that the definition of domicile waste does not include "things like construction debris for remodeling". (Tr. at 32.)

Mr. Grubaugh attempted on cross examination to elicit testimony in support of his position. Mr. Grubaugh questioned Mr. Mensing on "what is there in these piles that you can actually say that it came from outside site rather than residential." (Tr. at 13-14.) Mr. Mensing stated that:

As I testified to earlier, for one, I think the volume of the ash material, there is more than would be accounted for by domicile waste and remodeling waste from a porch or something like that. There were bricks, an old sink, and boards and just - - but I am coupling that with the fact that you told me personally that materials from off-site were brought there and burned. (Tr. at 14.)

Mr. Grubaugh then asked if the size of the ash pile could be explained by the fact that domicile waste had been burned there for approximately 10 to 12 years. (Tr. at 15.) Mr. Mensing states that ash building up over ten or fifteen years would not look like the ash at the site: "[a]shes from a pile ten years old would not be fresh, fluffy and all white. The ash pile had not seen rain." (Tr. at 15.)

In addition, Mr. Grubaugh testified that approximately a year and a half ago the front porch was removed from the house and "the rest of the house was remodeled last fall, and the siding was put on during the winter". (Tr. at 24-25.) Mr. Grubaugh states that he had intended to have the area cleaned up "long before that but we got busy" with his tree removal business. Mr. Grubaugh testified that the area has since been cleaned up.

The material described by Mr. Mensing and shown in the photographs clearly goes beyond mere domicile waste. In addition, the size of the ash pile would appear to indicate that a recent large burn had taken place. Thus, the Board finds that the waste pile on the Grubaugh property included waste which was nondomicile waste. Therefore, Mr. Grubaugh was in violation of

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Section 21(p)(3) of the Act.

The Board also notes that Mr. Grubaugh did not present any evidence on the alleged violation of Section 21(p)(1), litter. Mr. Grubaugh only argued that the pile was domicile waste. Therefore, the Board finds Mr. Grubaugh also in violation of Section 21(p)(1) of the Act.

The Board notes that although Mr. Grubaugh had cleaned up the site, such actions are not a mitigating factor under the administrative citation program. The statute sets forth the fine to be imposed (\$500 for each violation) and the Board must impose that fine.

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

ORDER

1. Respondent is hereby found to have been in violation on November 21, 1992, of Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1021(p)(1) and (3).
2. Within 45 days of this Order Respondent shall, by certified check or money order, pay a civil penalty in the amount of one thousand dollars (\$1,000) payable to the Environmental Protection Trust Fund, and shall be sent by First Class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 19276

Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (Ill. Rev. Stat. 1991, ch. 120, par. 10-1003), from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal, during which payment of the penalty is stayed.

3. Docket A in this matter is hereby closed.
4. Within 30 days of this Order, the County shall file a statement of its hearing costs, supported by affidavit, with the Board and

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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 the 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 paragraph 4 of this Order within 45 days of this Order.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill.Rev.Stat. 1991, ch. 111 1/2, par. 1041) provides for the appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 16th day of October, 1992, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board