

ILLINOIS POLLUTION CONTROL BOARD
December 17, 1992

SANGAMON COUNTY,)	
)	
Complainant,)	
)	
v.)	AC 92-37
)	Docket A & B
GERALD B. MILLER)	(Administrative Citation)
)	(SCDPH 92-AC-12)
Respondent.)	

MR. ROBERT L. SMITH APPEARED ON BEHALF OF COMPLAINANT,

MR. GERALD B. MILLER APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on an Administrative Citation filed by Sangamon County pursuant to the Illinois Environmental Protection Act (Act) (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1001 et. seq.). The citation was filed May 14, 1992, and alleges that respondent, Gerald B. Miller violated Section 21(p)(1)¹ of the Act by causing or allowing open dumping of waste resulting in litter.

Mr. Miller filed a request for hearing with the Board on June 16, 1992. Hearing was held September 8, 1992, in Springfield, Illinois. No members of the public participated in the hearing. No briefs were filed.

BACKGROUND

On April 10, 1992, Brian Wood, a solid waste inspector for the Sangamon County Health Department, conducted an investigation of Gerald B. Miller's property in Sangamon County. (Tr. at 6.) This site was previously inspected on August 23, 1991 and January 21, 1992, along with drive-by inspections between those dates. (Tr. at 7.) An administrative warning notice was issued to Mr. Miller as a result of the August 23, 1991 inspection. (Exh. 4.) During the inspection on April 10, 1992, Mr. Wood drew a sketch of the site (Exh. 2) and took photographs of the property. (Exh. 5.) The site sketch shows the locations where various items were discovered on Mr. Miller's property. (Exh. 2.) The sketch shows the locations of cars, trucks, tractors, storm windows, general household refuse, batteries, cans, machinery parts, wire, metal

¹ Section 21 of the Act was amended by Public Act 87-752, effective January 1, 1992. As a result, the two subsections enforceable through the administrative citation process have been changed from 21(p) and 21(q) to 21(o) and 21(p) respectively.

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construction materials and bee hives. (Exh. 2.) The photos depict several of these items. (Exh. 5.)

Mr. Miller agrees that there is some litter on the property but does not believe that it constitutes an open dump. (Tr. at 27.) Mr. Miller believes that the law does not prohibit him from keeping automobiles owned by him on his own property. (Tr. at 21.) He further states that old farm machinery does not constitute litter. (Tr. at 21.) Mr. Miller also contends that bee hives do not constitute litter. (Tr. at 23.) Mr. Miller relies on an exception for persons engaged in agricultural activity for disposal on one's own property of substances for used by the owner on his own property. (Tr. at 22.) Mr. Miller contends that he intended to use the storm windows, window framing, dimension lumber and fencing to put up a building on his property. (Tr. at 23.) Mr. Miller claims that the county failed to provide him with instructions on how to file an appeal as required by law. (Tr. at 21.) Mr. Miller also notes that the administrative citation contains additional items that were not mentioned in previous warnings. (Tr. at 22.)

In reply the county notes that the administrative citation includes instructions on the filing of an appeal. (Tr. at 25.) The county further notes that the pictures from the inspection show the condition of the property and are sufficient to prove a violation. (Tr. at 30.)

DISCUSSION

The administrative citation issued against Mr. Miller alleges a violation of subsection (1) of Section 21(p). Section 21(p) provides that no person shall in violation of Section 21(a) of the Act:

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;

Section 21(a) of the Act sets forth a general prohibition against open dumping by providing that "[n]o person shall cause or allow the open dumping of any waste." Section 31.1 of the Act provides that "[t]he prohibitions specified in subsections (p) and (q) of Section 21 of this Act shall be enforceable either by administrative citation under this Section or as otherwise provided in this Act." (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1031.1.)

The Act establishes that, in order to seek enforcement by way of the administrative citation process for violations of Section 21(p), the Agency must establish that the person caused

or allowed open dumping and must also prove that the open dumping resulted in litter, open burning or other specified conduct at the dump site. (Section 31.1(d)(2).) If the record demonstrates that such violation occurred then the Board must adopt an order finding a violation and impose the specified penalty unless, "...the person appealing the citation has shown that the violation resulted from uncontrollable circumstances." (Section 31.1(d)(2).) Therefore, the initial inquiry in this case is whether Mr. Miller's conduct constitutes causing or allowing "open dumping".

Section 3.24 of 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 sanitary landfill." Section 3.31 of the Act defines "refuse" as "waste." Section 3.53 of the Act defines "waste" as, inter alia, "garbage ... or other discarded material"

In St. Clair County v. Arthur Fields (August 22, 1991), AC 90-64, the Board adopted the definition of litter as found in the Litter Control Act:

"Litter" means any 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 . . . motor vehicle parts, furniture, oil,....or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

Ill. Rev. Stat. 1991, ch. 38, par. 86-3.

Mr. Miller argues that some of the items observed on his property are not "litter". (Tr. at 21, 23.) While it is arguable that some of the items located on Mr. Miller's property are not litter, it is equally clear that many of the items are litter based on the above definition. The photos of the site show furniture, appliances, abandoned vehicles, cans and other items throughout Mr. Miller's property of an unsightly nature which have been discarded improperly. The photos are sufficient to find a violation of the Act. Mr. Miller also testified that there is litter on his property. (Tr. at 27.)

Mr. Miller contends that he is allowed to dispose of the waste generated by his own activities on-site. (Tr. at 22.) The Act provides exemptions for some agricultural and on-site activities. Exemptions from the permit requirements are not at issue in this matter. The Act states that a person engaged in agricultural activity who is disposing of solid waste, acquired

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for use by that person on his own property, and disposed of on that property in accordance with the regulations or standards adopted by the Board, need not notify the Agency concerning the conduct of a waste-storage, waste-treatment or waste-disposal operation. (Section 21 (d)(3).)

Mr. Miller is mistaken regarding the effect of these agricultural activity and on-site exemptions. Any on-site disposal practice must comply with Board regulations or standards. No exception exists for the open dumping of any waste which results in litter, open burning or any other result enumerated in Section 21 (p) of the Act. The activities complained of are prohibited disposal practices by the terms of the Act and hence do not fall under the listed exemptions.

Section 31.1(b)(4) of the Act requires an administrative citation to contain "instructions for contesting the administrative citation." Mr. Miller contends that the citation did not provide information on the content of an appeal or filing requirements. The administrative citation reads as follows:

PROCEDURE FOR CONTESTING THIS
ADMINISTRATIVE CITATION

You have the right to contest this Administrative Citation, See Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1031.1. If you elect to contest this Administrative Citation, you must file a Petition for Review with the Clerk of the Illinois Pollution Control Board. A copy of the Petition for Review should be filed with the Sangamon County Department of Public Health. Such Petition for Review must be filed within thirty-five (35) days of the date of service of this Administrative Citation, or a default judgement shall be entered by the Pollution Control Board. The Petition for Review may be filed with the Clerk of the Illinois Pollution Control Board at the State of Illinois Center, 100 West Randolph, Suite 11-500, Chicago, Illinois, 60601; and a copy of said Petition for Review filed with the Sangamon County Department of Public Health, 200 South Ninth Street, Room 301, Springfield, Illinois, 62701.

The Board notes that the information on filing an appeal provided in the citation is not complete, in that it does not provide information on the content of an appeal or filing requirements. However, the Board finds that the information is sufficient to notify the reader of the appeal process and the time in which an appeal is to be filed. The citation satisfies the requirements of the statute. Mr. Miller could obtain additional information on filing an appeal by contacting the Pollution Control Board or by referencing the applicable statutes and regulations.

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The Board must consider whether Mr. Miller has shown that the violation resulted from uncontrollable circumstances. This is the only showing provided in the statute that allows the Board to excuse any violation. If the Board so finds, then no violation would be found and no penalty imposed. (Section 31.1(d)(2).)

Mr. Miller made no claim of uncontrollable circumstances. There is no evidence in the record that indicates that any uncontrollable circumstance was involved in this matter. The Board does not find any uncontrollable circumstance to warrant excusing the finding of violation.

Based on the facts presented in this case, the Board finds Mr. Miller in violation of Section 21(p) of the Act on April 10, 1992.

PENALTIES

Penalties in administrative citation actions of the type here brought are proscribed 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 provision of subsection (p) of Section 21 of this Act shall pay a civil penalty of \$500 for each violation of each such provision, plus any hearing costs incurred by the Board and the 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 as amended; except that if a unit of local government issued the administrative citation, 50% of the civil penalty shall be payable to the unit of local government.

Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1042(b)(4).

Respondent will therefore be ordered to pay a civil penalty of \$500 based on the violation as herein found. For purpose 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 Sangamon County. The Clerk of the Board will therefore be ordered to file a statement of costs, supported by affidavit, with the Board and with service upon Mr. Miller.²

² Sangamon County filed its affidavit of costs with the Board on September 16, 1992.

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 to have been in violation on April 10, 1992, of Ill. Rev. Stat. 1991, ch. 111 1/2 par. 1021(p)(1).
2. Within 45 days of this order respondent shall, by certified check or money order, pay a civil penalty in the amount of \$500 payable to the Sangamon County Public Health Department. Such payment shall be sent to:

James D. Stone, Director
Sangamon County - Dept of Public Health
200 South 9th St, Rm. 301
Springfield, Illinois 62701

Respondent shall include the remittance form and write the case name and number and their social security or federal Employer Identification Number on the Certified check or money order.

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), as now or hereafter amended, 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 has been stayed.

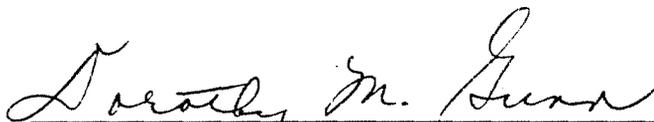
3. Docket A in this matter is hereby closed.
4. Within 30 days of this order, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service upon Gerald B. Miller. Such filing shall be entered in Docket B of this matter.
5. Respondent is 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.

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Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par 1041) provides for 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 17th day of December, 1992, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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