

ILLINOIS POLLUTION CONTROL BOARD
April 21, 1994

MONTGOMERY COUNTY,)
)
 Complainant,)
)
 v.) AC 93-45
) (Administrative Citation)
 RITA HEFLEY,)
)
 Respondent.)

KATHERINE DOBRINIC, MONTGOMERY COUNTY STATE'S ATTORNEY APPEARED
ON BEHALF OF MONTGOMERY COUNTY, and

RITA HEFLEY APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by M. McFawn):

This matter comes before the Board upon an Administrative Citation filed September 27, 1993 pursuant to Section 31.1 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/31.1 (1992)) by Montgomery County. The Administrative Citation alleges respondent Rita Hefley violated the open dumping provisions of the Act. (415 ILCS 5/21.) Respondent filed a letter on October 16, 1993, which the Board construed as a request for hearing to appeal the administrative citation. Accordingly, a hearing was held March 11, 1994.

The County presented one witness, Mr. Weldon Kunzeman, the landfill and solid waste inspector for the Montgomery County Health Department who inspected the site. Ms. Hefley testified on her own behalf. No post-hearing briefs were submitted.

APPLICABLE LAW

The administrative citation issued against Rita Hefley alleges violation of subsection (1) of Section 21(p) of the Act. Section 21(p) provides that no person shall in violation of 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;

Pursuant to Section 31.1(d)(2) of the Act, if the Board finds the alleged violation occurred, then the final order issued shall include a finding of violation, and shall impose the penalty specified in subdivision (b)(4) of Section 42, i.e. \$500 per violation. Section 31.1(d)(2) further provides that if the Board finds the violation resulted from uncontrollable

circumstances, it shall adopt a final order which makes no finding of violation and which imposes no penalty. Thus, a two-part inquiry is required: first, the Board must determine whether there was a violation based on the record in this case, and if so, the Board must then determine whether the violation was caused by uncontrollable circumstances.

BACKGROUND

This action concerns property in the Village of Honey Bend, at the corner of North Litchfield Township Roads 1755 North and 395 East. The property belongs to Rita Hefley, and the address is Rural Route 1, Box 84, Litchfield Illinois, 62056. At hearing, Inspector Kunzeman testified that he first inspected the property on May 5, 1993, and found it to be in violation of Section 21 of the Act. (R. at 9.) On May 24, 1993 an administrative warning notice was sent to Ms. Hefley. (Complainant's Exh. 2.) On July 23, 1993, Kunzeman re-inspected the property and found violations of Section 21 still present. He testified he found refuse or waste material piled and scattered in several areas throughout the site. (R. at 6.) Inspector Kunzeman also testified no permits were issued for the site. (R. at 7.)

The inspection report indicates that although one abandoned vehicle had been removed since the first inspection, three remained at the time of the re-inspection. (Complainant's Exh. 1.) The report further indicates the presence of several piles of litter and debris. Attached to the inspection report are several photographs of the property, showing the abandoned vehicles and a pile of debris. The photos show that auto parts and other trash are scattered near the abandoned vehicles, and that the pile of debris contains shelving, auto parts, paint cans, rusted metal containers, a kitchen pan, and large unidentifiable pieces of rusted metal, amongst other unidentifiable trash. Rusted 55 gallon drums and old tire rims are scattered near the trash pile. In her testimony, Ms. Hefley admitted that there was an open dump on the property. (R. at 12.)

DISCUSSION

The Board finds there is substantial, uncontroverted evidence that the conditions on Ms. Hefley's property constituted an open dump operated so as to cause litter in violation of Section 21(p)(1) of the Act.

The second and final question which the Board must consider is whether Ms. Hefley has shown the violation resulted from uncontrollable circumstances. This is the only showing provided in the Act that allows the Board to excuse a violation. If the Board so finds, then no violation would be found and no penalty

imposed. (415 ILCS 5/31.1(d)(2).)

Ms. Hefley testified heavy rains prevented her from disposing of the trash pile during May and June. (R. at 12.) Ms. Hefley also testified that she was working two jobs, and suffered an illness during the first week in July, sufficiently serious to keep her from work during that week. (R. at 13) The Board finds that none of these factors constitutes uncontrollable circumstances so as to excuse such prolonged noncompliance with the Act.

Addressing more fully the defense of heavy rains, we note adverse weather conditions normally do not warrant a finding of uncontrollable circumstances. (See In The Matter of Dan Heusinkved, County Clerk County of Whiteside, State of Illinois (January 21, 1988), AC 87-25.) In St. Clair County v. J & R Landfill, Inc. (May 10, 1990), AC 89-18, a landfill owner demonstrated that particular circumstances warranted an exception to this general rule, since the litter was frozen to the ground and could not be picked up by hand. The respondent in St. Clair County also demonstrated it was not possible for litter pickers to walk in the area due to muddy conditions. The evidence was uncontroverted and was supported by photographs in the record. Ms. Hefley has made no similar showing, and the photographs in the record give no indication that the litter could not be accessed or cleaned up.

Ms. Hefley also testified that the property was cleaned up soon after the inspection. The Board has previously held removal of the litter after the issuance of an administrative citation does not negate a violation, since clean up of the site is not a mitigating factor under the administrative citation program. (See Illinois Environmental Protection Agency v. Jack Wright (August 30, 1990), AC 89-227; Illinois Environmental Protection Agency v. Dennis Grubaugh (October 16, 1992), AC 92-3.)

PENALTY

The statute sets forth a fine of \$500 for each violation. (415 ILCS 5/42(b)(4).) Ms. Hefley has been found to have violated the open dumping provision of the Act. Therefore, at the time of the Board's final order, Ms. Hefley will be ordered to pay a penalty of \$500. Additionally, respondent is statutorily required to pay the hearing costs incurred by the Board and the complainant. (415 ILCS 5/42(b)(4).) Those costs are not known at this time. therefore as part of its interim order, the Board will order the Clerk of the Board and complainant to provide that information to the Board and the respondent.

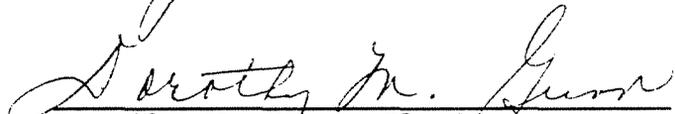
This opinion constitutes the Board's interim findings of fact and conclusions of law in this matter. A final order will be issued pursuant to the interim order which follows.

INTERIM ORDER

1. Respondent is hereby found to have violated 415 ILCS 5/21(p)(1) (1992) on July 23, 1993.
2. Montgomery County is hereby directed to file a statement of its hearing costs, supported by affidavit, with the Board and with service upon respondent, within 14 days of this order. Within the same 14 days, the Clerk of the Board shall file a statement of the Board's costs, supported by affidavit and with service upon respondent.
3. Respondent is hereby given leave to file a reply to the filings ordered in paragraph 2 within 14 days of receipt of that information, but in no case later than 40 days after the date of this order.
4. After the deadline for filing such information and reply thereto has expired, the Board will issue a final order assessing the statutory penalty, and making the appropriate award of costs.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the 21st day of April 1994, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board