

ILLINOIS POLLUTION CONTROL BOARD
April 20, 1995

SANGAMON COUNTY,)	
)	
Complainant,)	
)	AC 94-76
v.)	(SCDPH Case No. 94-AC-22)
)	(Administrative Citation)
SLC OF SPRINGFIELD, INC.,)	
)	
Respondent.)	

ROBERT L. SMITH, ASSISTANT STATE'S ATTORNEY, APPEARED ON BEHALF OF SANGAMON COUNTY.

MARK K. VINCENT APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. Yi):

This matter is before the Board pursuant to a petition for review timely filed by the respondent, SLC of Springfield (SLC), on October 5, 1994. Respondent has requested review of one count of an administrative citation issued August 29, 1994 by Sangamon County. Sangamon County is vested with the authority to bring such a citation pursuant to Section 31.1 of the Environmental Protection Act (Act) (415 ILCS 5/31.1) and a delegation of authority agreement with the Illinois Environmental Protection Agency statutorily authorized in Section 4(r) of the Act. (415 ILCS 5/4(r).) The Board accepted the petition for review on October 20, 1994 and set the case for hearing. Hearing was held before Hearing Officer June C. Edvenson on January 10, 1995 in Springfield, Illinois. No post-hearing briefs were filed.

The administrative citation alleges violations of Sections 21(p)(1) and 21(p)(3) of the Act (415 ILCS 5/21(p)(1) and 5/21(p)(3)) which carry a statutory civil penalty of \$500 for each violation if the Board finds that such violation occurred. SLC filed the petition for review for the limited purpose of challenging the alleged violation of Section 21(p)(3) of the Act. SLC admits to violating Section 21(p)(1) of the Act, for which the Board finds respondent liable for the payment of the statutory penalty of \$500. Therefore, the only issue before the Board is whether SLC violated Section 21(p)(3) of the Act. For the reasons set forth below, the Board does not find that the record demonstrates that SLC violated Section 21(p)(3) of the Act. Since the petition for review only challenged the allegation that SLC violated Section 21(p)(3) of the Act and the Board finds in favor of SLC, pursuant to Section 42(b)(4) of the Act no hearing costs will be assessed. (415 ILCS 5/42(b)(4).)

FACTS

SLC is the owner of a facility located in Sangamon County, Illinois. (Complaint at 1.) The property is commonly known to the Agency and Sangamon County as "Springfield/SLC of Springfield". The Agency has designated the facility with site code no. 1678220081 and the current operator of the facility is SLC. (Complaint at 1.) SLC is in the business of picking up trash and garbage from residences and business. (Tr. at 37.)¹ SLC does not take the collected trash to a landfill. Instead, it takes it to a transfer station and is charged by the transfer station a fee per truck load. (Tr. at 42.)

The instant administrative citation was filed against SLC by Sangamon County based on the direct observations made by Allen Alexander and Brain Wood, Solid Waste Specialists employed by the Sangamon County Health Department, on July 27, 1994. The SLC property is abutted to the east by property owned by the Wanless Estate (Wanless), which is not a party to this action. (Tr. at 20-21.) Mr. Alexander testified that on the day of the inspection he observed a large pile of burning refuse right next to a fenced-in area and along the eastern side of a driveway leading up to the fenced-in area. Located within the fenced-in area was a large pile of landscape waste and some dump trucks.

Mr. Alexander stated that he took approximately seven (7) photographs of the site which appear in his inspection report numbered 10-17. (Plaintiff's Exhibit #2.) Photograph #10 was taken in a north eastern direction and is of a large pile of burning refuse consisting of general garbage, demolition debris, plastic buckets, and tires just east of a driveway. Photograph #11 was also taken in a north eastern direction and is of the same pile of burning refuse but also shows the pile running farther north along the east side of the fenced in area and the driveway. Photographs #12 and #15 were done facing the east and are of the burning refuse. Photograph #13 was taken towards the northwest and is of the large landscape waste pile located within the fenced in area of the SLC site. Photograph #16 was taken in a southeasterly direction and is of the burning refuse. The last photograph, photograph #17, was taken towards the north looking up the driveway to the fenced in area where the dump trucks are parked and shows just to the east of the driveway the pile of burning refuse. (Tr. at 8-15, Plaintiff's Exhibit #2.)

Mr. Alexander testified that he did not see anyone lighting the burning refuse on the day of his inspection on July 27, 1994. (Tr. at 15.) Mr. Alexander also could not determine if the pile

¹The transcript of the hearing will be referenced as "Tr. at ".

of burning refuse was located on the property of SLC or on the property owned by Wanless. (Tr. at 21-22.)

Mr. Alexander revisited the site after the issuance of the administrative citation and observed that "...most of the burned material appeared to have been cleaned up, and sitting on part of the area where the burning was occurring in July were two dumpsters owned by SLC." (Tr. at 18.) He also went by the site at a later date and witnessed two men, who identified themselves as SLC employees, unloading refuse from trucks into the dumpsters. (Tr. at 18.)

Mr. Larry Squires, the President of SLC, testified on its behalf. (Tr. at 33.) Mr. Squires testified that at no time did SLC own or operate on the Wanless property prior to the July inspection. (Tr. at 38.) Mr. Squires also testified that there is refuse located on other properties in the neighborhood. (Tr. at 38.)

DISCUSSION

The Act establishes that, in order to seek enforcement by way of the administrative citation process for violations of Section 21(p), the Agency, or in this case the County, (since the Agency has delegated its authority pursuant to Section 4(r) of the Act), must establish that the respondent 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. If the record demonstrates that such violation occurred, then the Board must adopt an order finding a violation and imposing the specified penalty. The only mitigation of a violation is if "...the person appealing the citation has shown that the violation resulted from uncontrollable circumstances" in which case the Board must adopt an ordering which imposes no penalty. (415 ILCS 5/31.1(d)(2) (1992).)

The administrative citation issued against SLC alleges that Section 21(p) subsection (3) of the Act was violated. Section 21(p)(3) 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:

3. burning;

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 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". (415 ILCS 5/3.24 (1992).) Section 3.31 of the Act defines "refuse" as "waste". (415 ILCS 5/3.31 (1992).) Section 3.53 defines "waste" as, inter alia, "garbage...or other discarded material, resulting from industrial, commercial, mining and agricultural operations...." (415 ILCS 5/3.53 (1992).)

In St. Clair County v. Louis Mund (August 22, 1991), AC 90-64, 125 PCB 381, the Board adopted the definition of litter contained in the Litter Control Act:

"litter" means any discarded, used or unconsumed substance or waste. "Litter" may include, but is not limited to, any

In this case, SLC has admitted that it caused open dumping which led to litter on its property and is not seeking review of that count of the administrative citation. However, SLC does not admit, and in fact presented evidence to the contrary, that it ever open dumped on the Wanless property, and it denies that it ever open burned. The record before the Board demonstrates that the open dumping occurred and that the refuse was burning at the time of inspection on the Wanless property. However, the County must make some showing that the burning occurred at the facility issued the administrative citation. (See Sangamon County Department of Public Health v. Lee Hsueh, (July 1, 1993), AC 92-79 and Illinois Environmental Protection Agency v. John A. Gordon, (February 7, 1991), AC 89-156.) The question is whether the County has made such a factual showing in this particular proceeding.

Based on the evidence in the record, the Board concludes that the County has not demonstrated that the open burning occurred on SLC's property or that SLC caused or allowed the dumping of the refuse on the Wanless property which led to the open burning. Mr. Alexander could not determine whether the burning refuse was located on the SLC property or the Wanless property. The record demonstrates that the property line runs along the fenced-in area and the driveway, with the Wanless property being to the east where the burning refuse was located and the SLC property to the west. Mr. Squires testified that SLC has never operated or burned refuse on the Wanless property. Thus, the Board dismisses the alleged violation of 21(p)(3) of the Act.

PENALTY

Penalties in administrative citation actions are prescribed by Section 42(b)(4) of the Act which states:

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 (415 ILCS 5/42(b)(4) (1992)).

Respondent will therefore be ordered to pay a civil penalty of \$500 based on the violation of Section 21(p)(1) of the Act as admitted to in its petition for review. Pursuant to Section 42(b)(4) of the Act, normally respondents are also required to pay hearing costs incurred by the Board and the Sangamon County. However, the since the petition for review only challenged the allegation that SLC violated Section 21(p)(3) of the Act, which the Board finds in favor of SLC, no hearing costs will be assessed.

For the reasons stated in the above opinion and order, the Board finds that the respondents, SLC of Springfield, Inc., violated Section 21(p)(1) of the Act and dismisses the allegation that SLC of Springfield, Inc., violated Section 21(p)(3) of the Act. Accordingly, the respondents are liable for a penalty of five hundred dollars (\$500.00).

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

ORDER

1. Respondent, SLC of Springfield, Inc., is hereby found to have violated 415 ILCS 5/21(p)(1) (1992).
2. Within 30 days of this order, the Respondents shall pay the sum of five hundred dollars (\$500.00) by check or money order to the Illinois Environmental Protection Trust Fund. The payment shall be mailed to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Il. 62706

3. SLC of Springfield shall write the case name and number, and its social security number or federal Employer Identification Number, on the certified check or money order.
4. Penalties unpaid after the due date shall accrue interest pursuant to Section 42(g) of the Environmental Protection Act.

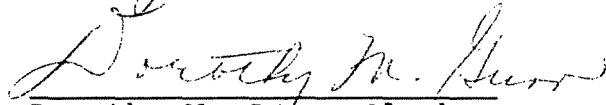
5. Payment of this penalty does not prevent future prosecution if the violation continues.

IT IS SO ORDERED.

Board Member Marili McFawn dissented.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for appeal of final orders of the Board within 35 days. The rules of the Supreme Court of Illinois establish filing requirements. See also, 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 20th day of April, 1995, by a vote of 6-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board