

ILLINOIS POLLUTION CONTROL BOARD  
October 24, 1991

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Complainant,	)	AC 90-91
	)	Docket A & B
v.	)	(Administrative Citation)
	)	(IEPA No.529-90-AC)
BERNARD LEITSCHUH,	)	
	)	
Respondent.	)	

MR. RICHARD C. WARRINGTON JR., ASSISTANT COUNSEL, APPEARED ON BEHALF OF COMPLAINANT

MR. BERNARD LEITSCHUH, RESPONDENT, APPEARED PRO SE

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

This matter comes to the Board on an Administrative Citation filed by the Illinois Environmental Protection Agency ("Agency") pursuant to the Illinois Environmental Protection Act (hereinafter "the Act") (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1001 et. seq.). The citation was filed November 26, 1990, and alleges that Respondent, Bernard Leitschuh, the operator of a facility located in Montgomery County, Illinois is in violation of Section 21(q) (1) and 21(q) (3) of the Act for causing or allowing open dumping of waste that results in litter and results in open burning.

A Petition for Review was filed with the Board on December 21, 1990. Hearing was held on July 12, 1991, at the Montgomery County Courthouse in Hillsboro, Illinois. Mr. Richard Warrington, Jr., appeared on behalf of the Agency; Mr. Bernard Leitschuh appeared pro se. Opening and closing statements and the filing of Briefs were waived at hearing.

**DISCUSSION**

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. 1989, ch. 111 1/2, par. 1021.1) Section 21(p) of the Act applies to sanitary landfills permitted under the Act while Section 21(q) applies to all dump sites. The administrative citation issued against Mr. Leitschuh alleges violation of subsections (1) and (3) of Section 21(q). Section 21(q) provides that:

No person shall: ...

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;

\* \* \*

3. opening 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 opening dumping of any waste.

These sections of the Act establish that, in order to seek enforcement by way of the administrative citation process for violations of Section 21(q), 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. 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) of the Act. Therefore, the initial inquiry in this case is whether Mr. Leitschuh's conduct constitutes causing or allowing "open dumping which resulted in litter and open burning."

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." (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1003.24) Section 3.31 of the Act defines "refuse" as "waste." (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1003.31) Section 3.52 defines "waste" as, inter alia, "garbage ... or other discharged material ...." (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1003.53)

At hearing the Respondent, Mr. Leitschuh, stipulated that he had discussed the charges with the Agency and the charges in the complaint were true and correct. The complaint was issued as a result of an inspection of the property by the Environmental Protection Agency on September 27, 1990.

Based on the admission of the Respondent at the hearing, the Board concludes that the Respondent caused or allowed open dumping of waste, which resulted in litter and open burning. Therefore, Mr. Leitschuh is in violation of Section 21(q) (1) and 21(q) (3) of the Act.

The Board must consider whether Mr. Leitschuh 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. (see Section 31.1(d) (2) of the Act).

The record raises no basis for a conclusion of uncontrollable circumstances. The Board finds that the violations did not result from uncontrollable circumstances. Therefore, Mr. Leitschuh is in violation of Section 21(q) (1) and 21(q) (3) of the Act.

### 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 (q) 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. 1989, ch. 111 1/2, par. 1042(b)(4).

Respondent will therefore be ordered to pay a civil penalty of \$1,000 based on the violations 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 the Agency. The Clerk of the Board and the Agency will therefore be ordered to each file statement of costs, supported by affidavit, with the Board and with service upon Mr. Leitschuh. 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 September 27, 1990, of Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1021(q) (1) and 1021(q) (3).
2. Within 45 days of this Order Respondent shall, by certified check or money order, pay a civil penalty in the amount of \$1,000 payable to the Illinois Environmental Protection Trust Fund. Such payment shall be sent to:

Illinois Environmental Protection Agency  
Fiscal Service Division  
2200 Churchill Road  
P.O. Box 19276  
Springfield, Illinois 62706

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.


Penalties unpaid after the due date shall accrue interest pursuant to Section 42(g) of the Illinois Environmental Protection Act.

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

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1989, 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.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 24<sup>th</sup> day of October, 1991, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board