

ILLINOIS POLLUTION CONTROL BOARD

June 6, 2002

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 01-29
) (Administrative Citation)
LESSLIE YOCUM, SANDRA YOCUM,) (IEPA No. 063-01-AC)
RICK L. YOCUM, and SHAWNA B.)
YOCUM (BIRMINGHAM/YOCUM #1),)
)
Respondents.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 01-30
) (Administrative Citation)
LESSLIE YOCUM and SANDRA YOCUM) (IEPA No. 062-01-AC)
(BIRMINGHAM/YOCUM #2),) (Consolidated)
)
Respondents.)

DISSENTING OPINION (by G.T. Girard and T.E Johnson):

We respectfully dissent from the Board’s opinion and order issued today in this matter. We do not believe the record supports the Board’s finding of violations of Section 21(p)(1)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(7) (2000)) for either of the Yocum sites (called Yocum #1 and Yocum #2). Further, the record is insufficient to find violations of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2000)) at Yocum #1. The only violation we believe the record supports is a finding that Section 21 (p)(1) of the Act was violated at the Yocum #2 site (AC 01-30). Therefore, the respondents, Lesslie Yocum and Sandra Yocum, should be fined \$1500.

At Yocum #1, the only evidence offered to support finding a violation of Section 21(p)(7) of the Act (construction debris) (415 ILCS 5/21(p)(7) (2000)) was the pile of “weathered dimensional lumber” seen in the lower right hand corner of Picture 001 (Ag.Exh.1

at Photo 001). Tr. at 14, 23. The Agency inspector, William E. Zierath testified, “. . . most of the items on site were, in fact, vehicles and that dimensional lumber. . . . I could not see if there were any small items on the ground for the most part.” Tr. at 15.

We believe that an observation of “weathered dimensional lumber” is insufficient for a finding of violation of Section 21(p)(7) of the Act without additional description. (415 ILCS 5/21(p)(7) (2000)). Lesslie Yocum testified that the lumber was to be used in building a garage. Tr. at 28. Photo 001 only shows a stack of lumber covered by a sheet of tin which is effectively keeping the snow off the lumber. There is no further description by Zierath that would help the Board make a finding that this is demolition debris, and not a stack of lumber stored for later use. In other administrative citation cases where we have made a finding that demolition debris was present there has been more description of the nature of the debris piles. “Weathered dimensional lumber” is simply an insufficient description to find a violation of Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2000)). Therefore, we would find that the Agency has not met its burden.

Similarly, there is insufficient evidence to find a violation of Section 21(p)(1) (litter) of the Act (415 ILCS 5/21(p)(1) (2000)) at Yocum #1. Zierath’s testimony to support the litter violation was primarily based on his observation that there were car parts and abandoned vehicles on the site. Tr. at 15. Zierath considered the vehicles abandoned, “[b]ecause the standard for whether it is an abandoned vehicle is whether it is in operable condition and has been moved in a week’s time, what we look for is are the vehicles—do they appear to be drivable at the time.” Tr. at 22.

Yocum testified that he purchased the vehicles (Tr. at 34, 40), and uses them for truck parts or to restore the vehicles when he retires in 10 years. Tr. at 33-34, 42, 44-46. He used the steel parts on the site to construct trailers. Tr. at 32-33.

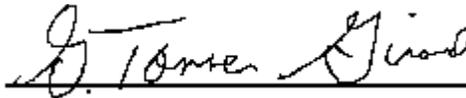
Zierath’s observations are insufficient to find a violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2000)). Zierath admitted that he could not see small items on the ground. Tr. at 15. The photos for Yocum 1 are similarly inconclusive. The photos support Yocum’s testimony that he uses the pickup beds to store scrap iron. *See* Ag.Exh. 1 at Photos 002, 003, 004, 005, and 006. The photos do not conclusively show that there is litter on the site, or that materials have been disposed. And the “abandoned vehicle” test advocated by Zierath (a vehicle is abandoned if not driven in a week) should not be dispositive in determining a Board finding of litter under the Act.

At Yocum #2, there is insufficient evidence of a violation of Section 21(p)(7) (construction debris) of the Act (415 ILCS 5/21(p)(7) (2000)) for similar reasons as at Yocum #1. Zierath testified that there was “weathered dimensional lumber” in Photo 011 (Ag.Exh. 2). Tr. at 18. No other items were identified as construction debris. The inspection report only states that “demolition debris” is visible in Photos 006, 007, 008, 009, 010, and 011 (Ag.Exh.2) . “Demolition debris”, or “construction debris” is a legal determination, not an observation. An observation would specify the type and nature of the materials, as well as

other evidence that would lead to the conclusion that this is “construction debris” or “demolition debris” and not just litter. The photos are not conclusive without further description. Therefore, we cannot find a violation of Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2000)) at Yocum #2.

There is sufficient evidence to find a violation of Section 21(p)(1) (litter) of the Act (415 ILCS 5/21(p)(1) (2000)) at Yocum #2. Testimony, the inspection report, and Photos 008, 009, 010, and 011 (Ag.Exh.2) show the type of materials and situation where we have typically found violations in past cases. For example, Photo 008 shows a pile of various materials heaped together, such as a tire with rim, five-gallon bucket, metal tank, roof vent, and various unidentifiable pieces of scrap metal. Photos 009 and 010 show a similar pile of admixed disposed materials from two different angles, and Photo 011 shows several other piles of apparently disposed materials overgrown with brush. Therefore, we would find a violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2000)) and assess a \$1,500 fine against the respondents at Yocum #2 (AC 01-30).

For these reasons, we respectfully dissent.

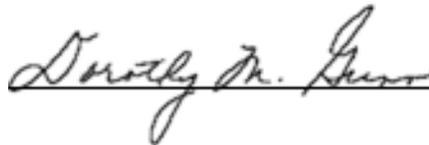


G. Tanner Girard
Board Member



Thomas E. Johnson
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above dissenting opinion was submitted on June 7, 2002.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board