

ILLINOIS POLLUTION CONTROL BOARD  
August 30, 1990

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 ) AC 89-224  
v. ) (IEPA no. 9951-AC)  
 ) (Administrative Citation)  
JOHN VANDER, )  
 )  
Respondent. )

WILLIAM SELTZER APPEARED ON BEHALF OF COMPLAINANT.

JOHN VANDER APPEARED PRO SE.

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

This matter comes before the Board on an administrative citation filed by the Illinois Environmental Protection Agency (Agency) on October 16, 1990 against respondent John Vander (Vander) pursuant to Section 31.1 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1031.1). The citation alleges that on August 16, 1989, Vander caused or allowed open dumping in East Marion Township, Williamson County, Illinois, in that Vander caused or allowed the accumulation of litter and open burning at the site in violation of Sections 21(q)(1) and 21(q)(3) of the Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1021(q)(1), (3)). On November 24, 1989, Vander filed his petition for review. Hearing was held on May 10, 1990 in Marion, Illinois. The parties elected not to file post-hearing briefs, standing on their closing arguments.

**FACTS**

On the morning of August 16, 1989 Charles Hayduk, a field inspector for the Agency, was driving east on Route 13 out of Marion when he noticed smoke in the sky. (Tr. at 6.) He observed two fires at a road construction site. (Id.) He approached Mr. Vander who told him that he had started the fires. (Tr. at 7-8.) According to Vander, he set the fires pursuant to a contract with Southern Illinois Asphalt Company (Southern) to remove eight buildings that were in the right-of-way of a new road to be constructed by Southern pursuant to a contract with the Illinois Department of Transportation (IDOT). (Tr. at 8.) On the date in question, Vander had set fire to the remains of two demolished buildings. (Tr. at 9.)

Vander does not dispute that he set the demolished buildings on fire. According to Vander's testimony and that of Terry Mandrell, superintendent of Southern, prior to the signing of the contract for removal Vander had asked Mandrell whether there was any prohibition against burning the buildings. (Tr. at 14-18.) Mandrell testified that he spoke to Rightnowler at IDOT who said it was permissible to burn the remains of the buildings. (Tr. at 21-22.) Mandrell passed this information along to Vander.

#### 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. 1031.1.) 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 Vander alleges violation of subsection (1) and (3) of Section 21(q). Section 21(q) 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;

\* \* \*

3. open 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.

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. Therefore, the initial inquiry in this case is whether Vander's conduct constitutes "open dumping." For the following reasons, the Board concludes that Vander's actions do not constitute 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." (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 3.53 defines "waste" as, inter alia, "garbage ... or other discarded material ... ." (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1003.53.)

Here, Vander demolished two dilapidated buildings in the right-of-way of a proposed roadway pursuant to a contract with Southern, who in turn had contracted with IDOT. The photographs introduced by the Agency indicate that the remains of the buildings were scooped into piles and then set on fire. (Agency Ex. 4, 6.) The site sketch prepared by Hayduk contains a hand drawn depiction of the two buildings and a notation stating "buildings knocked down and burned." (Agency Ex. 7.) The following testimony also indicates that the buildings were torn down and burned at the same location where the buildings once stood: "it was a pile of building debris that had been pushed there by some pieces of equipment"; "the larger fire site where there was a structure, concrete block structure, and the combustible material in the center was still smoking slightly"; and "there was nothing to one of the buildings ... but the other one, I did push it up into a small fire ... I did demolish the building and get it down into a small pile." (Tr. at 10, 11 and 19.)

Based upon the facts presented here the Board cannot say that Vander's conduct amounted to "the consolidation of refuse from one or more sources at a disposal site" as defined in Section 3.24 of the Act and set forth at Section 21(q). Vander merely tore down the remains of two buildings and burned the demolition debris on site at the point where the buildings once stood. This point can hardly be deemed a "disposal site." The record indicates that the demolition, scooping up of the remaining debris and burning took place as one continuous sequence of events. Where a person is involved in the continuous process of demolition, the Board is unwilling to construe the Act so that the demolition debris instantaneously results in an open dumping violation. The Board notes that it is possible that setting the remains on fire may constitute an "open burning" violation and that failing to properly remove the remains after demolition may constitute "littering". However, under the existing statutory provisions, such conduct would come under the purview of a regular enforcement action rather than an administrative citation.

The Board is cognizant of the fact that demolition sites can become open dumps. Whether demolition debris constitutes "open dumping" must be determined on a case-by-case basis. However, the facts presented here do not support a finding of a violation of the prohibition against open dumping as set forth in Section 21(q) of the Act.

Pursuant to the administrative citation process set forth in the Act, a person may not be held to have violated the subsections prohibiting open burning and littering without first being in violation of the prohibition against open dumping. Having found

that Vander's conduct does not constitute open dumping, the Board concludes that Vander is not in violation of Sections 21(q)(1) and (3) of the Act as alleged by the Agency.

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

**ORDER**

The Board finds that the Agency failed to establish that Mr. Vander violated Sections 21(q)(1) and (3) of the Act.

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 establish filing requirements.

IT IS SO ORDERED.

J.D. Dumelle, J. Theodore Meyer and B. Forcade dissent.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 30<sup>th</sup> day of August, 1990, by a vote of 4-3.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board