

ILLINOIS POLLUTION CONTROL BOARD

August 8, 2002

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 02-7
)	(IEPA No. 390-01-AC)
TERRY and LITISHA SPRINGER,)	(Administrative Citation)
)	
Respondents.)	

INTERIM OPINION AND ORDER OF THE BOARD (by N.J. Melas):

On September 4, 2001, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Terry and Litisha Springer (Springers). *See* 415 ILCS 5/31.1(b) (2000); 35 Ill. Adm. Code 108.202(c). The Agency alleged that the Springers violated Section 21(p)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002)). The Agency further alleged that the Springers violated this provision by causing or allowing open dumping of litter on their property in Godfrey, Jersey County. The Agency sought a penalty of \$1,500 for the alleged violation of the Act. The administrative citation was based on an inspection by Agency Field Inspector Charles King on July 5, 2001.

A hearing was held on June 26, 2002, in Jerseyville, before Board Hearing Officer Steven Langhoff. No post-hearing briefs were filed in this matter.

Based on the evidence presented, the Board finds that the items found on Terry and Litisha Springers' property on July 5, 2001, constitute open dumping of waste, resulting in litter on their property.

ADMINISTRATIVE CITATION PROCESS

Section 31.1 of the Act authorized the filing of administrative citations (415 ILCS 5/31.1 (2000)), and Part 108 of the Board's procedural regulations explains the administrative citation process before the Board (35 Ill. Adm. Code 108 *et seq.*). Administrative citations are an enforcement tool available to both the Agency and to local units of government under the Act. Administrative citations differ from enforcement actions in several respects. In particular, statutory penalties for administrative citations are set in the Act, and the Board has no leeway to consider mitigating or aggravating factors in determining penalty amounts. *See* 415 ILCS 5.42(b)(4-5) (2000).

PROCEDURAL HISTORY

Petition

The Springers timely filed a petition on October 11, 2001. On October 18, 2001, the Board issued an order finding that the Springers' petition failed to meet several of the requirements of Parts 101 and 108 of the Board's procedural regulations. 35 Ill. Adm. Code 101, 108. The Board gave the Springers until November 22, 2001, to file an amended petition correcting these deficiencies. The Springers failed to file an amended petition by the deadline. On December 6, 2001 the Board issued a default order finding the Springers in violation of Section 21(p)(1) of the Act and assessing a \$1,500 fine. *See* 415 ILCS 5/42(b)(4-5) (2000); 35 Ill. Adm. Code 108.500(a).

On January 8, 2002, the Springers' attorney filed an appearance, a motion to vacate default judgement, motion for reconsideration, and motion to dismiss (Mot.). On January 24, 2002, the Agency's attorney filed an appearance and complainant's response to respondents' motion to vacate default judgment, motion for reconsideration, and motion to dismiss (Resp.). On February 7, 2002, the Springers filed a motion for leave to file affidavit and respondents' reply to claimant's [sic] response to motion to vacate, motion for reconsideration, and motion to dismiss (Reply).

Motion to Dismiss/Service of the Complaint

The Springers disputed the Board's finding in its December 6, 2001 order that the Agency served the Springers with the administrative citation within 60 days after the date of the observed violation as required by law and asked that the administrative citation be dismissed. 415 ILCS 5/31.1(b) (2000); *see also* 35 Ill. Adm. Code 108.202(b). The Board found that service of the administrative citation on the Springers was timely due to the September 3, 2001 holiday. 35 Ill. Adm. Code 101.300(a). Accordingly, the Board denied the Springers' motion to dismiss on February 21, 2002.

Motion for Reconsideration/Motion to Vacate Default Judgment

The Springers also asserted that they never received the Board's October 18, 2001 order and requested that the Board reconsider and vacate the December 6, 2001 default judgment. The Springers further requested that the Board dismiss the administrative citation or, in the alternative, set the matter for hearing. Mot. at 2; Reply at 2. The Board vacated its default judgement and set the matter for hearing. The Board granted the Springers' motion for reconsideration, vacated the December 6, 2001 default judgment, and accepted this matter for hearing in a February 21, 2002 order.

FACTUAL BACKGROUND

This case involves claims that Mr. and Mrs. Springer caused or allowed open dumping of waste in a manner that resulted in litter on their property, located at 1629 Beltrees Road,

Godfrey, Jersey County. On July 5, 2001, an Illinois Environmental Protection Agency inspector, Mr. Charles King, did a follow-up inspection of Mr. & Mrs. Springer's property. There had been approximately eight prior inspections of this property. Tr. at 33.¹ He consequently issued an administrative citation warning for the debris he found on the Springers' property.

Mr. King first inspected the Springers' property on February 7, 1996, at which time there were approximately 635 cubic yards of waste at the site. NRRD at 3.² The initial inspection resulted in a Narrative Inspection Report Document memorandum and an Administrative Warning Notice setting the cleanup deadline as May 7, 1996. Two inspections later, on June 20, 1997, there were still an estimated 400 cubic yards of waste on the site, and so Mr. King issued a Violation Notice and Notice of Intent to Pursue Legal Action. *Id.* On March 25, 1998, the Agency received a complaint that the respondents were burning wire on the site. Two more inspections later, the waste was reduced, but the site was still not in compliance. *Id.* at 4. Mr. King issued an Open Dump Administrative Citation Warning Notice (ACWN) on February 25, 2000. On two subsequent re-inspections, wastes were yet still present. *Id.* This administrative citation focuses on the wastes found at the July 5, 2001 re-inspection.

Mr. King found items of waste on two sites of the Springers' property. The first site is an area about 75 feet in front of the shed on the site. Tr. at 13. On this site, Mr. King observed "conduit, pipe, electrical equipment, and paint cans lying on the ground" piled up to about two feet high. The second site is closer to the shed and surrounds the building on two sides. It is also piled with waste up to two feet high in some areas. Tr. at 13. On this second site, Mr. King observed "waste carpeting, used carpeting, cardboard, other metals, conduits, and hosing." Tr. at 14. Approximately 209 cubic yards of waste still existed on the Springers' property at the July 5, 2001 inspection. NRRD at 3. Some of the metals from these two sites were present on the Springers' property during previous inspections. Tr. at 27. Mr. King noted that on the remainder of the site he noticed other indiscriminate pieces of waste lying around. Tr. at 14. Some of the waste located outside of the first two sites was in boxes or on skids. Tr. at 14. Mr. Springer was told on previous inspections that he could keep metals as long as he kept them organized and on skids. Tr. at 20, 54.

Mr. Springer claims that individuals whom he did not name dumped the items found at the two sites on his property while he and his wife were on vacation in June of 2001. Tr. at 43. Mr. Springer also claims that he subsequently cleaned up the piles that were dumped on his property. Tr. at 46. The Springers' property does not have any permits for any type of waste storage or waste disposal operation, and there are no gates or fencing or other measures to control access to the site. Tr. at 64.

¹ The June 26, 2002 hearing transcript is referred to herein as "Tr. at ____."

² The Narrative Re-Inspection Report Document authored by Agency inspector Charles King and dated July 31, 2001 is referred to herein as "NRRD at ____."

STATUTORY BACKGROUND

Section 21(p)(1) of the Act states:

No person shall:

* * *

(p) in violation of subdivision (a) of this Section, 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. 415 ILCS 5/21(p)(1) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002.

Section 3.305 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 5/3.305 (2000) *amended by* P.A. 92-0574, eff. June 26, 2002.

Section 3.53 of the Act defines “waste” as, among other things, “garbage . . . or other discarded material . . . ” 415 ILCS 5/3.53 (2000).

It is well established that the Board accepts the definition of litter as that found in the Litter Control Act. St. Clair County v. Louis I. Mund, AC 90-64 (Aug. 22, 1991). Section 3 of the Illinois Litter Control Act provides:

‘Litter’ means any discarded, used or unconsumed substance or waste. ‘Litter’ may include, but is not limited to, any garbage, trash, refuse, debris ... or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned, or otherwise disposed of improperly. 415 ILCS 105/3(a) (2000).

ANALYSIS

In order to seek enforcement by way of the administrative citation process for violations of Section 21(p)(1), the Agency must show that: (1) the Springers caused or allowed open dumping; and (2) the open dumping was of waste, that resulted in litter. 415 ILCS 5.21(p)(1) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002.

Allowance of Open Dumping

Whether there was open dumping on the Springers’ property is not an issue since Mr. Springer testified at hearing, and stated at previous inspections, that more than one person brought him metals and dumped materials on him. Tr. at 19, 59-60. Additionally, the Springers’ property is not a permitted sanitary landfill. Therefore, the first issue before the Board is whether the respondent allowed the open dumping of waste under Section 21(p)(1) of

the Act (415 ILCS 5/21(p)(1) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002). The Agency argues that Mr. Springer allowed open dumping of waste because waste was present on his site on July 5, 2001, even though he had been warned to clean up the waste at prior inspections. Mr. Springer argues that neither he nor his wife allowed open dumping of waste on their property because the items in question were deposited on the site by others while he and his wife were away on vacation during June 2001.

The claim that others dumped waste at the owner's site is no defense. County of LaSalle v. Raikes, AC 97-24, slip op. at 7 (Apr. 17, 1997). This principle has been established by the Board as well as the Supreme Court of Illinois. *See* County of Will v. Utilities Unlimited, Inc., AC 97-041, slip op. at 5 (July 24, 1997); People v. Fiorini, 143 Ill. 2d 318, 574 N.E.2d 612 (1991). In Utilities Unlimited, for example, the Board found a violation of Sections 21(p)(1) and 21(p)(3) of the Act when an agent of the utilities company did not clean up litter on the property that others had deposited. In reaching this decision, the Board held, based on Illinois Supreme Court precedent, that a person can cause or allow a violation of the Act without knowledge or intent. Utilities Unlimited, AC 97-041, slip op. at 5, citing Fiorini, 143 Ill. 2d 318. Simple inaction is enough to find that a respondent allowed litter under the Act. IEPA v. Ronald D. Rawe, et al., AC 92-5 (Jan. 21, 1993). *See also*, IEPA v. M.K. O'Hara Construction, Inc., et al., AC 94-96, AC 94-97, slip op. at 6 (Apr. 6, 1995); IEPA v. Dobbke et al., PCB 72-130 (Aug. 22, 1972).

What liability does hinge on, however, is that the respondent had the ability to control the premises where the pollution occurred. Raikes, slip op. at 12; citing Fiorini, 143 Ill. 2d 318. A landowner has the responsibility to take steps to ensure that his land is being used properly and is not subject to nuisance dumping. County of Jackson v. Donald Taylor, AC 89-258, slip op. at 4 (Jan. 10, 1991).

Here, there is no dispute that Mr. Springer, as owner and operator of the site, had the ability to control the site. Mr. Springer claims that other people dumped waste on his property while he was on vacation in June 2001, and for that reason he did not violate Section 21(p)(1) of the Act. The July 5, 2001 inspection, however, was the ninth inspection of the Springers' property since February 1996. Tr. at 11. Consequently, Mr. Springer should have known to keep his property clear of discarded materials, and should have taken prudent measures to prevent dumping by others. Furthermore, approximately half of the items found on the Springers' property at the July 5th inspection were present at prior inspections. Therefore, even if additional items of waste were dumped on the Springers' property while they were on vacation, pre-existing waste was present and not organized or kept on skids as previously instructed. The Springers' failure to take prudent measures to prevent dumping and inaction to clean up the waste on their property constitute an "allowance" under the Act. The Board finds that the Springers allowed the open dumping of waste resulting in litter at their site.

Definition of Litter

The second issue is whether the items of waste on the Springers' property constitute "litter" as defined by the Litter Control Act. The complainant argues that discarded, unconsumed, or unused items are considered waste regardless of whether they are recycled at a later date. The respondent argues that because the materials on his property at the time of the inspection were later removed and recycled, they cannot be considered waste resulting in litter under the Act. Tr. at 71.

In making its decision, the Board looks to County of Sangamon v. Everett Daily, AC 1-16, AC 1-17 (consolidated), slip op. at 30 (Jan. 10, 2002), which dealt with similar issues. In Sangamon, the respondent, Daily, claimed the items on his property were not litter because he intended to use all of them. The Board found that even though some of the items were used regularly and stored properly, the other items that were not in use, unusable in their current condition, or disposed of improperly at the time of the inspections met the definition of litter. *Id.* More importantly, the Board noted, what Daily said he intended to do with the various materials at some indeterminate date in the future was not dispositive of the question of whether the materials constituted a waste or litter. Sangamon, AC 1-16, AC 1-17, slip op. at 26.

The Board finds that the Agency met its burden of proving that open dumping of waste on the Springers' property resulted in litter for purposes of Section 21(p)(1) of the Act. The Agency inspector observed and photographed conduit, pipe, electric equipment, and old carpeting, among other items, piled up on the Springers' property at his July 5, 2001 inspection. Based on this evidence, the Board finds that, like in Sangamon, while there may have been some items on the Springers' property that were organized and stored for future use as agreed upon with the Agency, there were many other items that were not in use, unusable in their current condition, or disposed of improperly on a site that is not a sanitary landfill. These items fit the statutory definition of litter. While the Board encourages reuse and recycling, it does not condone the open dumping of materials with the intent to use them for some undefined purpose at some undefined date in the future. Mr. Springer's intentions to sell or recycle the items on his property do not constitute a valid defense nor are they dispositive in determining whether the materials constitute waste or litter.

CONCLUSION

Based on the record before the Board, the Board finds that the respondents violated Section 21(p)(1) of the Act by allowing the open dumping of litter on their property. The items of waste found on the Springers' property constitute litter as defined in Section 3 of the Litter Control Act. 415 ILCS 105/3 (2000).

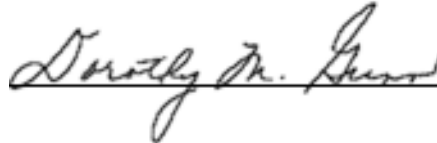
This interim opinion constitutes the Board's findings of fact and conclusions of law. A final order will be issued pursuant to the interim order that follows.

ORDER

1. The Board finds that respondents Terry and Litisha Springer violated Section 21(p)(1) of the Environmental Protection Act at their property in Godfrey, Jersey County. 415 ILCS 5/21(p)(1) (2000) *amended by P.A. 92-0574*, eff. June 26, 2002.
2. The Illinois Environmental Protection Agency and the Clerk of the Board must each file a statement of their hearing costs within 14 days of the date of this order, or by August 22, 2002. Each statement must be supported by affidavit and served on respondents.
3. The Springers are given leave to respond to the statements of hearing costs ordered in paragraph 2 of this order within 21 days after service of that information. 35 Ill. Adm. Code 108.506(a). The Agency may then file a reply to the Springers' response within 14 days after service of the response. 35 Ill. Adm. Code 108.506(b).
4. The Board will then issue a final order assessing a statutory penalty of \$1,500 for the violation and awarding appropriate hearing costs. 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on August 8, 2002, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board