

ILLINOIS POLLUTION CONTROL BOARD
November 2, 2000

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 00-72
)	(IEPA No. 69-00-AC)
CARL WHITE (Harmony/Carl White))	(Administrative Citation)
)	
Respondent.)	

ROBERT J. SCHERSCHLIGT APPEARED ON BEHALF OF THE AGENCY.

INTERIM OPINION AND ORDER OF THE BOARD (by S.T. Lawton, Jr.):

On March 6, 2000, the Illinois Environmental Protection Agency (Agency) issued an administrative citation to respondent, Carl White (White), pursuant to Section 31.1(b) of the Environmental Protection Act (Act) (415 ILCS 5/31.1(b) (1998)). The administrative citation alleges that the respondent violated Section 21(p)(1) of the Act, in that he caused or allowed the open dumping of waste in a manner resulting in litter on his property, located at 21340 Moonbeam Lane in Texico, Jefferson County, Illinois. 415 ILCS 5/21(p)(1) (1998).

After reviewing the record, including the transcript of the hearing held in this matter, the Board finds that White violated the Act as alleged in the complaint. In this interim opinion and order, the Board orders the Agency and the Clerk of the Board to file a statement of hearing costs, to which White is given leave to reply. After it receives these pleadings, the Board will issue a final order requiring White to pay the total statutory penalty of \$1,500 and any appropriate costs.

PROCEDURAL MATTERS

The Agency filed this citation with the Board on March 6, 2000, and served the administrative citation on White by certified mail on March 7, 2000. The citation alleges that White caused or allowed the open dumping of waste in a manner resulting in litter in violation of Section 21(p)(1) of the Act. See 415 ILCS 5/21(p)(1) (1998). Subsections (p)(1) and (p)(3) of Section 21 are enforceable by administrative citation under Section 31.1 of the Act. See 415 ILCS 5/31.1(a) (1998). White elected to contest the citation under Section 31.1(d)(2) by filing a petition for review with the Board on April 5, 2000. See 415 ILCS 5/31.1(d)(2) (1998).

The Board accepted this matter for hearing on April 20, 2000. A hearing took place as scheduled on July 25, 2000.¹ White was not present for the hearing. Tr. at 5. At the hearing, Gary Steele, regional manager with the Land Pollution Control Division of the Agency, testified

¹The transcript of the hearing is cited as "Tr. at _." Hearing exhibits are cited as "Exh. _."

on behalf of the Agency.² Tr. at 7-56. No other witnesses testified. The Agency waived the opportunity to file a posthearing brief.

FINDINGS OF FACT

The White facility is located at 21340 Moonbeam Lane, Texico, Jefferson County, Illinois. In his petition for review, White stated he resides at this address. Petition for Review at 1.³ White further stated that much of the waste that was observed by an Agency inspector, was on site when he moved to the property. Pet. at 1.

The Agency has made repeated and extensive efforts to assist White in coming into compliance with the Act. At hearing, the Agency presented testimony of Gary Steele. Steele has been the Marion regional manager for the Field Operations Section of the Agency's Bureau of Land since 1991. Tr. at 8. He has been a field inspector for the Agency since 1978. Tr. at 8. Steele reviews solid waste investigations of permitted and unpermitted facilities, inspections of hazardous waste sites, and generators and storage sites as well as treatment facilities. Tr. at 9. Steele has also reviewed approximately 1,000 inspection reports of his subordinates in the last nine years. Tr. at 9. Additionally, he has personally written over 600 inspection reports and participated in another 200 reports. Tr. at 9.

Steele first inspected the White property in 1995. Steele inspected the site a second time on February 19, 1999, in response to a citizen's complaint. In his inspection report, Steele cited White for a violation of Section 21(p)(1) of the Act for causing or allowing open dumping resulting in litter. Tr. at 14-15; see Exh. 1. Due to numerous dogs running loose on the site, Steele had to observe the condition of the facility from the safe confines of his car. Tr. at 16. Steele stated at hearing that he noticed abandoned vehicles, metal waste, iron pipe, household garbage, and approximately 300 tires. Tr. at 17.

According to Steele, White told him the garbage was his, and that he did not have garbage pick-up. Tr. at 17-18. This is consistent with the petition for review by White, which states that White hired a crew, which only removed a few loads of waste and never returned. See Pet. at 1. Further, Steele recalled that White stated during the inspection that he wanted to keep the cars for parts. Tr. at 18.

After inspecting the White facility, Steele sent White an administrative warning notice on March 4, 1999. The notice stated that site conditions needed immediate attention, gave legal authority for the inspection, and included a list of corrective actions needed to correct the problems on the site. The notice also stated that if White failed to act, he could face potential civil penalties. Tr. at 20-21. The notice requested that the respondent send back a letter committing to the Agency's schedule for corrective action, or set forth one of his own. Tr. at 21.

² In its March 6, 2000 filing, the Agency included a copy of the Administrative Citation Package, consisting of the Administrative Citation, inspector Gary Steele's affidavit and open dump inspection report. Steele states in the affidavit that he completed the inspection report, which to the best of his knowledge and belief, is an accurate representation of his observations and factual conclusions with respect to White.

³ The Petition for Review is cited as "Pet. at ___."

The notice also gave White until April 19, 1999, to clean up the site and until May 3, 1999, to submit receipts showing proper disposal of the waste from the facility. Tr. at 23.

On May 25, 1999, Steele re-inspected the facility. Tr. at 23. Steele observed that the household garbage was placed in a roll-off box and that other material had been consolidated. Tr. at 25. However, there was still a substantial amount of work to be done at the site. Tr. at 26. Steele estimated that there were 7,000 cubic yards of waste on the site. Tr. at 29. Steele cited White for violations of 21(p)(1) of the Act. Tr. at 27. Steele spoke with Kay White, the wife of Carl White, and requested a written commitment on dates to clean up the remainder of the facility. Tr. at 27. Steele stated at hearing that there was no reason he knew for the delay in removing and processing or recycling waste metal material, especially in light of the fact that there was a large scrap metal operation in Jefferson County. Tr. at 26.

Steele received a letter postmarked June 14, 1999, from Kay White stating that the large green dumpster of waste would be removed by July 1, 1999, and respondent would obtain a license from the Secretary of State to be an auto parts recycling facility by July 31, 1999. She stated respondent would remove the remaining metal waste by September 15, 1999. Steele did not see any indication of an auto recycling or salvaging business on site in prior inspections. Tr. at 31. The Agency offered to remove the tires free of charge if they were off the rims and the respondent first removed other waste from the site. Tr. at 32.

Steele sent a letter to respondent on June 28, 1999, confirming respondent's deadlines and warning that failure to comply with such dates could result in civil penalties. Steele gave respondent the alternate deadline for removing metal waste of July 31, 1999. Steele visited the site on August 26, 1999, to monitor compliance, and observed that White installed an electrical fence around the large green roll-off box, which was still filled with household garbage. Tr. at 36-37. All waste still remained in the same condition on the site. Tr. at 37-38. White did not keep any of his commitments. Tr. at 38.

On September 8, 1999, Kay White contacted Steele and stated respondent removed the roll-off box of garbage and was waiting to produce the receipt to the Agency. Tr. at 39. Steele had not received the receipt as of the date of the hearing. Tr. at 39. Kay White expressed difficulty reaching the Secretary of State. Steele contacted the Secretary of State and requested them to send an application to respondent for an auto salvage or recycling operation.

On October 5, 1999, Steele spoke again to Kay White, who stated the Secretary of State denied them a salvage license. Kay White reiterated that respondent wanted to keep the cars. Steele explained this subjected White to fines. Tr. at 41.

Steele made a final inspection of the White facility to monitor progress by respondent on January 14, 2000. In his report, he cited respondent for violations including 21(p)(1) of the Act. Although respondent removed the roll-off box of garbage, the site still contained waste including: metal waste; metal pipes; tires; shingles; and automobiles. Respondent was still living on the site on the date of the inspection. The January 14, 2000 inspection resulted in the citation, which is the basis for the complaint in this matter.

DISCUSSION

Section 21(p)(1)

The administrative citation alleges that White caused or allowed open dumping that resulted in litter at the site in violation of subsection (p)(1) of Section 21 of the Act. This provision reads that no person shall:

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) (1998).

Section 21(a), to which Section 21(p) refers, provides that no person shall “cause or allow the open dumping of any waste.” 415 ILCS 5/21(a) (1998).

Subsection (p)(1) requires the Agency to show, as a threshold matter, that White caused or allowed open dumping. “Open dumping” means “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 (1998). “Refuse” means “waste,” 415 ILCS 5/3.31 (1998), and “waste” includes “any garbage . . . or other discarded material,” 415 ILCS 5/3.53 (1998).

The record shows that White resided at property containing wastes including: household garbage, metal waste, metal pipes, tires, shingles, and several junk automobiles. The Board finds that these items constitute “discarded material” within the meaning of the term “waste.” Thus, the above list includes “waste” and “refuse” as defined in the Act. The Board also finds that the piles of waste constitute a “consolidation of refuse from one or more sources” within the meaning of the term “open dumping.” In addition, the Board finds that the area near the respondent’s trailer where the waste was consolidated constitutes “a disposal site that does not fulfill the requirements of a sanitary landfill.” Accordingly, the Board finds that White caused or allowed the open dumping of waste.

The next question is whether White’s open dumping of these wastes resulted in “litter” under Section 21(p)(1) of the Act. The Act does not define “litter,” but in similar cases, the Board has looked to the definition of “litter” in the Litter Control Act:

“Litter” means any discarded, used or unconsumed substance or waste.
 “Litter” may include, but is not limited to, any garbage, trash, refuse, debris, rubbish . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly. 415 ILCS 105/3(a) (1998); see St. Clair County v. Louis I. Mund (Aug. 22, 1991), AC 90-64, slip op. at 4, 6.

Using this definition, the Board finds that the waste including: metal waste; metal pipes; tires; shingles; and junk automobiles constitutes “litter” under Section 21(p)(1) and that White therefore violated that section.

PENALTY AND COSTS

Section 42(b)(4-5) of the Act provides for penalties in an administrative citation action as follows:

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 \$1,500 for a first offense and \$3,000 for a second or subsequent offense, plus any hearing costs incurred by the Board and the Agency. The penalties shall be deposited into the Environmental Protection Trust Fund, to be used in accordance with the provisions of the Environmental Protection Trust Fund Act; 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. 415 ILCS 5/42(b)(4-5) (1998).

The Board will assess White the statutory penalty of \$1,500 for violating Section 21(p)(1) of the Act. The Board and the Agency are also entitled to their hearing costs under Section 42(b)(4-5) of the Act, but no information on those costs is included in the record. Therefore, the Clerk of the Board and the Agency are ordered to file with the Board a statement of hearing costs, supported by affidavit, with service on White, within 14 days. White may file a reply as specified below.

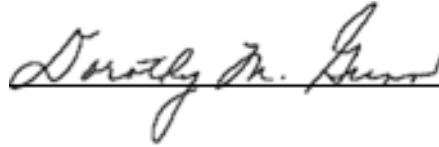
This interim opinion constitutes the Board's interim findings of fact and conclusions of law in this case.

ORDER

1. The Board finds that respondent, Carl White (White), violated Section 21(p)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/21(p)(1) (1998).
2. The Illinois Environmental Protection Agency must file a statement of its hearing costs, supported by affidavit, with the Board and with service on White, within 14 days of the date of this order. Within the same 14 days, the Clerk of the Board must file a statement of the Board's hearing costs, supported by affidavit and with service on White.
3. White is given leave to file a reply to the filings ordered in paragraph 2 of this order within 14 days after receipt of that information, but in no event later than 40 days after the date of this order.
4. No earlier than 40 days after the date of this order, the Board will issue a final order assessing a statutory penalty of \$1,500 for each violation, for a total civil penalty of \$1,500, and awarding appropriate costs.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the 2nd day of November 2000 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M Gunn, Clerk
Illinois Pollution Control Board