

ILLINOIS POLLUTION CONTROL BOARD

June 6, 2002

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 02-16
)	(IEPA No. 423-01-AC)
BRAD KRSTIC,)	(Administrative Citation)
)	
Respondent.)	

INTERIM OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

MICHELLE M. RYAN, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
APPEARED ON BEHALF OF COMPLAINANT; and

MARK A. APPLETON, ESQUIRE, APPEARED ON BEHALF OF THE RESPONDENT

INTERIM OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

This matter comes before the Board on an administrative citation issued by complainant, the Illinois Environmental Protection Agency (Agency), to respondent, Brad Krstic, (Krstic). The administrative citation alleges that on August 23, 2001, Krstic violated Sections 21(p)(1) and (3) of the Environmental Protection Act (Act), 415 ILCS 5/21(p)(1),(3) (2000). The Agency alleges that Hammond violated these provisions Krstic violated these provisions by causing or allowing the open dumping of waste in a manner resulting in litter and open burning at a facility located at 240th and Route 17 in Aledo, Mercer County.

A hearing was held on February 21, 2002, in Aledo before Board Hearing Officer Steven C. Langhoff. Both parties appeared. The Agency filed a post-hearing brief on March 22, 2002. Krstic filed a post-hearing brief on April 12, 2002.

Based on the evidence presented in this proceeding, the Board finds that Krstic violated Section 21(p)(3) of the Act, but did not violate Sections 21(p)(1) of the Act.

PROCEDURAL MATTERS

The Agency served this administrative citation on Krstic by certified mail on October 22, 2001. On the same date, the Agency filed the administrative citation with the Board. On November 26, 2001, Krstic filed a petition to review the administrative citation. A

hearing was held on February 21, 2002.¹ At hearing, R. Eugene Figge testified on behalf of the Agency. Brad K. Krstic, Richard Regnier, Rick L. McMeekan and Gregory McHugh testified on behalf of Krstic.

BACKGROUND

R. Eugene Figge (Figge) is an environmental protection specialist for the Agency. In that position, he conducts field inspections, and has been doing so for approximately 12 years. Tr. at 11. Figge primarily inspects sites concerning used tires, and has inspected approximately 1500 sites for the Agency. Tr. at 11, 21.

On August 23, 2001, Figge inspected property located at the intersection of 240th and Route 17 in Aledo, Mercer County. Tr. at 12-13. During the inspection, Figge observed that ashes containing remnants of tire rims, processed wood, insulation and various types of paper material including a beer carton, cigarette package and grocery bag were accumulated at the site. Tr. at 15-16; Exh. 1. Specifically, Figge testified that during his inspection he found two separate piles of burnt material. Tr. at 15. Figge found 14 visible bead rings found in the piles of burnt material. Tr. at 25-26. Figge testified that there are two bead rings per tire, and that dividing the number of found bead rings by two, he was able to determine that about seven tires were burned. Tr. at 25.

After the inspection, Figge performed a deed search and determined that the deed is in a trust, but that the tax record and other information are mailed to Krstic. Tr. at 13. Krstic admitted that he is the owner of the property in question and that he bought the property on June 17, 2001. Tr. at 33,35. An inspection report summarizing the inspection and containing photographs found by the hearing officer to fairly and accurately depict the site at the time of Figge's inspection was admitted at hearing. Tr. at 23.

Krstic bought the property with knowledge that it was the subject of a lawsuit filed by the Mercer County State's Attorney's Office on May 17, 2001. Tr. at 33; Exh. H. The lawsuit alleged that the buildings on the property were unroofed, that large holes exist on the property and that the whole property was covered with debris including nails, pieces of metal and other dangerous items, as well as being overgrown with weeds and tall grasses. Exh. H. The Mercer County State's Attorney's Office gave Krstic 30 days to effectuate cleanup on the property. On October 10, 2001, the Mercer County State's Attorney's Office moved to dismiss the lawsuit because the property had been cleaned up. This motion was granted on October 10, 2001.

Krstic commenced clean up of the property on the day after he closed on the property – June 18, 2001, and was still conducting remediation on the date of the hearing – February 21,

¹ The transcript of the hearing is cited as “Tr. at ___.”; hearing exhibits are cited as “Exh. ___.”; The Agency's post-hearing brief is cited as “Ag. Brief at ___.”; Krstic's post-hearing brief is cited as “Kr. Brief at ___.”

2002. Tr. at 37. During the remediation Krstic removed at least three semi loads of metal scrap and at least four container loads of refuse removed from the property. Tr. at 42-42. Krstic also disposed of at least 100 tires from the site. Tr. at 43-45; Exh. D; Kr. Brief at 3.

At or about the time that Krstic purchased the property, Richard Regnier, the supervisor of assessments and zoning for Mercer County inspected the property. Tr. at 54. Regnier estimated the vegetation to be at least three feet tall and dense enough to obstruct visibility of debris in the field. Tr. at 56. On February 7, 2002, the Mercer County Board sent Krstic a letter of appreciation recognizing the improvement at the site and congratulating him on the improvements made since Krstic purchased the property. Exh. F.

ARGUMENT

The Agency asserts that Krstic is the owner of the property in question and that he had control over the premises and directed the activity conducted thereon. Ag. Brief at 2. Accordingly, argues the Agency, Krstic caused or allowed open dumping of waste on August 23, 2001. *Id.*

The Agency argues that the piles containing ashes, remnants of burned tires, processed wood, insulation and various types of paper material constitute litter under Section 21(p)(1) of the Act, and that Krstic, therefore, violated that section. Ag. Brief at 2. The Agency notes that its inspector testified that several tires had been burned, as evidenced by the blackened wire bead rings remaining in the piles and that tires are commonly used to start fires in rural areas. Ag. Brief at 3.

The Agency maintains that Krstic's employee testified that he was instructed to collect litter from the highway because they were going to burn it, and that the lumber from the buildings had been burned. Ag. Brief at 3. The Agency concludes that the record shows open dumping of waste in a manner that results in open burning in violation of Section 21(p)(3) of the Act.

Krstic argues that although some litter was piled up on the site while the dumpster container was being emptied, proper disposal of that material would have been made and, in fact was made, upon the dumpster's return. Kr. Brief at 3. Krstic asserts that no showing has been made that the items burnt were anything other than vegetation. Kr. Brief at 2. Krstic asserts that the testimony shows that the usual and approved methods of disposal of waste were used at the site as demonstrated by the refuse disposal bill of lading admitted into evidence. Kr. Brief at 3.

Krstic does not dispute that several tires were bulldozed in amongst the vegetation being burnt, but notes that Krstic's employees used their best efforts to pull out those tires, stack them and dispose of them properly. Kr. Brief at 3. Krstic argues that it makes little sense to properly dispose of 100 tires only to burn 6 or 7 and that such burning must be viewed as accidental. *Id.* Krstic disputes the Agency's contention that the tires were used to start brush

fires as the testimony indicates the brush was so dry that it only took a match to light the fires.
Id.

DISCUSSION

Section 21(p)(1) and (3)

The administrative citation alleges that Krstic caused or allowed open dumping resulting in litter and open burning at the site in violation of Sections (p)(1) and (p)(3) of Section 21, respectively. Those provisions provide:

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;

* * *

3. open burning. 415 ILCS 5/21(p)(1),(3) (2000).

Section 21(a), to which Section 21(p) refers, provides:

No person shall:

(a) Cause or allow the open dumping of any waste. 415 ILCS 5/21(a) (2000).

As a threshold matter, Sections (p)(1) and (p)(3) of the Act each requires the Agency to show that Krstic caused or allowed open dumping. Open dumping is defined 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 5/3.24 (2000). Pursuant to the Act, “Refuse means waste.” 415 ILCS 5/3.31 (2000). Waste includes any garbage or other discarded material. 415 ILCS 5/3.53 (2000).

The record shows that Krstic is the owner of the site. The record also shows that on August 23, 2001, burn piles containing tire remnants, processed lumber and ashes, a cigarette pack, a Bud Light box, some insulation and various vegetative matter were present on the site. The Board finds that the debris at the site constitutes garbage or other discarded material within the meaning of waste as defined by the Act. The Board also finds that the debris was consolidated into piles constituting a consolidation of refuse at a disposal site not fulfilling the requirements of a sanitary landfill. Thus, the Board finds that Hammond caused or allowed open dumping of waste.

Next, the Board considers whether the open dumping of waste resulted in litter under Section 21(p)(1) of the Act. The Board has found that litter is defined as “any discarded, used or unconsumed substance or waste, and may include garbage, trash, refuse, debris, rubbish or anything else of an unsightly or unsanitary nature.” County of Will v. Hunter, AC 98-8 (May 7, 1998), slip op. at 3.

The Board finds that the open dumping at the site did not result a violation of 21(p)(1) of the Act. The record reveals that the litter (remnants of burned tires, processed wood, insulation, a beer carton, a cigarette package and a grocery bag) was gathered by Krstic’s employees from the roadside and the perimeter of the property for disposal in a dumpster. Krstic presented waste disposal receipts showing proper disposal of waste from the site, and has testified that one dumpster had been picked up on the day before the inspection and another dumpster brought back shortly thereafter. The Board is convinced that the materials in question were not discarded, but were merely being accumulated in the process of being properly disposed. Accordingly, the Board finds that Krstic did not violate Section 21(p)(1) of the Act.

The Board next addresses whether Krstic’s open dumping also resulted in open burning under Section 21(p)(3) of the Act. *See* 415 ILCS 5/21(p)(3) (2000). The Act defines “open burning” as “the combustion of any matter in the open or in an open dump.” 415 ILCS 5/3.23 (2000).

The record is clear that at least 7 tires as well as lumber from damaged buildings were burned at the site. The fact that Krstic’s employees were under instructions to use their best efforts to separate the tires for disposal and that Krstic regularly paid for and properly disposed of tires found at the site does not excuse the admitted burning of tires and lumber at the site. Accordingly, the Board finds that Krstic violated Section 21(p)(3) of the Act.

CONCLUSION

For the reasons stated above, the Board finds that Krstic has violated Section 21(p)(3) of the Act, but did not violate Section 21(p)(1) of the Act. This interim opinion constitutes the Board’s interim finding of fact and conclusions of law.

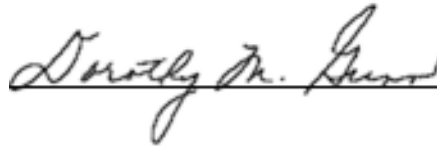
ORDER

1. The Board finds that the respondent has violated Section 21(p)(3) of the Environmental Protection Act. 415 ILCS 5/21(p)(3) (2000).
2. The Illinois Environmental Protection Agency must file a statement of its hearing costs within 14 days of the date of this order, or June 20, 2002. The statement must be supported by affidavit and served on respondents. 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.

3. The respondent is given leave to file a reply to the statements of hearing costs ordered in paragraph 2 of this order within 14 days after receipt of that information.
4. The Board will then issue a final order assessing a statutory penalty of \$1,500, 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, certify that the Board adopted the above interim opinion and order on June 6, 2002, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board