

ILLINOIS POLLUTION CONTROL BOARD

June 17, 2004

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 04-18
)	(IEPA No. 514-03-AC)
LUTHER COLEMAN,)	(Administrative Citation)
)	
Respondent.)	

MICHELLE RYAN APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY; and

LUTHER COLEMAN APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by J.P. Novak):

The Board today decides whether respondent Luther Coleman violated the Environmental Protection Act (Act) by causing or allowing the open dumping of waste resulting in litter and in the deposition of general construction or demolition debris at a site in Harrisburg, Saline County. For the reasons below, the Board finds that Mr. Coleman violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and (p)(7) (2002)) by causing or allowing the open dumping of waste resulting in litter and in the deposition of general construction or demolition debris, as alleged by complainant Illinois Environmental Protection Agency (Agency) in an administrative citation. The Board assesses the statutory civil penalty of \$3,000 as well as costs as described below.

In this interim opinion, the Board first describes the administrative citation process and the procedural history and facts of this case. The Board then sets forth the pertinent provisions of the Act. Next, the Board analyzes the issues and makes its conclusions of law regarding the alleged violations before addressing the issue of penalties.

ADMINISTRATIVE CITATION PROCESS

Section 31.1 of the Act authorizes the Agency and units of local government to enforce specified provisions of the Act through an administrative citation. 415 ILCS 5/31.1 (2002). Part 108 of the Board’s procedural rules provides the process of a citation before the Board. 35 Ill. Adm. Code 108 *et seq.* Unlike other environmental enforcement proceedings in which the Act prescribes a maximum penalty, *see, e.g.*, 415 ILCS 5/42(b)(1), the Act sets specific penalties for administrative citations. 415 ILCS 5/42(4, 4-5) (2002). In cases such as this, the Board has no authority to consider mitigating or aggravating factors when determining penalty amounts. *Id.* “[I]f the Board finds that the person appealing the [administrative] citation has shown that the

violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.” 415 ILCS 5/31.1(d)(2) (2002).

PROCEDURAL HISTORY

On October 8, 2003, the Agency issued to the respondent an administrative citation alleging violations of the Act at 624 West Logan, Harrisburg, Saline County.¹ The citation specifically alleges that the respondent violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2002)) by causing or allowing the open dumping of waste resulting in litter. AC at 2. The Agency further alleges that the respondent violated Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2002)) by causing or allowing the open dumping of waste resulting in deposition of general construction or demolition debris or clean construction or demolition debris. *Id.*

On December 5, 2003, the respondent filed an affidavit with the Board. In that affidavit, the respondent alleges that the allegations made in the administrative citation are untrue, that the materials cited relate to an adjacent property, and that the inspection of the property occurred without his consent. The Board construed this affidavit as a petition for review² and accepted that petition for hearing in a December 18, 2003 order.

On March 4, 2004, Board Hearing Officer Carol Sudman conducted a hearing in Harrisburg. At the hearing, Special Assistant Attorney General Michelle M. Ryan appeared and participated on behalf of the complainant and respondent Luther Coleman appeared and participated *pro se*. Two witnesses testified during the hearing: Mr. Kent A. Johnson of the Agency on behalf of the complainant and Luther Coleman on his own behalf.³ The Agency offered one exhibit at hearing: an Open Dump Inspection Checklist dated September 10, 2003, which was admitted into the record as Exhibit 1.⁴ Based on her legal judgment and experience, Hearing Officer Carol Sudman found that both witnesses testified credibly in this matter. Tr. at 14. On April 7, 2004, the complainant filed its post-hearing brief in this matter. Although the parties agreed to a schedule making the respondent’s brief due April 26, 2004 (Tr. at 13), the Board has not received a brief from the respondent.

FACTS

On September 10, 2003 Agency field inspector Kent Johnson inspected property located at 624 W. Logan in Harrisburg, Saline County. Tr. at 5; Exh. 1 at 3. No Agency operating permit applied to the site on that date. *See* Exh. 1 at 3. Mr. Luther Coleman owns that site (Tr. at 5), and also resides there. Exh. 1 at 3. The purpose of the inspection was to follow an August 22, 2003 inspection that had revealed waste on the ground in the vicinity of the house there. At

¹ The Board cites the administrative citation as “AC at _.”

² The Board cites the affidavit as “Resp. Pet. at _.”

³ The Board cites the hearing transcript as “Tr. at _.”

⁴ The Board cites the Agency’s hearing exhibit as “Exh. 1 at _.”

the time of the September 10 inspection, Mr. Coleman had not worked as a waste hauler for approximately 13 months, although he had previously hauled trash routes in Harrisburg and Eldorado. Exh. 1 at 3, 4. Also, his daughter had continued to haul waste until a time approximately two months before the date of the September 10 inspection. Exh. 1 at 3. In the course of his inspection, Mr. Johnson observed three separate piles of material on the ground and two pick-up trucks loaded with materials. Tr. at 6-7; Exh. 1 at 3-4.

The first pick-up truck, a Ford with no license plates, had materials protruding from a tarp covering its bed. Exh. 1 at 3; Exh. 1, photograph 2. The Ford pick-up contained an estimated 60 cubic feet of materials. Exh. 1 at 3. The second pick-up truck, a Dodge, contained several garbage bags of material in its bed. Exh. 1 at 4; Exh. 1, photograph 6. Mr. Coleman stated that his daughter had used the truck the day before to haul materials that she had removed from her home while cleaning it. Exh. 1 at 4. Mr. Johnson noted that the Dodge truck appeared to have been present on the site and full of waste during his August 22, 2003 inspection. Exh. 1 at 3.

The first pile on the ground contained approximately 160 cubic feet of materials. Exh. 1 at 3. Garbage and household items appeared beneath the tarp that covered the pile. Tr. at 6; Exh. 1, photograph 1. Mr. Coleman stated that the materials beneath the tarp had been on the site for “about a month.” Exh. 1 at 4. The second pile of materials contained approximately 128 cubic feet of items including demolition debris, metal, wood products, fencing, and tires. Tr. at 7; Exh. 1 at 4; Exh. 1, photographs 4, 5. The third pile of materials also contained approximately 128 cubic feet of items including demolition debris, metal, and tires. Tr. at 7; Exh. 1 at 4; Exh. 1, photographs 3, 5. Mr. Johnson took a number of photographs of the Coleman site on September 10, 2003 and documented its appearance on that date. Exh. 1 at 1.

STATUTORY BACKGROUND

Section 3.160 of the Act provides that:

(a) “General construction or demolition debris” means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and piping or metals incidental to any of those materials.

General construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any general construction or demolition debris or other waste. 415 ILCS 5/3.160(2002).

* * *

Section 3.305 of the Act defines “open dumping” as:

[T]he consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a landfill. 415 ILCS 5/3.305 (2002).

Section 3.385 of the Act defines “refuse” as “waste.” 415 ILCS 5/3.385 (2002).

Section 3.535 of the Act provides that:

“Waste” means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto. 415 ILCS 5/3.535 (2002).

Section 21(a) of the Act provides that no person shall:

Cause or allow the open dumping of any waste. 415 ILCS 5/21(a) (2002).

Section 21(p) of the Act provides that no person shall, in violation of subsection (a) of this Section:

Cause or allow the open dumping if any waste in a manner which results in any of the following occurrences at the dump site:

(1) litter

* * *

(7) deposition of:

(i) general construction or demolition debris as defined in Section 3.160(a) of this Act; or

(ii) clean construction or demolition debris as defined in Section 3.160(b) of this Act. 415 ILCS 5/21(p) (2002).

Section 31.1(d)(2) of the Act provides that:

[I]f the Board finds that the person appealing the [administrative] citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty. 415 ILCS 5/31.1(d)(2) (2002).

Section 42(b)(4-5) of the Act provides that:

In an administrative citation 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 each violation of each such provision, plus any hearing costs incurred by the Board and the Agency 415 ILCS 5/42(b)(4-5) (2002).

ISSUES AND ANALYSIS

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 landfill.” 415 ILCS 5/3.305 (2002). Because “refuse” means “waste,” (415 ILCS 5/3.385 (2002)) and because the Act defines “waste” to include “any garbage . . . or other discarded material,” (415 ILCS 5/3.535 (2002)) the Board finds that Mr. Coleman has caused or allowed the open dumping of waste on September 10, 2003. Also, the Board finds that Mr. Coleman’s site does not have a permit to operate as a landfill, which was not persuasively disputed in the record. *See* Resp. Pet. at 1 (suggesting that a permit is unnecessary where respondent “wasn’t accepting demolition debris or trash”).

Although the Act does not define the term “litter,” (*see* 415 ILCS 5/3.105-3.555 (2002)) the Board in other administrative citation cases has looked to the definition provided by the Litter Control Act, 415 ILCS 105/1 *et seq.* St. Clair County v. Louis I. Mund, AC 90-64, slip op. at 7 (Aug. 22, 1991). Under the Litter Control Act, “litter” means:

[A]ny discarded, used, or unconsumed substance or waste. “Litter” may include but is not limited to, any garbage, trash, refuse, debris, rubbish, grass clippings, or other lawn or garden waste, newspaper, magazines, glass, metal, plastic or paper containers or other packaging construction material, abandoned vehicle (as defined in the Illinois Vehicle Code), motor vehicle parts, furniture, . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned, or otherwise disposed of improperly. 415 ILCS 105/3 (2002).

Because Mr. Coleman caused or allowed open dumping of waste including garbage, metal, and tires, the Board finds that litter has resulted from that dumping in violation of Section 21(p)(1) of the Act.

Likewise, because the definition of “general construction or demolition debris” specifically includes items such as:

bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall

coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and piping or metals incidental to any of those materials (415 ILCS 5/3.160 (2002));

the Board also finds that Mr. Coleman has violated Section 21(p)(7) of the Act. 415 ILCS 5/21(p)(7) (2002).

Mr. Coleman has made a number of claims on his own behalf. First, he has attempted to sow doubt about the ownership of the property inspected by Mr. Johnson. In his affidavit and petition for review, Mr. Coleman claims that the debris triggering the inspection was located on the property next door to 624 West Logan. Resp. Pet. at 1. At hearing, Mr. Coleman indicated that some of the materials photographed by Mr. Johnson were actually situated at 700 West Logan. Tr. at 12.

On the date of the inspection, Mr. Coleman told Mr. Johnson that he owned property extending west from the residence at 624 W. Logan to a ditch. Exh. 1 at 4. The property at 700 West Logan occupies the area between the residence at 624 West Logan and that ditch. Tr. at 10. Also, the ditch forms the western boundary of the site sketch and report prepared by Mr. Johnson, (Tr. at 10) so all of the material Mr. Johnson observed was located within the area that Mr. Coleman professed to own. Exh. 1 at 6. Furthermore, on March 3, 2004, Mr. Johnson determined at the tax assessor's office that both 624 West Logan and 700 West Logan listed Luther Coleman as the recipient of the properties' tax bills. Tr. at 10. Mr. Coleman's own testimony at hearing acknowledged that the material observed by Mr. Johnson was present at both addresses. Tr. at 12-13.

The Agency in this case "must show that the alleged polluter has the capability of control over the pollution or that the alleged polluter was in control of the of the premises where the pollution occurred." People v. A.J. Davinroy Contractors, 249 Ill. App. 3d 788, 793, 618 N.E.2d 1282, 1286 (5th Dist. 1993) citing Phillips Petroleum Co. v. PCB, 72 Ill. App. 3d 217, 390 N.E.2d 620, 28 Ill. Dec. 453. Accordingly, the Agency need not prove that Mr. Coleman owned either 624 West Logan or 700 West Logan in order to find a violation of Section 21(p) of the Act. In this case, however, the record shows that Mr. Coleman owns the property at both addresses and thus exercises control over them. Mr. Coleman has submitted no evidence to show that he does not own those properties or that he does not exercise control over them. The Board finds that Mr. Coleman's claims regarding the issue of ownership are not well-founded and are not "uncontrollable circumstances" that would warrant dismissal of this administrative citation under Section 31.1(d)(2) of the Act. 415 ILCS 5/31.1(d)(2) (2002).

Second, Mr. Coleman stated at hearing that "there's nothing on 624" and that he had been cleaning up 700. Tr. at 11. With this testimony, Mr. Coleman apparently intended to indicate that he had cleared all materials from 624 West Logan and some of the materials from 700 West Logan between the time of the inspection on September 10, 2003, and the hearing on March 3, 2004. With regard to this issue, the Board has held that, "even in the context of a contested violation, post-citation activities of the citation recipient are not material" to whether a violation

has occurred or to the Board's review of the citation. Lincoln Chamber of Commerce, AC 89-26, slip op. at 2 (May 25, 1989). Specifically, the Board has stated that "[t]he Act, by its terms, does not envision a properly issued citation being dismissed or mitigated because a person is cooperative or voluntarily cleans-up the site." IEPA v. Jack Wright, AC 89-227, slip op. at 14 (Aug. 30, 1990). "The administrative citation process is structured to provide an inherent incentive to people to comply with the Act. It is clear that if the recipient of an administrative citation does not correct an ongoing violation, the Agency can issue subsequent citations to that person." Lincoln Chamber of Commerce, AC 89-26, slip op. at 4 (May 25, 1989). While Mr. Coleman indicates that he has begun to clean his site, (Tr. at 11) "such actions are not a mitigating factor under the administrative citation program." IEPA v. Dennis Grubaugh, AC 92-3, slip op. at 6 (Oct. 16, 1992). In light of the Board's precedents and the policies underlying the administrative citation process, the Board will not dismiss this citation because Mr. Coleman states that he has initiated clean-up.

Third, Mr. Coleman indicates that Mr. Johnson searched his property without permission. Specifically, he states that Mr. Johnson asked him "if he could look around and my answer to that was NO." Resp. Pet at 1 (emphasis in original). Mr. Coleman states that, after providing that response, Mr. Johnson "proceeded to look around an [sic] take pictures anyway." *Id.*

The Board has earlier stated that Section 4(c) and 4(e) of the Act "grant to the Agency both the authority and the duty to inspect and investigate violations of the Act or Board regulations. Section 4(e) also specifically references the Agency's duty to issue administrative citations." IEPA v. Omer Thomas, AC 89-215, slip op. at 12 (Jan. 23, 1992). In that case, the respondent argued that the Agency had conducted an illegal search because Section 4(d) of the Act limits the Agency to searches consistent with constitutional limitations. *Id.* Given the Agency's explicit statutory duties, the Board found this argument "unpersuasive." *Id.*

Furthermore, it is not clear from the record that Mr. Coleman denied permission to search. Mr. Johnson states that he told Mr. Coleman he would like to look around the property and take photos and asked him if he could do so. Exh. 1 at 4. When Mr. Coleman did not respond to that question, Mr. Johnson stated that he would observe the property and take some photos unless Mr. Coleman objected. *Id.* When Mr. Coleman did not object to that request, Mr. Johnson "proceeded to make brief observations and take photos while Mr. Coleman watched me." *Id.*

Fourth, Mr. Coleman states that the administrative citation is "a deal cooked up between the sheriff's department" and Mr. Johnson and that it's nothing more than a "conspiracy." The record contains no evidence of any kind substantiating these claims, and the Board will not consider it as a basis to dismiss the complaint.

PENALTY

In an administrative citation proceeding, any person found to have violated subsection (p) of Section 21 of the Act must pay a penalty of \$1,500 for each violation of each provision of the section and \$3,000 for each violation of each provision that is a second or subsequent offense, plus any hearing costs incurred by the Board and the Agency. 415 ILCS 5/42(b)(4-5) (2002).

Because the Board finds that Mr. Coleman has violated two subsections of Section 21 and that these are first offenses, in its final order the Board will order Mr. Coleman to pay a civil penalty of \$3,000, plus costs.

CONCLUSION

After reviewing the record in this case and the relevant portions of the Act, the Board finds that Mr. Coleman caused or allowed the open dumping of waste resulting in litter. The Board also finds that Mr. Coleman caused or allowed the open dumping of waste resulting in the deposition of general construction or demolition debris.

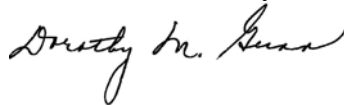
The Board further finds that none of the issues raised by Mr. Coleman constitute “uncontrollable circumstances” that justify dismissing the administrative citation. While the Board in rare cases will dismiss an administrative citation without finding uncontrollable circumstances, *see IEPA v. Jack Wright*, AC 89-227, slip op. at 14 (Aug. 30, 1990), the record in this case does not warrant that result. Consequently, the Board finds that Mr. Coleman has violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and 21(p)(7) (2002)) and in its final order will order him to pay a civil penalty of \$3,000. As set forth below, the Board directs the Agency and the Clerk to document hearing costs, after which the Board will issue a final order. This interim opinion constitutes the Board’s interim findings of fact and conclusions of law.

ORDER

1. The Board finds that Luther Coleman violated Sections 21(p)(1) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1) and 21(p)(7) (2002)).
2. The Illinois Environmental Protection Agency must file a statement of its hearing costs within 14 days of this order, on or before July 1, 2004. The statement must be supported by affidavit and served on Mr. Coleman. Within the same 14-day period, the Clerk of the Illinois Pollution Control Board must also file and serve on Mr. Coleman a statement of the Board’s hearing costs supported by affidavit. Respondent may file any objections to those statements within 14 days of service, by a date on or about July 15, 2004.

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 17, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board