

ILLINOIS POLLUTION CONTROL BOARD  
March 25, 1993

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 92-41  
 ) (Docket A & B)  
LAKEWOOD HOMES & ) (IEPA No. 260-92-AC)  
DEVELOPMENT CO., INC. ) (Administrative Citation)  
 )  
Respondent. )

TODD RETTIG AND GREG RICHARDSON APPEARED ON BEHALF OF THE  
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY;

DOUGLAS HANCOCK, CALUWAERT, PANEGASSER, HANCOCK & SCHOUSEN  
APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on a petition for review of an administrative citation filed by the Illinois Environmental Protection Agency (Agency) pursuant to the Environmental Protection Act (Act). (415 ILCS 5/1001 et. seq. (1992).)<sup>1</sup> The citation was filed on May 26, 1992 and alleges that respondent, Lakewood Homes & Development Co, Inc. (Lakewood), as the owner of property located in Northlake, has violated Section 21(p)(1) of the Act by causing or allowing open dumping of waste resulting in litter on the property.

Lakewood filed a petition for review with the Board on June 29, 1992. A hearing was held on October 1, 1992, at which no members of the public attended. The parties presented closing arguments at hearing and no briefs were filed in this matter.

BACKGROUND

The property is a vacant lot, consisting of about two acres of land, situated behind 5223 W. Lake St. (Tr. at 10.) The property is located in Northlake, Illinois. (Tr. at 10.) The property is bounded by a quick change oil service and Lake St. on the south, another vacant lot on the west, a residential area on the east and Hirsch Street to the north. (Tr. at 13.)

The administrative citation resulted from the inspection of the property on March 31, 1992, by Warren Weritz, Environmental

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<sup>1</sup> The Act was previously codified at Ill. Rev. Stat. 1991, ch. 111 1/2 par. 1001 et. seq.

Protection Specialist with the Agency. On the southeast corner of the property, he observed a pile of landscape waste about 10 feet wide and 60 feet long. (Tr. at 14.) He testified that the pile contained wood chips, brush weeds and some grass. (Tr. at 14.) Northwest of the landscape waste, Mr. Weritz noticed a pile of bricks, wood panels and wood debris about 50 feet by 50 feet. (Tr. at 15.) In the center of this pile was an old pick up truck. (Tr. at 15, Comp. Exh. 3.) He described the condition of the bricks as broken, weathered and some had moss growing on them. (Tr. at 16.) He found the wood was also weathered and other pieces of wood were in advanced stages of decomposition. (Tr. at 16.) He testified that the truck was in a state of disrepair and rusting. (Tr. at 16.) He further noted that graffiti had been painted on the truck and trees were growing out of the truck. (Tr. at 16.) Near the pile of bricks, he discovered some wire cages that were twisted and rusting. (Tr. at 17.) Mr. Weritz also saw a pick up truck with a trailer containing landscape waste on the property. (Tr. at 18.) Complainant's exhibit two shows a rusty storage tank on the property. (Tr. at 25.)

Mr. Weritz described the material as being indiscriminately dumped at the site and not protected from the elements. (Tr. at 15, 17 & 18.) Mr. Weritz did not observe anyone dumping waste on the property and doesn't know who dumped the materials at the site. (Tr. at 18 & 35.) Mr. Weritz noted that there is no fencing around the property except some to the east around some of the neighboring residential properties. (Tr. at 19.) Mr. Weritz also testified that it is difficult to determine the exact boundary of the west end of the property, which is adjacent to another vacant lot. (Tr. at 19.) From a for sale sign on the property, Mr. Weritz traced the property to Terrance Tranchitella. (Tr. at 21.)

Mr. Tranchitella is president and sole stockholder of Lakewood. (Tr. at 41.) He purchased the property in October of 1988. (Tr. at 41.) Mr. Tranchitella testified that the wire cages, shown in complainant's exhibit 1, are located on the adjacent property. (Tr. at 44.) Mr. Tranchitella stated that the storage tank, piles of bricks and pick up truck were on the property when he purchased the property. (Tr. at 44 & 45.) As for the landscape waste dumped on the property and the trailer of landscape waste, Mr. Tranchitella reports that these resulted from actions by a neighbor. (Tr. at 46.) Mr. Tranchitella testified that the dumped landscape waste and the trailer have subsequently been removed from the property. (Tr. at 47.)

#### DISCUSSION

The Act establishes that, in order to seek enforcement by way of the administrative citation process for violations of

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Section 21(p), 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. If the record demonstrates that such violation occurred then the Board must adopt an order finding a violation and impose the specified penalty unless, "...the person appealing the citation has shown that the violation resulted from uncontrollable circumstances." (415 ILCS 5/31.1(d)(2) (1992).)

The administrative citation issued against Lakewood alleges violation of subsection (1) of Section 21(p) of the Act. Section 21(p) 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;

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."

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." (415 ILCS 5/3.24 (1992).) Section 3.31 of the Act defines "refuse" as "waste." (415 ILCS 5/3.31 (1992).) Section 3.53 defines "waste" as, inter alia, "garbage ... or other discarded material, resulting from industrial, commercial, mining and agricultural operations,..." (415 ILCS 5/3.53 (1992).)

In St. Clair County v. Louis Mund (August 22, 1991), AC 90-64, 125 PCB 381, the Board adopted the definition of litter contained 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 . . . abandoned vehicle . . . or anything else of an unsightly or unsanitary nature which has been discarded, abandoned or otherwise disposed of improperly. (Ill. Rev. Stat. 1990 supp., ch. 38, par. 86.3.)

Mr. Tranchitella claims that the wire cages are located on the adjacent property. From the evidence presented the Board is unable to determine the exact location of the property boundaries or the location of the wire cages in respect to the property line. Therefore, the Board makes no finding concerning the wire cages.

Mr. Tranchitella admits that he is the owner of the property inspected by Mr. Weritz on March 31, 1992. He further admits that the bricks, truck, wood, storage tank and landscape waste were on his property at the time of the inspection.

The Board finds that open dumping of waste occurred on the property that resulted in litter. The items observed on the property are discarded materials constituting litter.

Mr. Tranchitella contends that because the landscape waste has been removed from the property after the administrative citation was issued there is no violation of the Act. The Board has previously held that removal of the litter after the issuance of an administrative citation does not negate a violation. The Act, by its terms, does not envision a properly issued administrative citation being dismissed or mitigated because a person is cooperative or voluntarily cleans up the site. (IEPA v. Jack Wright (August 30, 1990), AC 89-227, 114 PCB 863.) Clean up of the site is not a mitigating factor under the administrative citation program. (IEPA v. Dennis Grubaugh (October 16, 1992), AC 92-3, \_\_\_ PCB \_\_\_.)

Mr. Tranchitella argues that there is no violation since the debris was located on the property when he purchased the property and he did not place the debris on the property. Therefore he contends that he has not caused or allowed litter in violation of the Act. The Board has previously held that "allow" includes present inaction on the part of the landowner to remedy a previously caused violation. (EPA v. Robert Wheeler (January 10, 1991) AC 90-42, EPA v. A.J. Welin (May 13, 1982), PCB 80-125, 47 PCB 07.) The Board has held that passive conduct amounts to acquiescence sufficient to find a violation of Section 21(a) of the Act. (EPA v. Dobbeke et al. (August 22, 1972), PCB 72-130, 5 PCB 219.) In Freeman Coal Mining Corp. v. IPCB (3rd Dist. 1974), 21 Ill. App. 3d 157, 313 N.E.2d 616, the court stated that the Act is malum prohibitum and no proof of guilty knowledge or mens rea is necessary for a finding of guilt. Present inaction on the part of the landowner to remedy the disposal of waste that was previously placed on the site, constitutes "allowing" litter in that the owner allows the illegal situation to continue.

The presence of the litter on the site and the failure by the owner to take action is sufficient to find a violation of the "allow" language of Section 21 of the Act. The Board finds that Lakewood allowed litter on the property in violation of the Act.

Having found a violation, the Board must consider whether Lakewood has shown that the violation resulted from uncontrollable circumstances. This is the only showing of mitigating circumstances provided in the statute that allows the Board to excuse any violation. If the Board so finds, then no violation would be found and no penalty imposed. (see 415 ILCS

5/31.1(d)(2) (1992).)

The evidence indicates that Mr. Tranchitella failed to take any action to control the dumping of refuse on his property. At the time that Mr. Tranchitella purchased the property the storage tank, piles of bricks and pick up truck were already on the property. However, Mr. Tranchitella has taken no action to properly remove these items from the property during the time he has owned the property. The property is so situated that it is easily accessible. In his defense Mr. Tranchitella admitted that from time to time without his knowledge or consent, third parties will dump and litter the premise causing violations. (Pet. at 2.) However, Mr. Tranchitella has not erected a fence around the property to limit access or taken any other action to discourage others from open dumping. (Tr. at 59.) The Board finds that Mr. Tranchitella had control over the circumstances that resulted in the violation and does not find any uncontrollable circumstances. Therefore, the Board finds Lakewood in violation of Section 21(p)(1) of the Act for allowing litter.

#### PENALTIES

Penalties in administrative citation actions of the type here brought are proscribed by Section 42(b)(4) of the Act, to wit:

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 \$500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency. Such penalties shall be made payable to the Environmental Protection Trust Fund to be used in accordance with the provisions of "An Act creating the Environmental Protection Trust Fund", approved September 22, 1979 as amended; (415 ILCS 5/42(b)(4) (1992).)

Respondent will therefore be ordered to pay a civil penalty of \$500 based on the violation as herein found. For purpose of review, today's action (Docket A) constitutes the Board's final action on the matter of the civil penalty.

Respondent is also required to pay hearing costs incurred by the Board and the Agency. The Clerk of the Board and the Agency will therefore be ordered to each file a statement of costs, supported by affidavit, with the Board and with service upon Lakewood. Upon receipt and subsequent to appropriate review, the Board will issue a separate final order in which the issue of costs is addressed. Additionally, Docket B will be opened to treat all matters pertinent to the issue of costs.

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

ORDER

1. Respondent is hereby found to have been in violation on March 31, 1992 of 415 ILCS 5/21(p)(1) (1992).
2. Within 45 days of this order respondent shall, by certified check or money order, pay a civil penalty in the amount of \$500 payable to the Illinois Environmental Protection Trust Fund. Such payment shall be sent to:

Illinois Environmental Protection Agency  
Fiscal Service Division  
2200 Churchill Road  
Springfield, Illinois 62706

Respondent shall include the remittance form and write the case name and number and their social security or federal employer identification number on the certified check or money order.

Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003 (1992))<sup>2</sup>, as now or hereafter amended, from the date of payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

3. Docket A in this matter is hereby closed.
4. Within 30 days of this order, the Agency shall file a statement of its hearing costs, supported by affidavit, with the Board and with service upon Lakewood Homes & Development Co., Inc. Within the same 30 days, the Clerk of the Pollution Control Board shall file a statement of the Board's costs, supported by affidavit and with service upon Lakewood Homes & Development Co., Inc. Such filings shall be entered in Docket B of this matter.
5. Respondent is hereby given leave to file a reply/objection to the filings as ordered in paragraph

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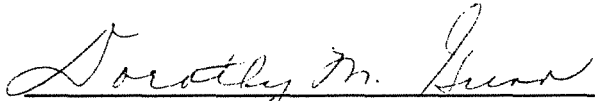
<sup>2</sup> Previously codified at Ill. Rev. Stat. 1991, ch. 120, par. 10-1003.

4 of this order within 45 days of this order.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill. 2d 304, 547 N.E.2d 437; Strube v. Illinois Pollution Control Board (3d Dist. March 15, 1993), No. 3-92-0468, slip op. at 4-5.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 25<sup>th</sup> day of March, 1993, by a vote of 6-0.

  
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 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board