

ILLINOIS POLLUTION CONTROL BOARD
May 5, 1994

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Petitioner,)	
)	
v.)	AC 92-86
)	(IEPA No. 658-92-AC)
)	(Administrative Citation)
AL SEAMAN,)	
)	
Respondent.)	

MR. JAMES G. RICHARDSON APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

MR. AL SEAMAN APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board pursuant to a petition for review of an administrative citation timely filed by the respondent, Al Seaman, on January 11, 1993. The respondent requested review of an administrative citation filed by the Illinois Environmental Protection Agency (Agency) on December 10, 1992. The Environmental Protection Act (Act) allows parties 35 days from the date of service of an administrative citation in which to appeal. (415 ILCS 5/31.1 (b)(4)(1992).) The Board accepted the petition on January 21, 1993, and set the matter for hearing. Hearing was held before Hearing Officer E. Liebermann April 26, 1993, in Rockford, Illinois. No post-hearing briefs were filed in this matter.

The administrative citation alleges a single violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1)) which carries a statutory civil penalty of \$500 if the Board finds that such a violation occurred. For the reasons set forth below, the Board finds that Al Seaman did not violate Section 21(p)(1).

FACTS

Al Seaman leases a barn located at 7445 Stephens Road in Rockton, Winnebago County (Tr. at 12-13). The property upon which the barn is located is owned by a Mrs. Zella Mayer. (Tr. at 12.) The facility is commonly known to the Agency as the Rockton/Mayer Property. (Complaint at 1.) The administrative citation only names Mr. Seaman as the respondent and alleges that he violated Section 21(p)(1) by causing or allowing the open dumping of used tires inside the barn in a manner which resulted in litter.

As to the number of tires in the barn, Katherine L. Geyer, the Agency's Environmental Protection Analyst who inspected the property, testified at hearing that she estimated 7000 to 8000 tires total. (Tr. at 9.) Seaman testified there are at least 4500 tires on rims and many others without rims, and that the total number of tires was approximately 6000 to 6500 tires. (Tr. at 19.) Seaman further testified that the tires are piled on top of "mounds of hay" (Tr. at 30-31) and that the tires had been collected in the barn since 1988 or 1989 (Tr. at 31-32).

The Agency first inspected the site on April 22, 1992 (Tr. at 24) and on July 22, 1992, notified respondent of possible violations of the Environmental Protection Act (Tr. at 25; Pet. Exh.1 at 8-22 (Enforcement Warning Notice)). Seaman was advised that the accumulation of tires in the barn constituted violations of the used tire provisions of the Act. (Pet. Exh.1 at 8-22.) Specifically, the Agency notified Seaman that the improper storage of used or waste tires at a disposal site without the proper permit were violative of the Board's used tire storage regulations and the Act. The Agency further advised Seaman that he was in violation of Section 21(p)(1) of the Act for causing or allowing open dumping of litter. (*Id.*) Upon receipt of the notification, the respondent and the Agency entered negotiations to reach a "tire removal" agreement, provided for pursuant to Section 55.3 of the Used Tires Act; however, for a variety of reasons agreement was never reached. (Tr. 25-27.)

The Agency reinspected the site on October 15, 1992, and found the site in a substantially similar state and advised Seaman that the violation still existed. (Tr. at 7.) The Agency found no evidence in its files that Mr. Seaman had provided receipts to the Agency showing that any of the tires had left the barn and were going to a permitted disposal site. (Tr. at 20 and 27.) Subsequent to the October site-visit, the Agency issued the administrative citation which is the subject of this appeal. No related action has been brought before the Board for violations of the used tire provisions of the Act at Title XIV. The Board has no knowledge of whether any enforcement action has been brought in circuit court regarding any such violations.

APPLICABLE LAW

Section 21(p)(1) of the Act provides, in part, that:

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).)

Section 3.24 of the Act provides, in pertinent part, that "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)

The Board has adopted the definition of "litter" contained in the Litter Control Act

. . .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 . . .or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.

415 ILCS 105/3 St. Clair County v. Mund,
(August 22, 1991) AC 90-64, 125 PCB 381.

DISCUSSION

In determining a Section 21(p)(1) violation of this case, the Board must decide whether Seaman's actions of stockpiling thousands of used tires in a barn constitutes "open dumping" which resulted in litter. The burden of proving such a violation rests upon the Agency to demonstrate that a violation of Section 21(p)(1) took place on the day of inspection. (IEPA v. Lakewood Homes & Development Co., Inc., (March 25, 1993) AC 92-41, _____ PCB _____.) If the Agency fails to prove the case, no citation shall issue.

Based on the testimony elicited at hearing and the photographs submitted as part of the investigator's report (Pet. Exh. 1), the barn appears to be in a dilapidated condition. It has holes in the roof (Tr. at 8), doors and windows are missing (Id.), and sections of the walls are missing (Inspection Report at 4). At hearing, Geyer's testimony indicated that where the windows and doors are missing, there is nothing protecting the inside from the outside elements. (Tr. at 8.) Geyer also testified that the tires were close enough to the openings in the wall to be exposed to the elements, i.e., rain and snow. (Tr. at

10.)

Thereafter, Geyer testified that she cited Seaman for a violation of the litter provision of Section 21(p) based on these observations, and that her working definition of "litter" is "anything that has been discarded or has been improperly disposed of", this definition having come from the Illinois Revised Statutes and a recent Board opinion. (Tr. 10-11.)

DECISION

The Fifth District Appellate Court in Illinois Environmental Protection Agency v. Illinois Pollution Control Board (5th Dist. 1991), 219 Ill. App.3d 975, 579 N.E.2d 1215, 162 Ill.Dec. 401, in reviewing an administrative citation articulated the test for determining whether "open dumping" has occurred. Relying on the definition of "open dumping" from the Act, the Court found that "open dumping" happens not when refuse is consolidated at the point of demolition "but when it is consolidated at a disposal site that does not fulfill sanitary landfill requirements." (Id., at 162 Ill.Dec. 401, 403.) On that premise, the court held that there must be "disposal", which is defined in the Act as

the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste *** into or on any land or water *** so that such waste *** may enter the environment or be emitted into the air or discharged into any waters, including ground waters."

(Emphasis added) (415 ILCS 5/3.08)

Here we find no such disposal. The Agency must demonstrate how the placement of the used tires in a barn could result in waste entering the environment. The evidence presented at hearing and summarized above does not demonstrate that fact. The Agency has charged only that the used tires in this case resulted in litter. Yet, the Agency has failed to provide evidence demonstrating how this waste constitutes litter. The Agency's reliance on a single phrase contained within the definition of "litter" as "anything improperly disposed of" is not sufficient to demonstrate that the used tires were disposed, rather than improperly stored. Therefore, the Board will dismiss the allegation charged against Mr. Seaman in the administrative citation. In so doing, we note that our finding is based on the record in this case, and is not to say that the same or similar facts would not be cognizable as violations under other provisions of the Act, such as Section 21(p)(5) or Title XIV: Used Tires.

ORDER

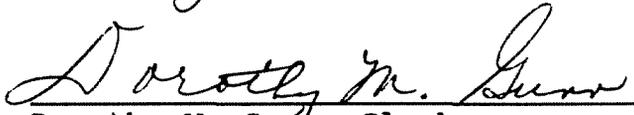
The administrative citation, IEPA No. 658-92-AC, issued to Al Seaman is hereby dismissed.

IT IS SO ORDERED.

C. A. Manning dissented.

G. Tanner Girard concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 5th day of May, 1994, by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board