

ILLINOIS POLLUTION CONTROL BOARD
September 21, 2006

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) AC 05-70
) (IEPA No. 145-05-AC)
JAMES STUTSMAN,) (Administrative Citation)
)
Respondent.)

MICHELLE M. RYAN, SPECIAL ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT; and

JAMES STUTSMAN APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by A.S. Moore):

On May 23, 2005, complainant, the Illinois Environmental Protection Agency (Agency), filed an administrative citation against respondent, James Stutsman. The citation alleges that Mr. Stutsman violated Sections 21(p)(1) and (7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (7) (2004)) at a site located at 8443 County Road 1100E in Bath, Mason County. For the reasons below, the Board finds that Mr. Stutsman violated the Act as alleged by allowing the open dumping of waste resulting in litter and the deposition of general construction or demolition debris.

Mr. Stutsman is therefore subject to a statutorily-mandated \$1,500 civil penalty for each of the two violations, totaling \$3,000, and must pay the hearing costs of the Agency and the Board. After finding the violations in this interim opinion and order, the Board directs the Agency and the Clerk of the Board to provide hearing cost documentation, to which Mr. Stutsman may respond. After the time periods for these hearing cost filings expire, the Board will issue a final opinion and order assessing the civil penalty and any appropriate hearing costs.

In this interim opinion, the Board first describes the administrative citation process, followed by the procedural history and the facts of this case. The Board then sets forth the pertinent provisions of the Act and describes the parties' arguments. Next, the Board analyzes the issues and reaches its conclusions of law regarding the alleged violations. Finally, the Board addresses civil penalties and hearing costs.

ADMINISTRATIVE CITATION PROCESS

Under the Act, an administrative citation is an expedited enforcement action brought before the Board seeking civil penalties that are fixed by statute. Administrative citations may

be filed only by the Agency or, if the Agency has delegated the authority, by a unit of local government, and only for limited types of alleged violations at sanitary landfills or unpermitted open dumps. *See* 415 ILCS 5/3.305, 3.445, 21(o), (p), 31.1(c), 42(b)(4), (4-5) (2004); 35 Ill. Adm. Code 108.100 *et seq.*

The Act provides that the civil penalty is \$1,500 for each violation of each provision of Section 21(p). *See* 415 ILCS 5/42(b)(4-5) (2004) (the penalty amount increases to \$3,000 per violation for a respondent's second or subsequent adjudicated violation of that provision); 35 Ill. Adm. Code 108.500. As the Act specifies the penalty for a violation in an administrative citation action, the Board cannot consider mitigating or aggravating factors when determining penalty amounts in these cases. *See* 415 ILCS 5/42(4-5) (2004).

A respondent issued an administrative citation may pay the civil penalty or challenge the administrative citation by petitioning the Board. *See* 415 ILCS 5/31.1(d) (2004). If the respondent does not succeed at hearing, the Board must impose on the respondent the civil penalty, as well as the hearing costs of the Board and the complainant. *See* 415 ILCS 5/42(b)(4), (4-5) (2004); 35 Ill. Adm. Code 108.500(b).

PROCEDURAL HISTORY

On May 23, 2005, the Agency filed the administrative citation with the Board.¹ On June 27, 2005, Mr. Stutsman filed a petition to contest the administrative citation. The Board accepted the petition for hearing in an order dated July 7, 2005.

On May 10, 2006, Board Hearing Officer Carol Webb conducted a hearing at the Mason County Courthouse in Havana.² At hearing, Special Assistant Attorney General Michelle M. Ryan appeared and participated on behalf of the Agency. Tr. at 5. Mr. Stutsman appeared on his own behalf. Tr. at 5. Two witnesses testified at hearing: Ms. Michelle Cozadd of the Agency (Tr. at 6-14, 25-28); and Mr. Stutsman (Tr. at 14-25). The hearing officer admitted four exhibits into evidence.³ Tr. at 12, 20, 25. Based on her legal judgment, experience, and observations at hearing, Hearing Officer Webb found that both witnesses testified credibly. Tr. at 30. On June 7, 2006, the Agency filed its post-hearing brief. Mr. Stutsman filed his post-hearing brief on June 30, 2006.⁴

FACTS

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

² The Board cites the hearing transcript as "Tr. at _."

³ The Board cites the hearing exhibits as "Exh. at _."

⁴ The Board cites the Agency's brief as "Compl. Br. at _," and Mr. Stutsman's brief as "Resp. Br. at _."

On April 1, 2005, Agency Field Inspector Michelle Cozadd inspected a one and one-half acre site located approximately one kilometer southwest of Bath in Mason County. Tr. at 7-9; Exh. 1, Checklist at 1. The site, which is owned by James Stutsman, has both wooded and open areas. The site is located on a narrow, sandy county road, with the address 8443 County Road 1100E in Bath. Tr. at 9; Exh. 1, Checklist at 1, Site Sketch at 1-4, Photo 1. Structures on the property include a house, garage, and several sheds. Tr. at 9; Exh. 1, Site Sketch at 1-2.

The April 1, 2005 inspection was the basis for the Agency's issuance of the present administrative citation. In all, Ms. Cozadd inspected this property eight times, beginning in July of 1999. Tr. at 9; Exh. 1, Memo at 1. On September 17, 1999, the Agency issued an "Administrative Citation Warning Notice" to Mr. Stutsman for "apparent open dumping violations" after its "initial complaint investigation" on July 9, 1999. Exh. 1, Memo at 1; Exh. 2 at 1-3. On November 15, 1999, the Agency sent a "Consensual Tire Removal Agreement form" to Mr. Stutsman, notifying him of the "available assistance to remove the used tires once all the other waste materials at the site were disposed or recycled properly." Exh. 1, Memo at 1.

The Agency set Mr. Stutsman's first cleanup compliance deadline for December 15, 1999. Exh. 1, Memo at 1; Exh. 2 at 1. However, Mr. Stutsman requested a time extension to complete the cleanup, and the Agency extended the deadline to April 1, 2000. Exh. 1, Memo at 1. Inspection of the site on October 18, 2000, revealed "continuing apparent violations of open dumping." *Id.* On November 8, 2000, the Agency requested a written response from Mr. Stutsman that would contain a plan and timetable for completing the cleanup. *Id.*

After a second Agency request (dated January 4, 2001) for a cleanup plan and timetable, Mr. Stutsman on January 11, 2001, requested a May 1, 2005 cleanup deadline. Exh. 1, Memo at 1; Exh. 3. A July 23, 2002 letter from the Agency informed Mr. Stutsman that "substantial progress must be made to dispose or recycle the waste at the site prior to the next re-inspection" and that Mr. Stutsman's proposed cleanup deadline of May 1, 2005, would be unacceptable "if substantial progress has not been made." Exh. 1, Memo at 4. The Agency observed "[c]ontinuing open dumping violations" during an August 27, 2002 re-inspection. *Id.*

The Administrative Citation Warning Notice, delivered September 20, 1999, directed Mr. Stutsman to remove all general refuse from his site. Exh. 2 at 1, 4. Additionally, the notice specified procedures necessary for disposing of metal, tires, batteries, gas cylinders, and other special wastes. *Id.* at 1-2. The Agency field inspector repeatedly asked Mr. Stutsman to show that he turned over materials as an indication that he would recycle all the items on his property. Tr. at 13. However, most of the items present during the April 1, 2005 inspection were also present on the site during the initial inspection in July 1999. Tr. at 11, 27-28. Although Mr. Stutsman arranged some items into piles, he did not remove a substantial amount of materials from the site over the span of the eight inspections. Tr. at 28. As of the April 1, 2005 inspection, Mr. Stutsman actually had accumulated additional materials at the site since the previous inspection on August 27, 2002. Exh. 1, Memo at 4.

Mr. Stutsman's property and land adjacent to his property contained:

about 1,000 used tires, over 80 abandoned vehicles, a school bus, mobile homes, metal tanks, scrap metal, campers, trailers, golf carts, buggies, boats, axles and other automotive parts, lead acid batteries, white goods, metal shelving units, and general construction or demolition debris. Tr. at 10; Exh. 1, Site Sketch at 1-4, Photos 1-81.

The site also contained “damaged dimensional lumber, metal siding, cinder blocks, and broken concrete and bricks.” Tr. at 10-11; Exh. 1, Photos 1, 5, 15, 23, 25, 29, 73, 74. Many of the cars were piled in stacks and some of the lead-acid battery casings were broken. Exh. 1, Memo at 3, Photos 33, 54, 57. Additionally, farm equipment was present throughout the property, and debris was present from 1995 or 1996 tornadoes. Exh. 1, Memo at 2-4; Tr. at 17.

Many materials on the Stutsman property were scattered throughout wooded areas, surrounded by brush or trees, and uncovered. *See, e.g.*, Exh. 1, Photos 1, 2, 5-8, 14. The vast majority of materials observed during the April 1, 2005 inspection were located on-site (Exh. 1, Site Sketch, Photos); some materials observed were located off-site (Exh. 1, Photos 9, 12, 16, 48, 49, 58, 75), across the county road from Mr. Stutsman’s property (Tr. 10-11).

Mr. Stutsman is a licensed scrap processor. Tr. at 14-15; Exh. 4. Since his retirement in April 2006, Mr. Stutsman has taken five loads of scrap to processors. Tr. at 16-17. An October 5, 2005 letter from the Agency to Mr. Stutsman states that a September 29, 2005 inspection of the property indicated that the “apparent violations previously cited remain unresolved.” Exh. 4; Tr. at 24. The letter also indicates that Mr. Stutsman had signed the Consensual Tire Removal Agreement, and that the Agency would soon be removing up to 1,000 used tires from the property. Exh. 4. Because of concerns with the West Nile virus, the Agency removed the tires from Mr. Stutsman’s property before he removed the other material. Tr. at 26-27.

STATUTORY BACKGROUND

The Agency’s administrative citation alleges that Mr. Stutsman violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2004)) by causing or allowing the open dumping of waste resulting in litter. AC at 2. The citation further alleges that Mr. Stutsman violated Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2004)) by causing or allowing open dumping resulting in the deposition of general or clean construction or demolition debris. *Id.*

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 (2004). “Refuse,” under the Act, means “waste.” 415 ILCS 5/3.385 (2004). The Act defines “waste” as:

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 (2004).

The Litter Control Act defines “litter” as:

any 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, oil, carcass of a dead animal, any nauseous or offensive matter of any kind, any object likely to injure any person or create a traffic hazard, potentially infectious medical waste as defined in Section 3.360 of the Environmental Protection Act, or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly. 414 ILCS 105/3(a) (2004).

The Act defines “general construction or demolition debris” as:

non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: brick, 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(a) (2004).

Section 21(a) of the Act provides that no person shall “[c]ause or allow open dumping of any waste.” 415 ILCS 5/21(a) (2004). Section 21(p) of the Act provides 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 ...

* * *

(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)(1), (7) (2004).

AGENCY’S BRIEF

The Agency claims it has demonstrated that Mr. Stutsman caused or allowed open dumping at the site. Compl. Br. at 1. The Agency argues that the inspection report admitted into evidence as Exhibit 1 and the testimony at hearing show that discarded materials including:

approximately 1000 used tires, over 80 abandoned vehicles, other vehicles and motor parts, scrap metal, lead acid batteries, white goods, metal shelving, damaged dimensional lumber, metal siding, cinderblocks, and broken concrete and bricks were present throughout the site. Compl. Br. at 1, citing Tr. at 10-11 and Exh. 1 Memo and Photos.

The Agency notes that Mr. Stutsman did not contest the presence of these materials at the site. Compl. Br. at 1-2. The Agency also points out that Mr. Stutsman has owned the site since at least July 1999, the time of the first inspection. *Id.* at 2. The property at that time was in the same general condition as observed during the April 1, 2005 inspection. *Id.*

Additionally, the Agency claims that the open dumping resulted in “litter.” Compl. Br. at 2. While the Act does not define “litter,” the Agency notes that the Board has employed the definition provided in the Litter Control Act, referring to “any discarded, used or unconsumed substance or waste.” *Id.* The Agency argues that the tires, vehicles, motor parts, metals, lead acid batteries, white goods, and construction or demolition debris constitute litter and that Mr. Stutsman accordingly violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2004)). *Id.*

The Agency also claims that damaged dimensional lumber, metal siding, cinderblocks, and broken concrete and bricks that were present throughout the site constitute general construction or demolition debris. Therefore, the Agency argues that Mr. Stutsman violated Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2004)). Compl. Br. at 2-3, citing 415 ILCS 5/3.160(a) (2004).

In response to Mr. Stutsman’s argument that he intended to use the materials for income once he retired (Tr. at 13), the Agency asserts that it did not allow Mr. Stutsman to “maintain this

open dump until his retirement.” Compl. Br. at 3. The Agency adds, moreover, that a person can cause or allow a violation of the Act without knowledge or intent. *Id.*

MR. STUTSMAN’S BRIEF

Mr. Stutsman argues that he does not operate a dump or landfill. Resp. Br. at 1. According to Mr. Stutsman, “[a]ll materials on [his] property are being and will be sorted, prepared and recycled.” *Id.* Mr. Stutsman emphasizes that he is a licensed scrap processor. *Id.* He claims that he has delivered an average of one load per week to the scrap mill since his retirement in April 2006. *Id.* Mr. Stutsman further claims that the lumber, metal siding, and cinder blocks will be used to construct a shed. *Id.* He also claims that he purchased all vehicles situated on his property and that there are no abandoned vehicles there. *Id.* Further, according to Mr. Stutsman, the broken concrete is used under tractors to prevent contact with the ground. *Id.* Mr. Stutsman added that the Agency agreed to remove tires from his site after he resolved the other issues. *Id.*

ISSUES AND ANALYSIS

Open Dumping of Waste

To prove a violation of Section 21(p) of the Act, the Agency must first prove that Mr. Stutsman caused or allowed the open dumping of waste. See 415 ILCS 5/21(a), (p) (2004). As noted, “open dumping” under the Act 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”; “refuse” is “waste”; and “waste” includes “any garbage . . . or other discarded material . . .” 415 ILCS 5/3.305, 3.385, 3.535 (2004).

Mr. Stutsman does not dispute that he owns the property. Further, Mr. Stutsman does not deny that the materials described in the Agency inspection report were on his property or that he arranged to have the materials placed there. Resp. Brief at 1. Nor does Mr. Stutsman claim that his operation meets the requirements of a sanitary landfill. *Id.* Mr. Stutsman does argue, however, that the material on his property is not waste. *Id.*; Tr. at 15. He has maintained that he would eventually use the material for his business as a scrap processor. Resp. Brief at 1; Tr. at 15.

Under this case’s specific circumstances, the Board finds that Mr. Stutsman’s claims of intended future use for the material are not dispositive of whether the material is waste or litter. See County of Sangamon v. Daily, AC 01-16, 01-17 (cons.), slip op. at 10, 12-13 (Jan. 10, 2002) (despite expressed “intention to use every single discarded item . . . numerous items were not in use, were not useable in their current condition, and were not stored in such a way as to protect any future use”), *aff’d. sub nom. Everett Daily v. County of Sangamon and PCB*, No. 4-02-0139 (4th Dist. Sept. 18, 2003) (unpublished order under Illinois Supreme Court Rule 23). Photographs of Mr. Stutsman’s site included in the Agency inspection report reveal that much of the material is not part of a functioning scrap processing business. Material is strewn across the property, commingled with trees or brush, not protected from the elements, and not prepared for salvage. Most of the materials had been on the site for nearly six years.

On this record, the Board cannot find that every item on the site had value, was being handled in a manner consistent with legitimate re-use, or was being promptly removed for disposal. Even if there was some valuable material being managed properly at the time of the inspection, the Board finds that at least some of the items consolidated there and identified during the inspection were “discarded” and thus “waste” under the Act. In similar situations, the Board has found open dumping. *See IEPA v. Carrico*, AC 04-27, slip op. at 7 (Sept. 2, 2004); *IEPA v. Cadwallader*, AC 03-13, slip op. at 4 (May 20, 2004); *Daily*, AC 01-16, 01-17, slip op. at 11 (“statements regarding [respondent’s] intentions to utilize, dispose of, or sell these various materials at some undetermined date in the future are not dispositive of the question of whether the items constitute a waste or litter”); *County of Jackson v. Easton*, AC 96-58, slip op. 2, 4 (Dec. 19, 1996) (presence of tires, metal materials and wiring and household goods on the ground at site supported finding of open dumping). It is also undisputed that Mr. Stutsman’s site does not meet the requirements for a sanitary landfill.

Additionally, in the context of whether there has been an administrative citation violation here, it is irrelevant that Mr. Stutsman has removed from the site some of the materials since the April 1, 2005 inspection. That inspection took place years *after* the Agency-given cleanup deadline, even as extended. As the Board has held:

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 and the Board does not find differently today. *** If an inspector determines that a site is in violation the Agency may promptly issue an administrative citation. Alternatively, the Agency may give a person time to clean up the site with the decision to give time being binding upon the Agency during the specified time. If upon reinspection the site is still thought to be in violation an administrative citation could properly issue based upon the reinspection. *IEPA v. Wright*, AC 89-227, slip op. at 7 (Aug. 30, 1990).

Further, that Mr. Stutsman may never have intended to violate the Act is of no aid to him. The Illinois Supreme Court has established that one may “cause or allow” a violation of the Act without knowledge or intent. *See People v. Fiorini*, 143 Ill. 2d 318, 336, 574 N.E.2d 612, 621 (1991) (“knowledge or intent is not an element to be proved for a violation of the Act. This interpretation of the Act . . . is the established rule in Illinois.”); *see also Freeman Coal Mining v. PCB*, 21 Ill. App. 3d 157, 163, 313 N.E.2d 616, 621 (5th Dist. 1974) (the Act is *malum prohibitum* and no proof of guilty knowledge or *mens rea* is necessary to find liability).

Under the particular facts of this case, the Board finds that Mr. Stutsman, at a minimum, allowed the open dumping of waste by letting waste remain for this duration on a site under his control. Even if all of the materials were properly brought to the site while Mr. Stutsman legally operated as a scrap processor, the Board has held that a current owner or operator can be found to have “allowed” open dumping by failing to remove an accumulation of refuse for which that person was not initially liable. *See IEPA v. Rawe*, AC 92-5, slip op. at 6 (Oct. 16, 1992); *see also IEPA v. Goodwin*, AC 02-17, slip op. at 4 (July 11, 2002). The Board emphasizes that its holding here is based on the specific circumstances of this case, as it was in *Carrico*:

[T]he Board is in no way holding that the otherwise lawful operation of a scrap processing and recycling facility constitutes *per se* open dumping. Nor is the Board today establishing any “bright-line” time period for cleaning up salvage yards. Carrico, AC 04-27, slip op. at 9.

Litter

The Act does not define “litter,” but the Board has applied the definition provided in the Litter Control Act, which defines “litter” in part as “any discarded, used or unconsumed substance or waste.” 415 ILCS 105/3(a) (2004); St. Clair County v. Louis I. Mund, AC 90-64, slip op. at 4, 6 (Aug. 22, 1991). The definition specifically includes metal and “anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.” 415 ILCS 105/3 (a) (2004).

Numerous photographs depict discarded metal covered with brush and lying on the ground in wooded areas. The Board finds that materials open dumped on Mr. Stutsman’s site qualify as “litter” under the Act.

Construction or Demolition Debris

The Act’s definition of “general construction or demolition debris” includes a range of “uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads . . .” 415 ILCS 5/3.160(a) (2004). Mr. Stutsman’s site contains broken concrete, damaged dimensional lumber, bricks, and cinder blocks. Many materials are scattered in a wooded area or overgrown with brush. The Board finds that materials open dumped at Mr. Stutsman’s site qualify as “general construction or demolition debris” under the Act.

Consensual Tire Removal Agreement

Title XIV of the Act sets forth prohibitions and requirements with respect to the handling of used and waste tires, includes provisions for the Agency and owners and operators to remove used and waste tires, and provides for the creation of the Used Tire Management Fund. *See* 415 ILCS 5/53-55.15 (2004). Certain tire disposal site owners and operators are required to file and receive Agency approval of a Tire Removal Agreement with a schedule for the owner or operator to complete removal activities. *See* 415 ILCS 5/55.4 (2004). Under Title XIV, the Board adopted regulations for the management of used and waste tires. *See* 35 Ill. Adm. Code 848.101 *et seq.*

Mr. Stutsman states that he had been told that the Agency would remove the tires *after* he removed other waste from his property. Resp. Brief at 1. It is unclear how Mr. Stutsman’s understanding would militate in his favor. In fact, the Agency did remove tires from his site after issuing the administrative citation. The tire removal actually took place *before* Mr. Stutsman had removed other waste items, reflecting the Agency’s health concerns over the West Nile virus.

The Agency's use of the Act's used tire program does not provide a defense for Mr. Stutsman. Mr. Stutsman benefited from that program by entering into the Consensual Removal Agreement, under which the Agency apparently removed up to 1,000 tires from the site at no cost to Mr. Stutsman. *See* 415 ILCS 5/55.3(c) (2004)). The Board has held that a respondent's mere participation in the tire program does not insulate the person from administrative citation liability. *See Carrico*, AC 04-27, slip. op. at 12 (Sept. 2, 2004); *IEPA v. Susan Simon d/b/a Berman's Auto Parts*, AC 02-2, slip op. at 5-6 (Aug. 8, 2002) (finding that respondents "did not comply with the directives of the Agency," and stating that respondents' "argument that their agreement with the Agency pursuant to the Used Tire Management Act [Title XIV of the Act] somehow excuses them from the alleged violation that resulted in an administrative citation is not meritorious"). Under the facts of this case, the Board finds that Mr. Stutsman's alleged defense based on the Agency's use of the used tire program fails.

Finding of Violations

Having found that Mr. Stutsman allowed the open dumping of waste resulting in litter and the deposition of general construction or demolition debris, and that none of his purported defenses have merit, the Board finds that Mr. Stutsman violated Sections 21(p)(1) and (7) of the Act.

Civil Penalty and Hearing Costs

The Agency seeks the statutory \$1,500 civil penalty per violation, for a total of \$3,000, as well as hearing costs. AC at 2-3. Because Mr. Stutsman violated Sections 21(p)(1) and (7), the Board now discusses the issues of civil penalty and hearing costs. Both are addressed in Section 42(b)(4-5) of the Act:

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 each violation of each such provision, plus any hearing costs incurred by the Board and the Agency, except that the civil penalty amount shall be a \$3,000 for each violation of any provision of subsection (p) of Section 21 that is the person's second or subsequent adjudicated violation of that provision. 415 ILCS 5/42(b)(4-5) (2004).

Mr. Stutsman states that since his April 2006 retirement, he has removed, on average, one load per week from his site to a scrap mill. When the Board finds a violation in a formal enforcement action brought under Section 31 of the Act, the Board has the discretion to impose a penalty and if the Board decides to impose one, the Board may consider factors that mitigate the amount of penalty. *See* 415 ILCS 5/33(c), 42(h) (2004). The Board has no such discretion after finding a violation in an administrative citation action. The Board must impose a civil penalty on Mr. Stutsman.

There is no indication that this is a second or subsequent adjudicated violation for Mr. Stutsman. Therefore, the civil penalty for these first violations of Sections 21(p)(1) and (7) by Mr. Stutsman is statutorily set at \$1,500 per violation, totaling \$3,000, and the Board will assess

the penalty in its final opinion and order. *See* 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500(b)(2).

In addition, by unsuccessfully contesting the administrative citation at hearing, Mr. Stutsman also must pay the hearing costs of the Agency and the Board. *See* 415 ILCS 5/42(b)(4-5) (2004); 35 Ill. Adm. Code 108.500(b)(3). However, no information on those costs is in the record. The Agency and the Clerk of the Board are therefore each ordered to file a statement of costs, supported by affidavit, and to serve the filing on Mr. Stutsman. Mr. Stutsman will have an opportunity to respond to the requests for hearing costs, as provided in the order below.

CONCLUSION

The Board finds that Mr. Stutsman allowed the open dumping of waste resulting in litter and the deposition of general construction or demolition debris. Having found the violations in this administrative citation action, Mr. Stutsman must pay a civil penalty of \$3,000 and the hearing costs of the Agency and the Board. As set forth in the order below, the Board directs the Agency and the Clerk of the Board to file hearing cost documentation, to which Mr. Stutsman may respond. After the time periods for the filings on hearing costs have run, the Board will issue a final opinion and order imposing the civil penalty on Mr. Stutsman and assessing against him any appropriate hearing costs.

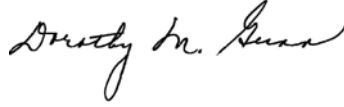
This interim opinion constitutes the Board's interim findings of fact and conclusions of law.

ORDER

1. The Board finds that Mr. Stutsman violated Sections 21(p)(1) and (7) of the Act (415 ILCS 5/21(p)(1), (7) (2004)).
2. By October 11, 2006, the Agency must file with the Board a statement of its hearing costs. The statement must be supported by affidavit and served upon Mr. Stutsman. By October 11, 2006, the Clerk of the Board must submit a statement of the Board's hearing costs. The statement must be supported by affidavit and served upon Mr. Stutsman.
3. By November 1, 2006, Mr. Stutsman may file with the Board a response to the statements of hearing costs required by paragraph 2 of this order. Mr. Stutsman must serve any such response on the Agency. The Agency may file a reply to Mr. Stutsman's response within 14 days after being served with that response.

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 September 21, 2006, by a vote of 4-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board