

ILLINOIS POLLUTION CONTROL BOARD
February 19, 2009

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 08-28
)	(IEPA No. 52-08-AC)
ROB PINSKI)	(Administrative Citation)
)	
Respondent.)	

MICHELLE M. RYAN APPEARED ON BEHALF OF THE COMPLAINANT.

INTERIM OPINION AND ORDER OF THE BOARD (by G.L. Blankenship):

The Illinois Environmental Protection Agency (Agency) timely filed an administrative citation against Rob Pinski¹ (respondent) alleging that respondents violated Sections 21(p)(1), (3), and (4) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (3), and (4) (2006)). The administrative citation was issued for alleged violations occurring at a facility located at 1043 N. Walnut Street, St. Johns, Perry County. For the reasons discussed below, the Board finds that respondent did violate Sections 21(p)(1), (p)(3), and (p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2006)) and that a fine of \$4,500 must be assessed. Further, the Agency and the Board are directed to file statements of hearing costs within 14 days of this order so that those costs too may be assessed against respondent.

PROCEDURAL HISTORY

On April 11, 2008, the Agency timely filed an administrative citation (AC) against Rob Pinski. On May 12, 2008, respondent filed a petition (Pet.) to contest the administrative citation. The Board accepted the petition for review on June 5, 2008.

A hearing was held before Board Hearing Officer Carol Webb on October 21, 2008 (Tr.). At that hearing Ms. Sheila Williams, an inspector with the Agency, testified. Tr. at 7. The hearing officer set a schedule for filing briefs, requiring the Agency to file a brief by November 13, 2008. Tr. at 19. The Hearing Officer directed respondent to file a brief by November 26, 2008 and noted that if no brief were received by December 1, 2008, "it shall be assumed that no brief will be filed". *Id.* and Hearing Officer Order (Oct. 30, 2008). The Agency timely filed a brief (Br.) that the Board received on November 13, 2008. Respondent has not filed a brief.

¹ The administrative citation was also filed against Joseph Cosentino. On June 5, 2008, the Board dismissed Joseph Cosentino on the motion of the Agency. *See IEPA v. Cosentino and Pinski*, AC 08-28 (June 5, 2008).

MOTION TO AMEND

On October 22, 2008, the Agency filed a motion to amend the administrative citation. Respondent did not file a response to the motion and pursuant to Section 101.500(d), any objection to the granting of the motions is deemed waived. 35 Ill. Adm. Code 101.500(d). At hearing, the Agency explained that a typographical error occurred in the administrative citation and the third violation was listed as Section 21(p)(4) of the Act (415 ILCS 5/21(p)(4) (2006)) rather than a violation of Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2006)). Tr. at 5. The Agency explained that the inspection report attached with the administrative citation properly cited to Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2006)). *Id.* Because the actual inspection report properly includes the allegation of a Section 21(p)(7) violation, and the evidence at the hearing addressed a violation of Section 21(p)(7), the Board will grant the motion.

FACTS

Respondent operates a facility located in St. Johns, Perry County, known to the Agency as St. Johns/Cosentino-P. and E. Construction, Pinski” and designated with Site Code No. 1450200009. AC at 1. The facility is an open dump operating without a permit. *Id.* On February 29, 2008, Ms. Williams inspected the site. *Id.*; Tr. at 9-10.

The Agency received a complaint concerning demolition of property in DuQuoin, Illinois, from which the waste was being removed to St. Johns and burned. Tr. at 9; Exh. 1, Narrative Inspection Report at 1. Ms. Williams spoke to Mr. Pinski and he indicated to her he was removing waste from DuQuoin to St. Johns. *Id.* In addition, Mr. Pinski states in his petition for review that he was tearing down a house, removing the wood, and burning the wood. Pet. at 1. Ms. Williams inspected both sites; however, only the material at the St. Johns site was included in this administrative citation. Tr. at 9-10.

Ms. William took six pictures depicting the DuQuoin demolition site and an additional 17 photographs of the St. Johns disposal site. Tr. at 12-14. In addition, four pictures were received from Ron Darnel, the animal and health officer for DuQuoin. Tr. at 12 and 15.

Of the pictures taken, Ms. Williams testified that some of the pictures depict vinyl siding that looks comparable to the siding shown at the house in DuQuoin. Tr. at 14-15. Ms. Williams described the photos as including charred dimensional lumber, wood, and ash. Tr. at 13. Ms. Williams noted that photos also include evidence of warped vinyl siding consistent with siding that had gotten too warm. *Id.* Ms. Williams testified that she is referring mainly to material located in Area A of her site drawing. Tr. at 14-15. Ms. Williams further testified that the pictures sent to her by Ron Darnel were taken of Area A and depict material on fire at the site. Tr. at 15-16. Those pictures and were taken late in the day on February 29, 2008 and forwarded to Ms. Williams. Tr. at 15-16.

STATUTORY BACKGROUND

Section 21(p) of the Act prohibits any person from causing or allowing open dumping in a manner which results in the following occurrences at the dump site:

(1) litter;

(3) open burning;

(7) deposition of general construction or demolition debris as defined in Section 3.160(a) of this Act. 415 ILCS 5/21(p)(1), (3), (7) (2006).

Section 3.305 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 5/3.305 (2006). Section 3.385 of the Act defines “refuse” as “waste”. 415 ILCS 5/3.385 (2006). Section 3.53 of the Act defines “waste” as, among other things, “garbage . . . or other discarded material” 415 ILCS 5/3.53 (2006).

It is well established that the Board accepts the definition of litter as that found in the Litter Control Act. St. Clair County v. Louis I. Mund, AC 90-64 (Aug. 22, 1991). Section 3 of the Illinois Litter Control Act provides:

“Litter” means any discarded, used or unconsumed substance or waste. “Litter” may include, but is not limited to, any garbage, trash, refuse, debris . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned, or otherwise disposed of improperly. 415 ILCS 105/3(a) (2006).

Section 3.300 defines “open burning” as “the combustion of any matter in the open or in an open dump.” 415 ILCS 5/3.300 (2006).

Section 3.160(a) of the Act defines general construction or demolition debris, in part, as “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.” 415 ILCS 5/3.160(a) (2006).

Section 31.1 of the Act allows the respondent to appeal the Agency’s issuance of an administrative citation within 35 days of the service of the administrative citation. 415 ILCS 5/31.1 (2006). Under Section 31.1(d)(2) of the Act, if the Board finds that the violations

occurred and were not the result of uncontrollable circumstances, the Board must enter an order finding the violation and assessing the statutory penalty. 415 ILCS 5/31.1(d)(2) (2006). Statutory penalties for administrative citations are set in the Act, and the Board has no leeway to consider mitigating or aggravating factors in determining penalty amounts. *See* 415 ILCS 5.42(b)(4-5) (2006).

AGENCY'S ARGUMENTS

The Agency asserts that the evidence establishes that respondent violated Sections 21(p)(1), (3), and (7) of the Act (415 ILCS 5/21(p)(1), (3), and (7) (2006)) by open dumping materials from a demolition site. Br. at 1. Specifically, the Agency points out that the respondent admitted to the inspector that respondent hauled waste away from DuQuoin to St. Johns. *Id.* Respondent also indicated in the response to the administrative citation that he would be taking away wood and burning it in the county. Br. at 2, citing Pet. at 1. The Agency asserts that the inspection report and testimony establish that materials including vinyl siding comparable to the siding at DuQuoin and ash from burning were present in St. Johns. Therefore, the Agency maintains that respondent caused or allowed open dumping of waste observed on February 29, 2008.

More specifically, the Agency notes that the Board uses the definition of "Litter" found in the Litter Control Act (415 ILCS 105/3(a) (2006)) and according to the definition and supporting case law, vinyl siding, dimensional lumber and ash constitute litter. Br. at 2. Because these items were all observed at the site, the Agency asserts that respondent violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2006)). *Id.*

The Agency further maintains that the charred wood, warped vinyl siding and ash, consolidated into a pile below a tree with scorched limbs was observed at the site. Br. at 3. The Agency asserts that presence of these materials establish open burning occurred at the site and thus respondent violated Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2006)). *Id.*

The Agency points out that the inspector observed vinyl siding and dimensional lumber at the site and these materials derived from the house located at the DuQuoin demolition site. Br. at 3. The Agency asserts that dimensional lumber qualifies as construction or demolition debris under the Act. Br. at 3, citing IEPA v. Yocum, AC 01-29 and 01-30 (consld.) (June 6, 2002); *aff'd* in an unpublished order as Yocum v. PCB, 4-02-0107 (June 20, 2003). Therefore, the Agency argues, respondent violated Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2006)).

The Agency opines that respondent's statement that "he didn't know it was illegal to burn" the debris from the DuQuoin site is not a valid defense, as knowledge or intent is not required for the Board to find a violation. Br. at 4, citing County of Will v. Utilities Unlimited, Inc. AC 97-41, slip op. at 5 (July 24, 1997). The Agency also takes issue with respondent's claim that after being informed that burning the debris was illegal he stopped. Br. at 4. The Agency points to the photos taken on the same day and sent to Ms. Williams from Ron Darnel as rebuttal to the respondent's claim. *Id.*

As to respondent's claim that the inspector told him he would receive three warning tickets, the Agency asserts respondent did receive an administrative citation with three violations. Br. at 4. The Agency notes that the original administrative citation did inadvertently cite a violation of Section 21(p)(4) rather than (p)(7) of the Act (415 ILCS 5/21(p)(4) and (7) (2006)). However, the Agency argues respondent never addressed this error and the Agency corrected the issue. *Id.* Furthermore, the Agency asserts that based on the evidence the violation of Section 21(p)(7) was clearly the correct allegation. *Id.*

DISCUSSION

The evidence in the record establishes that Mr. Pinski removed debris from a demolition site in DuQuoin to a site operated by Mr. Pinski in St. Johns. *See, i.e.,* Tr. at 9, Pet. at 1. Thus, by Mr. Pinski's own admission he committed open dumping. Mr. Pinski asserts that he did not know he was violating the law. However, the Board has long held that a person can cause or allow a violation of the Act even without knowledge or intent. County of Will v. Utilities Unlimited, Inc., AC 97-41, slip op. at 5 (July 24, 1997); IEPA v. Goff, AC 05-20 slip op. at 12. (Oct. 2005); IEPA v. Schrum, AC 05-18 slip op. at 19 (Mar. 16, 2006). Thus, Mr. Pinski's being unaware that he was violating the Act is not a defense against the alleged violation and the Board finds that Mr. Pinski open dumped waste.

Having found that Mr. Pinski open dumped waste the Board next looks to the evidence in the record to determine if Mr. Pinski's open dumping led to litter being present at the site. The pictures and testimony from the Agency establish that vinyl siding, ash and dimensional lumber are all present at the St. Johns site. These items have consistently been found by the Board to constitute "litter" as that term is used in the Act. *See* IEPA v. Yocum, AC01-29 and 01-30 (consld) (June 6, 2002). Therefore, the Board finds that Mr. Pinski open dumped waste leading to litter in violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2006)).

The evidence includes pictures that show actual burning of lumber at the St. Johns site. *See* Tr. at 15-16. In addition, the record includes testimony from Ms. Williams and pictures that show ash and charred wood. *See* Tr. at 13. Thus, the evidence supports a finding of violation and the Board finds that Mr. Pinski open dumped waste leading to open burning in violation of Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2006)).

Pictorial evidence and testimony firmly establish dimensional lumber and vinyl siding at the St. Johns site. *See* Tr. 13. Furthermore, Mr. Pinski indicated that a house was being torn down in DuQuoin and the material removed to St. Johns. *See* Pet. at 1. Therefore the Board finds that Mr. Pinski open dumped waste leading to deposition of general construction or demolition debris in violation of Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2006)).

CONCLUSION

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) (2006).

Because there are three violations of Section 21(p) of the Act (415 ILCS 5/21(p) (2006)) and these violations are the first offense, based on the record, the total civil penalty is \$4,500. Further, because a hearing was held in this proceeding, respondent is also liable for hearing costs. Therefore, the Board and the Agency must file a statement of costs with the Clerk within 14 days of this order.

This interim opinion constitutes the Board's findings of fact and conclusions of law. A final order will be issued pursuant to the interim order that follows

ORDER

1. The Board finds that respondent Mr. Rob Pinski violated Sections 21(p)(1) (3), and (7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (3), and (7) (2006)) at property located in St. Johns, Perry County.
2. The Illinois Environmental Protection Agency and the Clerk of the Board must each file a statement of their respective hearing costs within 14 days of the date of this order, or by March 8, 2009. Each statement must be supported by affidavit and served on Mr. Pinski.
3. The Board gives Mr. Pinski leave to respond to the statements of hearing costs ordered in paragraph 2 of this order within 21 days after service of that information. 35 Ill. Adm. Code 108.506(a). The Agency may then file a reply to Mr. Pinski's response within 14 days after service of the response. 35 Ill. Adm. Code 108.506(b).
4. The Board will then issue a final order assessing a statutory penalty of \$4,500 for the violations and awarding appropriate hearing costs. 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 19, 2009, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board