

ILLINOIS POLLUTION CONTROL BOARD  
December 15, 2016

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY )  
 )  
Complainant, )  
 )  
v. ) AC 12-16  
 ) (Administrative Citation)  
JULIE WEBBER, )  
 )  
Respondent. )

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

JULIE WEBBER APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by G.M. Keenan):

On September 26, 2011, the Illinois Environmental Protection Agency (“Illinois EPA”) inspected Julie Webber’s property in Lafayette, Stark County. Based on the inspection’s findings, Illinois EPA filed an administrative citation against Ms. Webber on November 18, 2011. The citation alleged that Ms. Webber caused or allowed the open dumping of waste in a manner resulting in (1) litter and (2) deposition of general construction or demolition debris or clean construction or demolition debris, violating Section 21(p)(1) and 21(p)(7) the Illinois Environmental Protection Act (the “Act”). The Board held a hearing on this matter on October 5, 2016.

Below, the Board finds that Ms. Webber violated the Act as alleged by Illinois EPA.<sup>1</sup> The Board also partially grants and partially denies Illinois EPA’s motion to strike Ms. Webber’s post-hearing brief. The Board directs Illinois EPA and the Clerk of the Board to file documentation of hearing costs by January 16, 2017. Ms. Webber may respond to any request for costs by February 15, 2017.

**BACKGROUND**

Illinois EPA inspected Ms. Webber’s property, located at 404 Willow Street, Lafayette, Stark County, on September 26, 2011.<sup>2</sup> The inspection report describes and depicts various items scattered at the property, including a plastic tank, a trailer, tires, vehicles, telephone poles, and miscellaneous debris. The inspection report formed the basis for the administrative citation that Illinois EPA filed before the Board on November 18, 2011 (“AC”). Ms. Webber filed a

---

<sup>1</sup> 415 ILCS 5/21 (2014).

<sup>2</sup> Exh. to Administrative Citation (inspection report).

petition contesting the administrative citation on January 3, 2012 (“Pet.”), alleging that she did not commit the alleged violations.

The Board accepted the petition for hearing on January 19, 2012. Due to separate litigation related to ownership of the property, a hearing was not immediately scheduled. After the separate matter was resolved, this matter could proceed. The Board held a hearing on October 5, 2016 in Toulon, Stark County. The Illinois EPA employee who inspected Ms. Webber’s property testified at the hearing. Illinois EPA filed a post-hearing brief on October 26, 2016 (“IEPA Br.”); Ms. Webber filed a post-hearing brief on November 17, 2016 (“Webber Br.”). Illinois EPA then filed a motion to strike Ms. Webber’s brief on November 24, 2016 (“IEPA Mot.”). Ms. Webber did not respond to this motion.

## **DISCUSSION**

### **Ms. Webber Caused or Allowed Open Dumping Resulting in Litter and Deposition of Construction and Demolition Debris**

Illinois EPA alleges that Ms. Webber caused or allowed the open dumping of waste in a manner resulting in litter (violating Section 21(p)(1)) and deposition of construction or demolition debris (violating Section 21(p)(7)).<sup>3</sup> To prove this, Illinois EPA must first show that the items on the property constitute open dumping of waste.<sup>4</sup> Second, Illinois EPA must show that Ms. Webber caused or allowed this open dumping. Then, Illinois EPA must show that this open dumping resulted in litter and deposition of construction or demolition debris.

#### **Open Dumping of Waste**

The Act defines waste as “any garbage . . . or other discarded material.”<sup>5</sup> Illinois EPA argues that the items that the inspector observed at Ms. Webber’s property are discarded material constituting waste under the Act.<sup>6</sup> The report’s photographs of the items on the property support Illinois EPA’s argument; the items do not appear intended for reuse. This characterization is further reinforced by the inspector’s testimony at hearing.<sup>7</sup> The Board finds that items on Ms. Webber’s property described in the inspection report are discarded material and “waste” as defined in the Act.

The Act defines open dumping as “the consolidation or refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill” (where “refuse” equates to “waste”).<sup>8</sup> No party stated that Ms. Webber’s property is a permitted sanitary landfill. The Board finds that the waste has been open-dumped at Ms. Webber’s property.

<sup>3</sup> IEPA Br. at 1, citing 415 ILCS 5/21(p)(1), (p)(7) (2010).

<sup>4</sup> See IEPA v. Ray Newingham, AC 11-13, slip op. at 4 (Feb. 16, 2012).

<sup>5</sup> 415 ILCS 4/3.535 (2014).

<sup>6</sup> IEPA Br. at 1-2, citing Exh. to AC at 3-17 (inspection report).

<sup>7</sup> Hearing Transcript at 7:8–13:23 (inspector’s testimony).

<sup>8</sup> 415 ILCS 5/3.305 (2014) (defining open dumping), 415 ILCS 5/3.385 (2014) (equating refuse with waste).

### **Cause or Allow**

As an Illinois Appellate Court held in Gonzalez v. Pollution Control Board, an owner of property is responsible for pollution on the land: the owner caused or allowed the pollution unless the owner “lacked the capability to control the source or had undertaken extensive precautions to prevent vandalism or other intervening causes.”<sup>9</sup>

Ms. Webber argues that property ownership is not sufficient to show that she caused or allowed pollution. In support, she cites a Supreme Court of the United States decision interpreting federal law—the Comprehensive Response, Compensation and Liability Act.<sup>10</sup> However, this decision has no bearing on the Illinois Environmental Protection Act. Though Ms. Webber refers two other cases in support of her argument, the Board is unable to parse the vague citations provided, and so cannot consider them.

Illinois EPA’s inspector testified that Ms. Webber owns the property in question.<sup>11</sup> No evidence shows that she could not control the pollution or took any precaution to prevent it. The Board finds that Ms. Webber caused or allowed open dumping of waste.

### **Litter**

Under Section 21(p)(1) of the Act, no person shall cause or allow the open dumping of any waste in a manner resulting in litter.<sup>12</sup> Because the Act does not define the term “litter,” the Board refers to the Litter Control Act, which 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 . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly.<sup>13</sup>

As stated above, the items found at Ms. Webber’s property constitute waste, and therefore are also “litter” as defined by the Litter Control Act. The Board finds Ms. Webber caused or allowed the open dumping of waste in a manner resulting in litter, in violation of Section 21(p)(1) of the Act.

---

<sup>9</sup> Gonzalez v. Pollution Control Bd., 355 Ill. Dec. 890, 897, 960 N.E.2d 772, 779 (2011) (citations omitted).

<sup>10</sup> Webber Br. at ¶ 5, citing Burlington Northern v. U.S., 556 U.S. 599 (2009).

<sup>11</sup> Hearing Transcript at 8:16-17.

<sup>12</sup> 415 ILCS 5/21(p)(1) (2014).

<sup>13</sup> 415 ILCS 105/3(a) (2014).

### **Deposition of Construction or Demolition Debris**

Under the Act, “construction or demolition debris” includes wood, metal, bricks, and rock materials.<sup>14</sup> The Illinois EPA employee observed such materials during his inspection.<sup>15</sup> The Board finds that Ms. Webber caused or allowed open dumping of waste resulting in the deposition of construction or demolition debris in violation of Section 21(p)(7) of the Act.<sup>16</sup>

### **Motion to Strike**

After both parties filed post-hearing briefs, Illinois EPA filed a motion to strike Ms. Webber’s post-hearing brief. Illinois EPA argued that Ms. Webber’s brief made statements of fact that were not presented at hearing. The Board’s administrative rules allow participants to submit written statements of fact before or at hearing, and require such participants to be subject to cross-examination.<sup>17</sup> The Board’s rules do not allow participants to submit written statements of fact after hearing, as Ms. Webber has done. The Board therefore grants Illinois EPA’s motion to strike with respect to the statements of fact made in paragraphs one, two, three, and four of her post-hearing brief.

The fifth paragraph in Ms. Webber’s post-hearing brief, however, contains statements of law, not statements of fact. Illinois EPA’s motion to strike is denied with respect to this paragraph.

### **Civil Penalty and Hearing Costs**

The Board finds that Ms. Webber violated Sections 21(p)(1) and 21(p)(7) of the Act.<sup>18</sup> The civil penalty in an administrative citation for a violation of Section 21(p) is \$1,500 for a person’s first violation, for each section that is violated. This appears to be Ms. Webber’s first violation, so she is subject to a civil penalty of \$3,000.

If Illinois EPA proves a violation at a hearing, a respondent will also be held liable for hearing costs of the Board and Illinois EPA.<sup>19</sup> The Board directs Illinois EPA and the Clerk of the Board to file hearing cost documentation, to which Ms. Webber may respond.<sup>20</sup> After the time periods for the filings on hearing costs have run, the Board will issue a final opinion and order imposing civil penalties and assessing appropriate hearing costs.

---

<sup>14</sup> 415 ILCS 5/3.160(a) (2014).

<sup>15</sup> Hearing Transcript at 11:7-22.

<sup>16</sup> 415 ILCS 5/21(p)(7) (2014).

<sup>17</sup> 35 Ill. Adm. Code 101.628(b).

<sup>18</sup> 415 ILCS 5/21(p)(1), 21(p)(7) (2014).

<sup>19</sup> 415 ILCS 5/42(b)(4-5) (2014).

<sup>20</sup> 35 Ill. Adm. Code 108.506(a).

## CONCLUSION

The Board finds that Ms. Webber caused or allowed the open dumping of waste in a manner resulting in litter and the deposition of construction or demolition debris in violation of Sections 21(p)(1) and 21(p)(7) of the Act.<sup>21</sup> The Board directs Illinois EPA and the Clerk of the Board to file a statement of hearing costs by January 16, 2017. Ms. Webber may respond to any requests for costs by February 15, 2017.

## ORDER

1. The Board finds that Julie Webber violated Sections 21(p)(1) and 21(p)(7) of the Illinois Environmental Protection Act.<sup>22</sup>
2. The Illinois Environmental Protection Agency must file a statement of hearing costs by January 16, 2017, which is the first business day after the 30th day after this order.<sup>23</sup> Within that same period, the Clerk of the Illinois Pollution Control Board must also file and serve upon Ms. Webber a statement of the Board's hearing costs supported by affidavit.<sup>24</sup>
3. Ms. Webber may file any objections to those statements by February 15, 2017.<sup>25</sup>
4. After the time for filing statements of hearing costs and objections has run, the Board will issue a final order assessing a statutory penalty of \$3,000 for the violations and awarding appropriate hearing costs.<sup>26</sup>

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 15, 2016, by a vote of 4-0, Member Santos voted Present.




---

John T. Therriault, Clerk  
Illinois Pollution Control Board

---

<sup>21</sup> 415 ILCS 5/21(p)(1), (p)(7) (2014).

<sup>22</sup> 415 ILCS 5/21(p)(1), (p)(7) (2014).

<sup>23</sup> 35 Ill. Adm. Code 108.502.

<sup>24</sup> 35 Ill. Adm. Code 108.504, 108.506(a).

<sup>25</sup> 35 Ill. Adm. Code 108.506(a).

<sup>26</sup> 35 Ill. Adm. Code 108.500(b).