

ILLINOIS POLLUTION CONTROL BOARD  
May 15, 2014

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|------------------------|---|---------------------------|
| ILLINOIS ENVIRONMENTAL | ) |                           |
| PROTECTION AGENCY,     | ) |                           |
|                        | ) |                           |
| Complainant,           | ) |                           |
|                        | ) |                           |
| v.                     | ) | AC 13-7                   |
|                        | ) | (IEPA No. 175-12-AC)      |
| ROBERT MANKER,         | ) | (Administrative Citation) |
|                        | ) |                           |
| Respondent.            | ) |                           |

INTERIM OPINION AND ORDER OF THE BOARD (by D. Glosser):

On July 23, 2012, the Illinois Environmental Protection Agency (Agency) timely filed an administrative citation (AC) against Robert Manker (respondent) alleging that respondent violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2012)). The administrative citation was issued for alleged violations occurring at a facility located at 2287 West Street, Literberry, Morgan County (the Site). The property is commonly known to the Agency as “Literberry/Manker” and designated with Site Code No. 1378580003. For the reasons below, the Board finds that respondent violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2012)) and that a fine of \$4,500 is proper. Further the Agency and the Board are directed to file statements of hearing costs within 14 days of this order.

**PROCEDURAL HISTORY**

On July 23, 2012, the Agency timely filed an administrative citation against Robert Manker. The Agency also filed an inspection memo with photos (Memo) in support of the AC. On August 14, 2012, respondent filed a petition to contest the administrative citation. However, the Board found the petition contained deficiencies, including: failing to state adequate grounds for appeal; failing to include the proper caption and number; failing to name the Agency within the petition; and failing to include evidence that respondent served the Agency with the petition. Therefore, the Board ordered respondent to file an amended petition.

On September 27, 2012, respondent timely filed an amended petition for review (Am. Pet.). The amended petition was timely because it was postmarked on the filing deadline of September 24, 2012. *See* 415 ILCS 5/31.1(d) (2012); 35 Ill. Adm. Code 101.300(b). In the amended petition, respondent admitted to owning the Site and listed several reasons why the allegedly open-dumped items were on the Site. Am. Pet. at 1. Respondent explained that the wood flooring was left at the Site for another individual to go through in order to make crafts. *Id.* Respondent also explained that the cardboard boxes were left at the Site to start fires, the tires were new and had been on cars he sold for scrap, and the trusses and lumber were left to build a garage that respondent had not yet had time to complete. *Id.* Respondent also argued

that he had hired a neighbor to clean up his yard prior to receiving the administrative citation. *Id.* Respondent admitted to removing the drywall cited in the AC from a partial mobile home located on the Site, in order to create more room in the mobile home. *Id.* Respondent also claimed he cleaned up the Site prior to receiving the charges against him. *Id.*

On October 4, 2012, the Board accepted the amended petition for hearing. A hearing was held before Board Hearing Officer Carol Webb on January 29, 2014 (Tr.). At the hearing, Mr. Mark Weber, an inspector with the Agency, and Mr. Robert Manker testified. Tr. at 5 & 27. The hearing officer set a schedule for filing briefs, requiring the Agency to file a brief by March 10, 2014. Tr. at 32. The hearing officer directed respondent to file a brief by April 20, 2014. *Id.* Upon Agency request, the hearing officer extended the briefing schedule by hearing officer order on March 11, 2014. Hearing Officer Order at 1. The Agency timely filed a post-hearing brief on March 24, 2014. Respondent has not filed a brief.

### FACTS

The respondent owns the Site, which is located in Literberry, Morgan County. Am. Pet. at 1. Mr. Weber originally inspected the Site on June 22, 2011. At that time, a large pile of trash was present on the Literberry/Manker property. Memo at 1; Tr. at 8. After the June 22, 2011 inspection, the Agency sent respondent an Administrative Citation Warning Notification (ACWN). Memo at 1. The violations of the Act cited in the ACWN included Sections 9(a), 9(c), 21(a), 21(d)(1), 21(d)(2), 21(e), 21(p)(1), 21(p)(3), 21(p)(7), and 55(a)(1). *Id.*; 415 ILCS 5/9(a), (c), 21(a), (d)(1), (d)(2), (e), (p)(1), (p)(3), (p)(7), 55(a)(1) (2012).

On June 6, 2012, Mr. Weber re-inspected the Site. Tr. at 7-8. The large pile of trash identified during the 2011 inspection had been removed, but additional debris had since been deposited on the Site. Memo at 1. The materials present during the 2012 inspection consisted of dimensional lumber, landscape waste, plastic, cardboard, hardwood flooring, tarps, paper, used tires, and drywall. Tr. at 9; Memo at 4-6. The materials were located in the open, unprotected from the elements. *Id.* Also present on the Site was partially-burned debris in a burn pit. Tr. at 9.

At hearing, Mr. Manker testified on his own behalf. Tr. at 27. Mr. Manker testified that he did not know a lot of his infractions were illegal. Rather, he testified that he has seen the alleged open dumping “done in many places” in his area. Tr. at 27. Mr. Manker also testified that he owns a construction company. *Id.* at 28-29. When discussing the items pictured in hearing Exhibit A, Mr. Manker testified, “We had just finished a job. We dumped it off. It had not been straightened out and moved to where we take stuff.”<sup>1</sup> *Id.* at 29. Mr. Manker testified that his practice was to bring waste to his yard until he had enough to fill a large dumpster. *Id.* at 28. Mr. Manker continued by stating he would burn some of the dimensional lumber, until he found out burning it was illegal. *Id.* Mr. Manker then testified that all of the materials he was cited for have either been cleaned up or are covered properly by a tarp. *Id.* at 28-29. When questioned by the Agency at hearing, Mr. Manker answered that he eventually obtained a dumpster to facilitate removal of the waste from the Site. *Id.* at 31. Mr. Manker finished his

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<sup>1</sup>The Board notes that hearing Exhibits A through D were initially filed, on July 23, 2012, with the Board as a part of the AC inspection memo. Tr. at 18.

testimony by stating that he is trying to cooperate with the Agency, and because he has since complied with the regulations, asked the Agency to either forgive or reduce the fine. *Id.* at 29. Mr. Manker also testified that he was unable to prevent the violations due to uncontrollable circumstances. *Am. Pet.* at 1.

### **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;

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(3) open burning;

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(7) deposition of general construction or demolition debris as defined in Section 3.160(a) of this Act; or clean construction or demolition debris as defined in Section 3.160(b) of this Act. 415 ILCS 5/21(p)(1), (3), and (7) (2012).

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 (2012). Section 3.385 of the Act defines “refuse” as “waste.” 415 ILCS 5/3.385 (2012). Section 3.53 of the Act defines “waste” as, among other things, “garbage . . . or other discarded material . . .” 415 ILCS 5/3.53 (2012).

It is well established that the Board accepts the definition of litter 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) (2012).

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 (2012).

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; asphalt roofing shingles and other roof coverings; reclaimed or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and corrugated cardboard,

piping or metals incidental to any of those materials.” 415 ILCS 5/3.160(a) (2012).

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 (2012). 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) (2012). 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) (2012).

### **AGENCY’S ARGUMENTS**

The Agency asserts that respondent violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2012)) by open dumping waste that resulted in litter, open burning, and deposition of clean or general construction debris. Br. at 5. The Agency, in its post-hearing brief (Br.), offered five arguments in support of the AC. Each of the arguments will be addressed below.

#### **The Respondent Caused or Allowed Open Dumping**

The Agency states that Mr. Weber took field notes and documented his inspection with photographs entered into evidence. Br. at 5. The Agency notes that Mr. Weber testified to the photographs. *Id.* The Agency emphasizes Mr. Weber’s description of the materials, including the dry wall on respondent’s property, as not being protected from the elements or insects. *Id.* The Agency further points to the respondent’s admission that respondent operates a construction business, and the dry wall was from the on Site mobile home, and that some of the debris was from a job his construction crew had just completed at another location. *Id.* The Agency then notes that the respondent admitted that his employees open dumped the debris on the Site after the job. *Id.*

The Agency then points out that Mr. Weber testified that the respondent’s property is not a sanitary landfill, and therefore the preponderance of the evidence admitted in the case proves that respondent caused or allowed open dumping. *Id.* at 6-7.

#### **The Respondent’s Open Dumping Resulted in Litter**

The Agency argues that the Board must rely on the definition of “litter” found in the Illinois Litter Control Act, 415 ILCS 105/1 *et seq.* Br. at 7. The Agency also cites Illinois EPA v. Porter et al., PCB No. AC 2012-053 (Sept. 5, 2013), to show that the Board found litter to include “discarded materials such as cardboard, plastics, lumber, and other miscellaneous waste.” *Id.*

The Agency reiterates that Mr. Weber testified he found materials such as corrugated cardboard and lumber that was not protected from the elements, leading him to believe the respondent was not saving them for later use. Br. at 7-8. The Agency also points to Mr. Weber's testimony that there was a vinyl tarp, which is a form of plastic, lying out that was not covering or protecting any material. *Id.*

The Agency argues that the evidence in this case shows that respondent caused or allowed open dumping of materials the Board has previously deemed litter. Br. at 8. The Agency further argues that this proves respondent was in violation of Section 21(p)(1) of the Act. 415 ILCS 5/21(p)(1) (2012). *Id.*

### **The Respondent's Open Dumping Resulted in Open Burning**

The Agency states that Section 3.300 of the Act defines "open burning" as "the combustion of any matter in the open or in an open dump." Br. at 8, quoting 415 ILCS 5/3.300 (2012).

The Agency cites Mr. Weber's observations of a burn pit on respondent's property. Br. at 8. The Agency also points out that hearing Exhibit B contains the image of a burn pit with cardboard boxes in it. *Id.*; *see also* Memo at 5. The Agency then notes Mr. Weber's testimony that the bricks, depicted in Exhibit B, had ash on them and exhibited some stress from heat. *Id.* at 9.; *see also* Memo at 5. Mr. Weber also documented partially burned wood and ashy residue within the pit. *Id.*

The Agency argues that the respondent verified this information when he admitted using the cardboard to start fires at the pit, where his family would "come out and do wiener roasts and stuff." Br. at 9; *see also* Tr. at 23. The Agency points to respondent's testimony that he used to burn lumber as well, before he realized it is illegal to burn 2 by 4's. *Id.* Further the Agency details respondent's claim that he only used the burn pit for family recreation, not commercially. *Id.*

The Agency argues that based on the evidence they have proved respondent violated Section 21(p)(3) of the Act, by burning cardboard and dimensional lumber through combustion in an open pit. *Id.*; 415 ILCS 5/21(p)(3) (2012).

### **The Respondent's Open Dumping Resulted in the Deposition of Clean or General Construction or Demolition Debris**

The Agency states that Mr. Weber observed a variety of open dumped general construction or demolition debris at the Site during his inspections. *Id.* In support of this assertion, the Agency points to Mr. Weber's testimony of observing and photographing debris including: lumber, including wood or wood products such as sheeting or strand board; dimensional lumber; finished hardwood floors; vinyl tarps; drywall; and corrugated cardboard. Br. at 10. The Agency describes Mr. Weber's account of the debris as being used, and looking like it had been removed from another building. *Id.* The Agency emphasized Mr. Weber's testimony that the finished wood flooring had nails, the cardboard boxes were empty, the drywall

was broken up, and some of the lumber had mold and was rotting. *Id.* at 10-11; *see also* Tr. at 13-19. Again the Agency cited Mr. Weber's testimony that none of the above materials were protected or preserved from the elements. *Id.* at 11.

The Agency argues that the respondent corroborated much of Mr. Weber's testimony. *Id.* The Agency cites respondent's testimony, with regard to the debris, that "[w]e had just finished a job. That's why there's tarps. We had used the tarps on the roof [of the job]. The guys pulled up, backed the truck up, dumped everything off and took off." Br. at 11; *see also* Tr. at 30. Further the Agency points to respondent's specific testimony that there were trusses and two-by-fours on his property not protected from the elements. *Id.*

Therefore, the Agency argues that based on a preponderance of the evidence respondent caused or allowed open dumping that resulted in deposition of general construction or demolition debris at the Site. Br. at 11. Thus the Agency requests that the Board find respondent violated Section 21(p)(7) of the Act. *Id.*; 415 ILCS 5/21(p)(7) (2012).

### **The Facts undercut Respondent's Defense**

The Agency argues that respondent's assertion that he was unable to prevent the violations fails to identify the circumstances, what made them uncontrollable, and how they caused him to be unable to abide by the regulation. Br. at 12. The Agency claims that respondent's testimony undermines his defense, explaining that the respondent testified about picking up the debris and placing it in a dumpster. *Id.* The Agency further explains that this means that the respondent was able to prevent the violations by doing exactly what he ultimately did, placing the debris in a dumpster for proper disposal. *Id.*

### **DISCUSSION**

The Agency alleges that the respondent violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2012)) by causing or allowing the open dumping of waste resulting in litter, open burning, and deposition of general construction or demolition debris or clean construction or demolition debris. AC at 2. As a threshold matter, to prove a violation of Section 21(p)(1), 21(p)(3), and 21(p)(7) of the Act, the Agency must first prove a violation of Section 21(a) of the Act (415 ILCS 5/21(a) (2012)). Section 21(a) provides that "[n]o person shall: (a) Cause or allow the open dumping of any waste." 415 ILCS 5/21(a) (2012).

The photos included in Weber's inspection report, along with his testimony at hearing, provide evidence that open dumping occurred at the Site. Memo at 1-6; Tr. at 6-21. Respondent does not contest the Agency's assertion that the Site is operating without an Agency permit. In addition, Mr. Weber's inspection photos depict refuse and waste at the Site. Respondent's testimony supports a finding that the refuse or waste was consolidated at the Site from various construction sites.

Mr. Weber's testimony and photographs establish that the Site contained approximately 20 cubic yards of discarded material. Memo at 4-6. The Board finds that the piles of cardboard,

dimensional lumber, plastic, drywall, hardwood flooring, and other materials at the Site were discarded, and therefore are “waste” under the Act. *See* 415 ILCS 5/3.53 (2012). Specifically, Weber’s photographs depict charred remains of solid waste inside of a burn pit, building materials, and municipal waste. Memo at 4-6. The Board finds that the materials depicted in Weber’s photographs were “discarded” and therefore constitute “waste” under the Act. Therefore, the Board finds that in bringing the materials to his unpermitted property and depositing them there, respondent “open dumped” the waste.

The Respondent argues that he had no knowledge that his actions were illegal, that the open dumping resulted from uncontrollable circumstances, and that he voluntarily cleaned up the debris in question before receiving the citation. Tr. 27-29. However, because knowledge is not an element of a violation of the Act, lack of knowledge is not a defense. *See Caseyville Sport Choice, LLC v. Erma I. Sieber, et al.*, PCB 08-30, slip op. at 9 (Feb. 3, 2011). In order for a violation to be found, “it is not necessary to prove guilty knowledge or *mens rea*.” *People v. A.J. Davinroy Contractors*, 249 Ill. App. 3d 788, 793 (5th Dist. 1993). To prove a violation, the Agency only needs to show that “the alleged polluter has the capability of control over the pollution or that the alleged polluter was in control of the premises where the pollution occurred.” *Id.*, citing *Phillips Petroleum Co. v. IEPA*, 72 Ill. App. 3d 217, 220-21 (2d Dist. 1979). Finally, in *IEPA v. Jack Wright*, AC 89-227, slip op. at 7 (Aug. 30, 1990), the Board stated that “[t]he 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.”

Here, respondent does not dispute that he is the owner of the Site. Tr. at 27. Respondent failed to elaborate on what uncontrollable circumstances led to the violations. The respondent also admits on direct examination that he was subsequently able to obtain a dumpster to dispose of the debris, meaning that properly disposing of the debris was possible and feasible. The Board finds that neither respondent’s lack of knowledge of the law nor the voluntary cleanup of the Site is a valid defense to alleged violations of the Act.

As noted above, the Board has adopted the definition of “litter” provided in the Litter Control Act for purposes of Section 21 of the Act. *See St. Clair County*, AC 90-64, slip op. at 4, 6. Consistent with the discussion above, the Board finds that the discarded material on respondent’s property falls within the definition of “litter.” Thus, the Board finds that respondent’s open dumping of waste resulted in litter in violation of Section 21(p)(1) of the Act. 415 ILCS 5/21(p)(1) (2012). Mr. Weber’s photographs depict a burn pit on the Site, “in the open and not enclosed in any way,” supporting the Agency’s allegation of open dumping that resulted in open burning at the Site in violation of Section 21(p)(3) of the Act. 415 ILCS 5/21(p)(3) (2012).

As stated above, the Board’s definition of “general construction or demolition debris” comes from Section 3.160(a) of the Act. 415 ILCS 5/3.160(a) (2012). Mr. Weber’s photographs show drywall, dimensional lumber, finished hardwood floors, and other wood products that classify as general construction and demolition debris at the Site. Memo at 4-6; Tr. at 9. Thus the Board finds that respondent’s open dumping of waste resulted in the deposition of clean or general construction or demolition debris in violation of Section 21(p)(7) of the Act. 415 ILCS 5/21(p)(7) (2012).

Accordingly, the Board finds that respondent caused or allowed the open dumping of waste resulting in litter, open burning, and deposition of construction debris. The Board finds that respondent did not establish a valid defense to the alleged violations. Therefore, the Board finds that respondent violated Sections 21(p)(1), 21(p)(3) and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2012)).

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

The Agency seeks the statutory \$4,500 civil penalty for the three violations that are the subject of the AC. AC at 2. Because the Board finds that respondent violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act, the Board must now address the issue of civil penalties 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 shall be \$3,000 for each violation of any provision of subsection (p) of Section 21 . . . that is the person's second or subsequent adjudicate[ed] violation of that provision. 415 ILCS 5/42(b)(4-5) (2012).

In this case, the Board finds respondent violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2012)). The Agency has provided no evidence that these are respondent's second or subsequent adjudicated violations of the Act. Therefore, the Board will assess a total penalty of \$4,500 in its final opinion and order.

In addition, by unsuccessfully contesting the AC at hearing, the respondent must pay the hearing costs of the Agency and the Board. *See* 415 ILCS 5/42(b)(4-5) (2012); 35 Ill. Adm. Code 108.500(b)(3). The Agency and the Clerk of the Board are each directed to file a statement of costs, supported by affidavit, and to serve the filing on respondent. The respondent will have an opportunity to respond to the requests for hearing costs, as provided in the order below.

### **CONCLUSION**

The Board finds that respondent violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2012)) by causing or allowing the open dumping of waste resulting in litter, open burning, and deposition of general construction or demolition debris or clean construction or demolition debris. Respondent must pay a civil penalty of \$4,500 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 costs documentation, to which respondent may respond. After the time for hearing costs filings has expired, the Board will issue a final opinion and order imposing the civil penalty on respondent and assessing against him any appropriate hearing costs.

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




**ORDER**

1. The Board finds that respondent Robert Manker violated Sections 21(p)(1), 21(p)(3), and 21(p)(7) of the Environmental Protection Act (415 ILCS 5/21(p)(1), (p)(3), (p)(7) (2012)).
2. By May 29, 2014, the Agency and Clerk of the Board must each file a statement of hearing costs, supported by affidavit, with service on the respondent.
3. By June 12, 2014, respondent Robert Manker may file a response with the Board to the filings required by this order, with service on the Agency.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 15, 2014, by a vote of 4-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board