

On April 12, 2019, the People filed a motion to deem facts admitted and for summary judgment. Hearing Officer Order (Apr. 29, 2019). Accompanying the People's motion are exhibits A, B, and C. Exhibit A is the People's notice of filing and complaint and an unsigned certified mail return receipt. Mot., Exh. A. Exhibit B is United States Postal Service tracking information. Mot., Exh. B. Exhibit C is an affidavit of Mr. David Asselmeier, Unit Manager for the Data and Inventory Support Unit of the Air Quality Planning Section in the Agency's Bureau of Air. Mot., Exh. C. Also marked as Exhibit C is a six-page copy of Dressler's 2014 Annual Emission Report (AER). *Id.* at 2-7. At the July 1, 2019 status conference, Dressler failed to appear. Hearing Officer Order (July 1, 2019). As of the date of this order, Dressler has not filed any answer or responsive pleadings to the complaint or responded to the motion to deem facts admitted and for summary judgment.

COMPLAINT

Count I of the complaint alleges that Dressler, as the owner or operator of emission units, failed to timely submit AERs for calendar years 2011, 2012, 2014, 2015, and 2017 violating Section 9(a) of the Act (415 ILCS 5/9(a) (2016)), Section 201.302(a) of the Board's air pollution rules (35 Ill. Adm. Code 201.302(a)), and Section 254.132(a) of the Agency's air pollution regulations (35 Ill. Adm. Code 254.132(a)).¹ Comp. at 5.

MOTION TO DEEM FACTS ADMITTED

The People's motion requests the Board deem the material allegations in its complaint to be admitted by Dressler. Mot. at 12. Under the Board's procedural rules, "the respondent may file an answer within 60 days after the receipt of the complaint if the respondent wants to deny any allegations in the complaint. All material allegations in the complaint will be taken as admitted if no answer is filed." 35 Ill. Adm. Code 103.204(d).

Dressler failed to answer the complaint within 60 days, although the hearing officer extended the deadline because the People disclosed the parties were discussing settlement. Hearing Officer Order (Jan. 9, 2019). After the parties failed to reach a settlement, the hearing officer extended the deadline for an attorney to file an answer on behalf of Dressler to April 10, 2019. Hearing Officer Order (Mar. 11, 2019). Although Mr. Charles Dressler stated he filed an answer to the complaint on behalf of Dressler, the People and the Board did not receive it. Hearing Officer Order (Apr. 29, 2019). The Board grants the People's motion and deems admitted the material allegations in the People's complaint. *See* 35 Ill. Adm. Code 103.204(d).

FACTS

Dressler is an active corporation organized in Missouri and authorized to do business in Illinois. Comp. at 1-2. Dressler operates a grain elevator located at 409 West Apple Street, Freeburg, St. Clair County, Illinois. *Id.* at 2. Dressler's operations include grain receiving,

¹ The Board notes that the People's motion states there are two counts in the complaint, but the complaint and the motion only address one count. Mot. at 1.

cleaning, drying, transfer, and loadout operations. *Id.* The facility’s operations emit or can emit particulate matter into the environment. *Id.*

Dressler applied for and obtained from the Agency a Lifetime Operating Permit No. 95050206 for its Grain Elevator on June 23, 1999. *Id.* The permit requires Dressler to submit AERs by May 1 of the year following the calendar year in which the emissions took place. *Id.* at 4. Dressler, however, repeatedly failed to timely submit AERs. *Id.* Dressler submitted AERs for calendar years 2011, 2012, 2014, 2015, and 2017 on August 9, 2018. *Id.* The AER for calendar year 2011 was submitted 2,291 days late. *Id.* at 5. The AER for calendar year 2012 was submitted 1,926 days late. *Id.* The AER for calendar year 2014 was submitted 1,196 days late.² *Id.* The AER for calendar year 2015 was submitted 830 days late. *Id.* The AER for calendar year 2017 was submitted 100 days late. *Id.* *Id.* at 4. Dressler did, however, timely submit the AER for calendar year 2013. *Mot.* at 10.

MOTION FOR SUMMARY JUDGMENT

The People seek summary judgment against Dressler. The Board’s procedural rules require a party to respond to a motion for summary judgment within 14 days after receipt of the motion. 35 Ill. Adm. Code 101.516(a). If no response is filed, “the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d); *see People v. Env’tl Health and Safety Svcs., Inc.*, PCB 05-51, slip op. at 13 (July 23, 2009). Dressler has not responded to the People’s motion or filed a motion to extend the time to respond. The Board finds that by failing to respond to the People’s motion for summary judgment, Dressler has waived any objection to the Board granting the motion for summary judgment. *See id.*

The People argue that the facts deemed admitted, together with the exhibits supporting the motion for summary judgment, contain all material facts necessary to establish liability for the violations alleged in the complaint. *Mot.* at 4-6. Based on the facts deemed admitted, Mr. Asselmeier’s affidavit, and Dressler’s 2014 AER, the People allege that Dressler violated Section 201.302(a) of the Board’s air pollution rules (35 Ill. Adm. Code 201.302(a)), Section 254.132(a) of the Agency’s air pollution regulations (35 Ill. Adm. Code 254.132(a)), and Section 9(a) of the Act (415 ILCS 5/9(a) (2016)). *Mot.* at 6. The People assert there are no genuine issues of fact, and that the People are entitled to judgment as a matter of law. *Id.*

Next the Board sets forth the relevant statutory and regulatory provisions and standard of review for the motion for summary judgment, and then decides the motion.

Statutory and Regulatory Background

Section 9(a) of the Act states no person shall:

² Dressler initially submitted its AER for calendar year 2014 on February 2, 2018. *Comp.* at 4. This report was incomplete because it left blank the page requiring a report of actual emissions. *Id.* Dressler submitted the complete 2014 report on August 9, 2018. *Id.*; *Mot.* at 4-5.

- (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act. 415 ILCS 5/9(a) (2016).

Section 3.315 of the Act defines “Person” as “any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company.” 415 ILCS 5/3.315 (2016).

Section 3.165 of the Act defines “Contaminant” as “any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.” 415 ILCS 5/3.165 (2016).

Section 201.302(a) of the Board’s air pollution rules states:

- (a) The owner or operator of any emission unit or air pollution control equipment meeting the applicability criteria contained in 35 Ill. Adm. Code 254.102 shall submit to the Agency as a minimum, annual reports detailing the nature, specific emission units and total annual quantities of all specified air contaminant emissions; provided, however, that the Agency may require more frequent reports when necessary to accomplish the purposes of the Act and this Chapter. 35 Ill. Adm. Code 201.302(a).

Section 254.132(a) of the Agency’s air pollution regulations states:

- (a) Failure to file a complete Annual Emissions Report by the applicable deadlines prescribed in Section 254.137(a) of this Subpart shall be a violation of this Part and 35 Ill. Adm. Code 201.302(a). 35 Ill. Adm. Code 254.132(a).

Section 254.137(a) of the Agency’s air pollution regulations states:

- (a) All Annual Emissions Reports are due by May 1 of the year following the calendar year in which the emissions took place. 35 Ill. Adm. Code 254.137(a).

Section 211.4370 of the Board’s air pollution rules defines “Owner or operator” as “any person who owns, operates, leases, controls, or supervises a source, an emission unit or air pollution control equipment.” 35 Ill. Adm. Code 211.4370.

Section 211.1950 of the Board’s air pollution rules defines “Emission unit” as “any part or activity at a stationary source that emits or has the potential to emit any air pollutant.” 35 Ill. Adm. Code 211.1950.

Section 211.6370 of the Board's air pollution rules defines "Stationary source" as "any building, structure, facility or installation that emits or may emit any air pollutant." 35 Ill. Adm. Code 211.6370.

Section 211.370 of the Board's air pollution rules states:

"Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material and byproduct material) substance or matter which is emitted into or otherwise enters the atmosphere. Such term includes any precursors to the formation of any air pollutant, to the extent that the relevant statute or rule has identified such precursor or precursors for particular purpose for which the term "air pollutant" is used. 35 Ill. Adm. Code 211.370.

Standard of Review

Summary judgment is appropriate when the record, pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. IEPA and The Village of New Lenox v. PCB et. al., 386 Ill. App. 3d 375, 391, 896 N.E.2d 479, 493 (3rd Dist. 2008) (citing Dowd & Dowd, Ltd.v. Gleason, 181 Ill. 2d 460, 693 N.E.2d 358 (1998)); *see* 35 Ill. Adm. Code 101.516(b). In ruling on a motion for summary judgment, the Board "must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party." Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370. Summary judgment "'is a drastic means of disposing of litigation,' and therefore it should be granted only when the movant's right to relief 'is clear and free from doubt.'" Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370 (citing Purtill v. Hess, 111 Ill. 2d 299, 240, 489 N.E.2d 867, 871 (1986)). However, a party opposing a motion for summary judgment may not rest on the pleadings but must "present a factual basis which would arguably entitle [it] to judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

Burden of Proof

In an enforcement proceeding before the Board, the burden of proof is by a preponderance of the evidence. People v. General Waste Services, Inc., PCB 07-45, slip op. at 11 (Apr. 7, 2011) (citing People v. Community Landfill Co., PCB 97-193, 04-207 (consol.), slip op. at 13 (Aug. 20, 2009)); People v. Blue Ridge Construction Corp., PCB 02-115, slip op. at 12 (Oct. 7, 2004)). A proposition is proved by a preponderance of the evidence when it is more probably true than not. General Waste Services, PCB 07-45, slip op. at 11 (citing Industrial Salvage, Inc. v. County of Marion, PCB 83-173, slip op. at 4 (Aug. 2, 1984)).

Ruling on Motion for Summary Judgment

Dressler is the owner or operator of a grain elevator, a unit that emits air pollutants, including particulate matter. Comp. at 2; *see* Mot., Exh. C at 2, 6. The record indicates that Dressler operates a source of regulated air pollutants and is required to obtain an operating

permit under 35 Ill. Adm. Code 201.144. Mot. at 5. The record further indicates that because Dressler must obtain an operating permit, it is also required to submit “annual reports detailing the nature, specific emission units and total annual quantities of all specified air contaminant emissions.” *Id.* at 3-5. Dressler is not exempt from reporting because Dressler’s reported grain handling operations of 436,255.24 bushels during 2014 exceeded an annual limit of 300,000 bushels. *Id.* at 5-6; *see* 35 Ill. Adm. Code 201.146(s); Mot., Exh. C at 5. Dressler was required to submit AERs by May 1 of the year following the calendar year in which the emissions took place. Mot. at 4; *see* 35 Ill. Adm. Code 254.137(a). The facts deemed admitted indicate Dressler did not timely submit AERs for calendar years 2011, 2012, 2014, 2015, and 2017 in accordance with Section 254.137(a). Mot. at 7. Specifically, the facts indicate Dressler submitted all the AERs for those years on August 9, 2018. *Id.* at 4; Comp. at 4.

On summary judgment, the Board must construe the facts strictly against the movant and in favor of the opposing party. *See supra* p. 5. The Board finds that the record including the facts deemed admitted, Mr. Asselmeier’s affidavit, and Dressler’s 2014 AER, construed in favor of Dressler, are sufficient to prove that it is more probably true than not that Dressler failed to timely submit AERs.

The Board finds the People met their burden of proof and that the People are entitled to judgment as a matter of law. The Board grants the People’s motion for summary judgment, finding Dressler violated Section 201.302(a) of the Board air pollution rules (35 Ill. Adm. Code 201.302(a)), Section 254.132(a) of the Agency air pollution regulations (35 Ill. Adm. Code 254.132(a)), and thereby also violated Section 9(a) of the Act (415 ILCS 5/9(a) (2016)).

REMEDY AND PENALTIES

The People ask the Board to: order Dressler to cease and desist from further violations of the Act, the Board’s rules, and Agency’s regulations; order Dressler to pay a civil penalty of \$15,000 for the violations; and grant such other relief as deemed appropriate. Comp. at 5-6.

Having found that Dressler violated Section 201.302(a) of the Board’s air pollution rules (35 Ill. Adm. Code 201.302(a)), Section 254.132(a) of the Agency’s air pollution regulations (35 Ill. Adm. Code 254.132(a)), and Section 9(a) of the Act (415 ILCS 5/9(a) (2016)), the Board must now determine an appropriate remedy including any penalties. In evaluating the record to determine the appropriate penalty, the Board considers the factors of Section 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2016)).

Section 33(c) of the Act states:

In making its orders and determinations, the Board shall take into consideration all facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;

- (ii) the social and economic value of the pollution source;
- (iii) the suitability or unsuitability of the pollution source to an area in which it is located, including the question of priority of location in the area involved;
- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- (v) any subsequent compliance. 415 ILCS 5/33(c) (2016).

The People provide brief statements regarding each of the above factors: 1) human health and the environment were threatened and Dressler's violations hindered the Agency's information gathering responsibilities, as well as the Agency's inventory and reporting requirements under the Clean Air Act (CAA) (42 U.S.C. 7401 *et seq.*); 2) there is social and economic benefit to the facility; 3) suitability or unsuitability of Dressler's grain handling operations is unknown; 4) timely and regular submission of AERs was both technically and economically feasible; and 5) Dressler showed subsequent compliance by submitting AERs for 2011, 2012, 2014, 2015, and 2017 on August 9, 2018. Mot. at 7-9.

The People indicate that Dressler's failure to submit timely and complete AERs impaired the Agency's ability to gather accurate emissions data of regulated contaminants in Illinois. *Id.* at 8. The Agency needs accurate emissions data from sources to comply with the reporting requirements of the Agency's regulations and the CAA, as the Agency must submit a "comprehensive, accurate, current inventory of actual emission from all sources," and periodically submit a revised emission inventory. *Id.* In this regard, Dressler interfered with the protection of health and general welfare by repeatedly failing to submit its necessary AERs by the regulatory deadline. *Id.* This factor weighs against Dressler.

The record contains no information on the suitability or unsuitability of Dressler's grain elevator to the Freeburg, St. Clair County area. *Id.* The Board, therefore, does not weigh this factor as mitigation or aggravation of a penalty amount.

Dressler's grain handling operations have social and economic value. The record, however, demonstrates that Dressler has the capacity to submit AERs for 2011, 2012, 2014, 2015, and 2017. *Id.* Dressler did not indicate why he was not able to submit these AERs by May 1st of the year following the calendar year in which the emissions took place. And Dressler did eventually submit AERs for all of the previous years on August 9, 2018. This demonstrates submitting timely and regular AERs was technically feasible and economically reasonable for Dressler. Factors (ii) and (iv) therefore weigh against Dressler.

Dressler subsequently complied by submitting the AERs to the Agency for 2011, 2012, 2014, 2015, and 2017 on August 9, 2018. *Id.* This factor weighs in favor of Dressler.

Dressler did not reply to the People’s Motion; therefore, the Board considers only the People’s statements on these factors. The Board finds that the Section 33(c) factors favor the entry of a cease and desist order from future violations and the imposition of a civil penalty. Dressler’s failure, as an operating permit holder, to timely submit complete AERs to the Agency in order to report emissions, was not in accordance with the Act as well as the Board’s and the Agency’s regulations and serves no social and economic benefit.

Having concluded using the Section 33(c) factors that a penalty is appropriate, the Board next applies the factors of Section 42(h) to consider the \$15,000 civil penalty requested by the People against Dressler. Section 42(h) of the Act states:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), (b)(5), (b)(6), or (b)(7) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including, but not limited to, the following factors:

- (1) the duration and gravity of the violation;
- (2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by the Act;
- (3) any economic benefits accrued by the respondent because of delay in compliance with the requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
- (4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by respondent;
- (6) whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency;
- (7) whether the respondent has agreed to undertake a “supplemental environmental project,” which mean an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and

- (8) whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

When determining the appropriate civil penalty to be imposed under subsection (a) or paragraph (1), (2), (3), or (5) of subsection (b) of this Section, the Board shall ensure, in all cases, that the penalty is at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship. However, such civil penalty may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent. 415 ILCS 5/42(h) (2016).

Dressler's violations continued intermittently from 2012 until 2018, with a duration of at least 2,291 days for the late 2011 AER. Mot. at 10. Dressler submitted the rest of the AERs late on August 9, 2018, and thus, was in violation for a total of 6,343 days. *Id.* The duration of the violation is extensive. Dressler showed a lack of diligence in attempting to comply with the Act's requirements and regulations by failing to timely submit a series of complete and accurate AERs by the required deadlines. Dressler knew the facility was regulated under the Act and the Board's air pollution, permitting, and reporting regulations, because it obtained a lifetime operating permit in 1999, and Dressler submitted a timely AER for calendar year 2013. *Id.* The first two Section 42(h) factors weigh against Dressler.

The record does not quantify the amount of economic benefit under Section 42(h)(3) that Dressler accrued by failing to timely submit complete and accurate AERs for calendar years 2011, 2012, 2014, 2015, and 2017. *Id.* In the absence of any contrary evidence or argument, the Board must find that the People's penalty request includes the amount of any such benefit. The Board does not weigh this factor as mitigation or aggravation of a penalty amount.

The People assert that the Agency, to obtain accurate historical emission data for its own reporting requirements, dedicated state resources to compel production of the information from Dressler. *Id.* at 11. The People argue that the suggested \$15,000 penalty will ensure voluntary compliance by the respondent and other emission sources in Illinois, and that the penalty is appropriate given Dressler's size and the facts of the case. *Id.* This factor weighs against Dressler.

The record does not indicate whether Dressler previously violated the Act or regulations. *Id.* Dressler did not self-disclose its non-compliance to the Agency and did not propose, or perform, a supplemental environmental project in settlement of this matter. *Id.* The Board finds that Section 42(h)(8) is not a factor in this analysis because the respondent did not enter a Compliance Commitment Agreement with the Agency. *Id.* The Board does not weigh any of these four factors as mitigation or aggravation of a penalty amount.

Based on this record and the statutory factors, the Board finds that the People's requested civil penalty is appropriate to encourage future compliance by Dressler and others similarly situated. In its order below, the Board assesses a civil penalty of \$15,000.

CONCLUSION

The Board finds that there is no genuine issue of material fact and that the People are entitled to summary judgment as a matter of law. The Board accordingly grants the People's unopposed motion to deem facts admitted and for summary judgment against Dressler. The Board finds that Dressler violated Section 9(a) of the Act (415 ILCS 5/9(a) (2016)), Section 201.302(a) of the Board's air pollution rules (35 Ill. Adm. Code 201.302(a)), and Section 254.132(a) of the Agency's air pollution regulations (35 Ill. Adm. Code 254.132(a)), as alleged in the People's complaint. Having considered the factors of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2016)), the Board enters a cease and desist order, and assesses a \$15,000 civil penalty against Dressler, as requested by the People.

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

ORDER

1. The Board grants the unopposed motion to deem facts admitted and for summary judgment filed by the Office of the Attorney General, on behalf of the People, and finds that Dressler violated Section 9(a) of the Act, Section 201.302(a) of the Board's air pollution rules, and Section 254.132(a) of the Illinois Environmental Protection Agency's air pollution regulations. 415 ILCS 5/9(a) (2016); 35 Ill. Adm. Code 201.302(a); 35 Ill. Adm. Code 254.132(a).
2. Dressler must pay a civil penalty of \$15,000 no later than August 26, 2019, which is the first business day after 30 days from the date of this order. Such payment must be made by certified check, money order, or electronic transfer of funds, payable to the Environmental Protection Trust Fund. The case number, case name, and Dressler's federal employer identification number must be included on the respective certified check, money order, or electronic transfer of funds.
3. Dressler must send the certified check, money order, or confirmation of electronic funds transfer to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2016)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2016)).
5. Dressler must cease and desist from further violations of the Act, Board air pollution rules, and Agency air pollution regulations that were the subject of the complaint.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2016); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, and 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board
Office of the Attorney General Attn: Christopher J. Grant 69 West Washington Street, Suite 1800 Chicago, Illinois 60602 cgrant@atg.state.il.us	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601
Dressler Truck Service Attn: Charles Dressler 409 West Apple Street Freeburg, Illinois 62243	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 25, 2019 by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board