

ILLINOIS POLLUTION CONTROL BOARD
November 4, 2004

PEOPLE OF THE STATE OF ILLINOIS)
ex rel. GARY W. PACK, MCHENRY)
COUNTY STATE'S ATTORNEY,)
)
Complainant,)
)
v.) PCB 01-43
) (RCRA Enforcement)
)
MICHAEL STRINGINI,)
)
Respondent.)

DAVID N. STONE AND RICHARD BUELOW, OF THE STATE'S ATTORNEY OF MCHENRY COUNTY APPEARED ON BEHALF OF THE COMPLAINANT, and

MICHAEL S. STRINGINI APPEARED PRO SE.

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

The People of the State of Illinois (People) filed an eleven-count complaint against Michael Stringini (Stringini). On October 16, 2003, the Board issued an order that granted the People's motion for summary judgment as to counts I, II, III, IV, VI, VIII, X and XI of the complaint; and granted Stringini's motion for summary judgment regarding count IX. On December 4, 2003, the Board issued an order that granted the People's motion to dismiss counts V and VII, and directed the parties to proceed to hearing and present Board with sufficient evidence to allow Board to assess civil penalty on counts I, II, III, IV, VI, VIII, and XI of the complaint.

In this interim opinion, the Board provides a brief procedural history of the case; the statutory background for civil penalties, costs, and attorney fees; a summary of the pertinent facts; and a discussion showing the Board's reasoning in directing Stringini to pay a \$110,000 civil penalty.

PROCEDURAL HISTORY

The People's complaint alleged (1) storing and/or disposing of foundry sand containing lead and hazardous waste without a Resource Conservation and Recovery Act (RCRA) permit; (2) failing to properly store hazardous waste; (3) failing to institute proper site entry controls; (4) failing to conduct property inspections and maintain proper inspection records; (5) failing to keep and maintain proper records at the facility; (6) failing to take hazardous waste release containment measures; (7) failing to make proper emergency and contingency plan arrangements; (8) failing to properly implement a groundwater monitoring program; (9)

conducting a solid waste management site without a permit; (10) disposing, treating, storing and abandoning waste without meeting the requirements of the Act; and (11) open dumping. People v. Stringini, PCB 01-43, slip op. at 3 (Oct. 16, 2003).

The People alleged that these violations of the Environmental Protection Act (Act) and the Illinois Administrative Code occurred at a facility located on McCue Road, south of Illinois Highway 176 in Union, McHenry County, Illinois.¹ Comp. at 2.

The People filed a motion for summary judgment on May 28, 2003. As stated, the Board granted the People's motion on eight counts. People v. Stringini, PCB 01-43 (Oct. 16, 2003). Specifically, the Board found that Stringini violated 415 ILCS 21(a),(e) and (f) (2002); and 35 Ill. Adm. Code 703.121, 703.150, 724.194(a), 725.113(b), 725.114, 725.115(a) and (b), 725.131, 725.173, 725.190, 725.271, 725.273(a) and (b), 725.274, 725.351, and 728.150(a). *Id.* at 18.

On October 16, 2003, the Board considered the factors set forth in Section 33(c) of the Act and determined that a civil penalty is proper in this case. People v. Stringini, slip op. at 15-16. However, after considering the factors listed in Section 42(h) of the Act, the Board determined that it did not have sufficient information to fairly consider the penalty amount that will deter Stringini and other similarly situation respondents, and that the evidence before the Board on economic benefit was incomplete. *Id.* at 17-18. The Board ordered the matter to hearing so that the parties could adequately address the penalty phase of the proceeding.

On March 23, 2004, the Board held a hearing on the specific issue of civil penalties. Both parties appeared and presented testimony. The People filed a post-hearing brief on April 14, 2004. Stringini filed a response brief on July 1, 2004. The People filed a reply brief on August 17, 2004.

STATUTORY BACKGROUND

Section 33(c) of the Act states: "In making its orders and determinations, the Board shall take into consideration all the 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 the area in which it is located, including the question of priority of location in the area involved;

¹ The Board will cite the complainant's complaint as "Comp. at ___." The complainant's post-hearing brief will be cited as "Br. at ___." The transcript of the Board's March 23, 2003 hearing will be cited as "Tr. at ___." The People's motion for summary judgment will be cited as "Mot. at ___"; Exhibits accompanying the motion for summary judgment will be cited as "Ex. ___."

- (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) (2002).

According to Section 42(h) of the Act, in determining the appropriate civil penalty, the Board considers any matters of record in mitigation or aggravation of penalty, including “the following factors:

- (1) the duration and gravity of the violation;
- (2) the presence or absence of due diligence on the part of the violator in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
- (3) any economic benefits accrued by the violator because of delay in compliance with requirements;
- (4) the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.” 415 ILCS 5/42(h) (2002).

Furthermore, Section 42(f) provides: “the Board . . . may award costs and reasonable attorney’s fees, including the reasonable costs of expert witnesses and consultants, to the State’s Attorney or the Attorney General in a case where he has prevailed against a person who has committed a willful, knowing or repeated violation of the Act.” 415 ILCS 5/42(f) (2002).

FACTS

Stringini began operating on Zimmerman's property in 1980 and stopped in 1984. People v. Stringini, PCB 01-43, slip op. at 6. During that time, Stringini accepted foundry sand and never removed the sand from the property. *Id.* Samples taken at the site indicated the sand contained levels of lead that exceeded regulatory limits. Also during that time, Stringini operated without a RCRA permit. *Id.*

Stringini is subject to the requirements of RCRA. Stringini accepted foundry sand at the site and never removed the sand from the property. People v. Stringini, PCB 01-43, slip op. at 6. A portion of the sand contained levels of lead that classified the waste as hazardous. *Id.* The foundry sand is most accurately described as a material being accumulated speculatively as referenced in 35 Ill. Adm. Code 721.102(c)(4). *Id.* All such materials, aside from commercial

chemical products listed in Section 721.133, are considered solid wastes. People's exhibits H and I contain clear sample results that indicate the foundry sand is above the applicable limits for lead. The foundry sand is, therefore, a hazardous waste that is subject to RCRA requirements. *Id.* at 7.

Stringini processed some foundry sand, but he did not completely process the sand. People v. Stringini, slip op. at 7. None of the foundry sand was removed during the time (over three years) Stringini engaged in the accumulation of foundry sand at the site. *Id.* The drums in which the waste was stored were used scrap metal drums, did not contain lids, and were open during the time Stringini operated on the property. Ex. G.

Stringini failed to control entry to the site, by posting the proper signs and by failing to prevent the unknowing entry and minimize the possibility of unauthorized entry of persons or livestock onto the active portion of the facility. People v. Stringini, PCB 01-43, slip op. at 8. Stringini did not arrange for fences, and no fences existed around the farm. Ex. G. No signs stating 'danger' with regards to the waste were present. *Id.* In addition, Stringini did not maintain site entry control on the Zimmerman Property as required in 35 Ill. Adm. Code 725.114. Ex. A.

Stringini did not meet general inspection requirements, maintain an inspection log or summary, or inspect the container storage area. People v. Stringini, PCB 01-43, slip op. at 9-10. A waste analysis plan was not available at the site, waste analysis and dates of waste storage were not available in the operating record, and annual reports were not submitted to the Agency. *Id.* Stringini did not develop a written waste analysis plan from January 12, 1988 to November 1, 1993. *Id.*

Stringini did not keep a written operating record or a waste analysis plan as describe in 35 Ill. Adm. Code 725.113 and 725.173 at the facility. Ex. B., Resp.#17. From January 12, 1988, until at least November 3, 1994, Stringini did not contain releases of foundry sand. People v. Stringini, PCB 01-43, slip op. at 10. Stringini did not cover the piles of foundry sand to control wind dispersal. Ex. B., resp. #18.

Stringini did not keep records of groundwater analysis or report groundwater monitoring information to the Agency. Ex. B, resp. #24. Stringini did not implement a groundwater monitoring program as described in 35 Ill. Adm. Code 725.190. Ex. B, resp. #19. Stringini did not have a solid waste management site permit for the Zimmerman property. Ex. B, resp. #16. Stringini's facility did not meet the requirements of the Act and associated regulations as alleged in counts I through VI and VIII of the complaint. People v. Stringini, PCB 01-43, slip op. at 13. Stringini stored and/or disposed of foundry sand at the facility, without obtaining permits from the Agency. *Id.* Stringini engaged in open dumping as defined in Section 21(a) of the Act at the site. *Id.* at 14.

DISCUSSION

The Board now determines the appropriate remedy for Stringini's violations of the Act and regulations. The People request that the Board levy a civil penalty. Br. at 1. The People are

not seeking any further remedy in this matter, but did ask for reimbursement of costs and attorney fees in the complaint. *See Comp.*

Remedies

In determining what remedy is appropriate, the Board considers all facts and circumstances of record that bear upon the reasonableness of Stringini's violations. 415 ILCS 5/33(c) (2002).

Section 33(c)

Section 33(c) lists five factors, which the Board considers in making orders and determinations. The Board considered these factors in its October 16, 2003 order and determined that a civil penalty is proper in this case. People v. Stringini, PCB 01-43, slip op. at 15-16. In summary, the Board found that the facts and circumstances of this case show that the violations in question interfered with the protection of the health, general welfare and physical property in an area around the site; that there is no evidence in the record showing that Stringini's operation, as conducted, had a social or economic value; that the foundry sand was suitable to the area; and that Stringini did comply with the Act subsequent to receiving notice of the violations. *Id.* To determine the proper penalty, the Board considers factors listed in Section 42(h) of the Act.

Section 42(h)

In determining the appropriate civil penalty, the Board considers any matters of record in mitigation or aggravation of penalty. 415 ILCS 42(h) (2002). The Board's determination is aided by the five factors listed in Section 42(h) of the Act. The only remedy sought by the People is the imposition of a civil penalty. The People noted that the potential maximum civil penalty is \$166,525,000 for count I, and \$66,660,000 for each other count. Mot. at 22. The People recommend the imposition of a \$200,000 penalty. The People assert that the cost of remediation at the site was in excess of \$600,000 and feel the penalty should be no less than one-third of that amount. *Id.*; Br. at 1.

The People address each of the 42(h) factors in their brief, and provided argument on each factor in the motion for summary judgment as well. The People assert that the duration and gravity of the violations is obvious, and that while Stringini is arguably the most culpable of the three parties involved, he has had no consequence imposed on him since the enforcement action was commenced. Mot. at 22. The People note that the other two parties (Sloan and Zimmerman) took full responsibility for the closure of the site at a cost in excess of \$600,000.00. Br. at 1, Exs. 1 and 2. The People note that volume of hazardous waste was substantial and remained on the land for a period of between 13 and 18 years. Br. at 1, Exs. 4 and 13.

The People assert that Stringini has shown no due diligence to seek permits, comply with the requirements while operating at the site or participate in the closure of the property. Mot. at 22. Further, the People argue that respondent did nothing to determine compliance with the law and still maintains he was not in violation. Br. at 1. The People contend Stringini received an

economic benefit because Sloan paid him for the material he stored and disposed on the Zimmerman property, did not pay his rent on the property, did not incur any cost to operate in compliance with the Act, and did not incur any expense for closure. Mot. at 22. The People contend Stringini saved more than \$110,000 because of his delay in compliance and collected at least \$220,317.88 from his illegal operation. Br. at 2, citing Tr. at 11.

The People argue that Stringini is recalcitrant and insists that he did nothing wrong, and that a substantial penalty will indicate to Stringini that he must comply with the Agency if he continues his metal reclaiming business, something he is currently doing. Br. at 2. The People assert that although Stringini claims to be without assets, a substantial penalty would deter Stringini from securing the necessary financing to continue or expand his illegal metal reclaiming business and that it is unlikely the judgment could be discharged in bankruptcy. *Id.* Finally, the People are not aware of any other enforcement actions against Stringini. *Id.*

Stringini does not address the 42(h) factors in his response.

Duration and Gravity of Violations The amount of hazardous waste on the site was substantial and some waste remained on the land for a long period time – until 1993. The Board weighs this factor in favor of aggravation of the civil penalty.

Diligence in Attempting to Comply Stringini did not show due diligence. The violations continued for well over ten years. The record shows that Stringini did not contribute in any way to the remediation of the site. Consequently, the Board weighs this factor in favor of aggravation of the civil penalty.

Economic Benefit Stringini received an economic benefit through his lengthy failure to comply the Ac. Further, he did not incur any expense for remediation of the site. There is no evidence in the record that rebuts the People’s contention that Stringini saved \$110,000 because of his delay in compliance and collected at least \$220,317.88 from his illegal operation. The Board weighs this factor in aggravation of the civil penalty.

Penalty Amount that will Deter Further Violations and Aid in Enhancing Voluntary Compliance Stringini maintains that he did nothing wrong in the face of the Board’s October 16, 2004 order finding him in violation of the Act and associated regulations. The People seek a civil penalty of \$200,000. The People reason that this substantial penalty amount will show Stringini that he must comply with the Act, and will prevent him from securing the necessary financing to continue or expand his illegal metal reclaiming business.

The record shows that Stringini has modest financial resources; as noted by the People’s attorney at hearing, it appears that Stringini made approximately \$13,000 in 2003 with \$9,600 in expenses. Tr. at 86. Stringini also receives social security, but has no other meaningful assets. The Fourth District Appellate Court stated in ESG Watts Inc. v. PCB, 282 Ill. App. 3d 43, 52, 668 N.E.2d 1015, 1021 (4th Dist. 1996), that “the deterrent effect of penalties on the violator and potential violators is a legitimate goal for the Board to consider when imposing penalties.”

The Board agrees with the People that a civil penalty is necessary to deter further violations and to enhance voluntary compliance, but must take Stringini's financial state into account as well. The Board does not weigh this factor for or against aggravation of the civil penalty.

Previously Adjudicated Violations The record contains no previously adjudicated violations. Consequently, the Board weighs this factor in favor of mitigation of the civil penalty.

The Board Finding on Appropriate Civil Penalty.

To arrive at the appropriate penalty, the Board has considered the factors of Section 33(c) and 42(h) of the Act. The violations at issue were lengthy and severe, and resulted in a large economic benefit to Stringini. Stringini saved approximately \$110,000 by not complying with the Act and Board regulations. Stringini showed little, if any, diligence in attempting to comply with the Act and Board regulations. The Board notes that the site has been remediated, and no further closure is necessary. The Board finds that a civil penalty equal to the economic benefit that Stringini received in this case will serve to deter future violations and add in voluntary compliance by Stringini and those similarly situated. Accordingly, the Board assesses a \$110,000 civil penalty.

Consistent with Section 42(a) of the Act, the Board will order Stringini to pay the civil penalty to the Environmental Protection Trust Fund. *See* 415 ILCS 5/42(a) (2002).

Costs and Attorney Fees

Section 42(f) of the Act provides that the Board may award costs and reasonable attorney fees to the State's Attorney or the Attorney General if the respondent "has committed a willful, knowing or repeated violation of the Act." 415 ILCS 5/42(f) (2002). The People asked for costs and attorney fees in the complaint, but did not renew their request in the post-hearing brief, nor have the People made any demand for a specific amount for costs or attorney fees. In light of this, the Board in its discretion will not award costs and attorney fees in this matter.

CONCLUSION

The facts and circumstances of record in this case show that Stringini's violations of the Act and Board regulations were not reasonable. After consideration of the Section 33(c) and Section 42(h) factors, the Board imposes a civil penalty of \$110,000.

In this final opinion and order, the Board incorporates the findings of fact and conclusions of law from its October 16, 2003 interim opinion and order.

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

ORDER

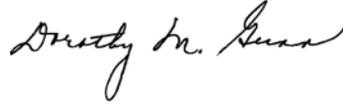
1. The Board finds that Michael Stringini (Stringini) has violated 415 ILCS 21(a),(e) and (f) (2002); and 35 Ill. Adm. Code 703.121, 703.150, 724.194(a), 725.113(b), 725.114, 725.115(a) and (b), 725.131, 725.173, 725.190, 725.271, 725.273(a) and (b), 725.274, 725.351, and 728.150(a);
2. Stringini must cease and desist from any further violations of the Act, and associated regulations.
3. Stringini must pay a civil penalty of \$110,000 for committing violations of the Act and Board regulations.
4. No later than November 22, 2004, the first business day after 30 days from the date of this order, Stringini must pay \$110,000 by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and Stringini's social security number or federal employer identification number must be included on each certified check or money order.
5. Stringini must send the certified check or money order to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
6. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act. 35 ILCS 5/1003(a) (2002).

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) (2002); *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, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 4, 2004, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board