

Illinois Environmental Protection Agency (IEPA) that physical contact with the waste or disturbance of the waste would not injure unknowing or unauthorized persons or livestock entering the site and failing to properly post proper warning signage; Section 724.115(a) of the Board's regulations (35 Ill. Adm. Code 724.115(a)) by failing to conduct inspections of the hazardous waste management site often enough to identify problems in time to correct them; Section 724.131 of the Board's regulations (35 Ill. Adm. Code 724.131) by failing to design, construct, maintain, and operate the site in a manner to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil, or surface water that could threaten human health or the environment; Section 724.135 of the Board's regulations (35 Ill. Adm. Code 724.135) by failing to maintain aisle space at the site in a manner to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency; Section 724.212 of the Board's regulations (35 Ill. Adm. Code 724.212) by failing to have a written closure plan for the hazardous waste management site; Section 724.271 of the Board's regulations (35 Ill. Adm. Code 724.271) by failing to transfer hazardous waste from 55 gallon drums leaking hazardous waste to containers in good condition or to manage the waste in some other way that complied with Board regulations; Section 724.273 of the Board's regulations (35 Ill. Adm. Code 724.273) by failing to always store the hazardous waste in closed containers and store it in a manner that prevented rupture or leakage; Section 724.274 of the Board's regulations (35 Ill. Adm. Code 724.274) by failing to inspect the site where 55 gallon drums of hazardous waste were stored at least weekly and failing to look for deterioration and leaking of 55 gallon drums caused by corrosion or other factors; Section 724.275(a) of the Board's regulations (35 Ill. Adm. Code 724.275(a)) by failing to have a hazardous waste containment system designed and operated in accordance with Section 724.275(b) of the Board's regulations (35 Ill. Adm. Code 724.275(b)); and Section 728.150(c) of the Board's regulations (35 Ill. Adm. Code 728.150(c)) by owning or operating a hazardous waste storage or disposal site and storing hazardous waste at the site beyond one year without a permissible purpose.

The People allege in count IV of the complaint that Mr. Carter violated Section 724.113(a) of the Board's regulations (35 Ill. Adm. Code 724.113(a)) by failing to obtain a detailed chemical and physical analysis of a representative sample of the waste in the 55 gallon drums prior to storing or disposing of the wastes and Section 724.113(b) of the Board's regulations (35 Ill. Adm. Code 724.113(b)) by failing to develop and follow a written waste analysis plan that described waste analysis procedures. Finally, in count V of the complaint, the People allege that Mr. Carter violated the following provisions in the manner indicated: Section 21(g)(1) of the Act (415 ILCS 5/21(g)(1) (2010)) by transporting 55 gallon drums of hazardous waste to the site without registering and obtaining a special waste hauling permit from IEPA; Section 21(g)(2) of the Act (415 ILCS 5/21(g)(2) (2010)) by transporting 55 gallon drums of hazardous waste to the site without registering and obtaining a special waste hauling permit from IEPA; Section 723.111 of the Board's regulations (35 Ill. Adm. Code 723.111) by transporting 55 gallon drums of hazardous waste without having received a USEPA identification number; Section 723.120(a) of the Board's regulations (35 Ill. Adm. Code 723.120(a)) by accepting hazardous waste contained in 55 gallon drums at the site from a generator without a properly signed hazardous waste manifest; and Section 723.120(b) of the Boards regulations (35 Ill. Adm.

Code 723.120(b)) by failing to sign and date a hazardous waste manifest acknowledging acceptance of hazardous waste that was transported to the site.

For each of the five counts of the complaint, the People ask that the Board order Mr. Carter to cease and desist from any further violations and to pay civil penalties of \$50,000 for each violation and \$10,000 for each day during which each violation continued.¹

The Board finds that the complaint meets the content requirements of the Board's procedural rules and accepts the complaint for hearing. *See* 35 Ill. Adm. Code 103.204(c), (f), 103.212(c). A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if Mr. Carter fails within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider Mr. Carter to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d).

The Board directs the hearing officer to proceed expeditiously to hearing. Among the hearing officer's responsibilities is the "duty . . . to ensure development of a clear, complete, and concise record for timely transmission to the Board." 35 Ill. Adm. Code 101.610. A complete record in an enforcement case thoroughly addresses, among other things, the appropriate remedy, if any, for the alleged violations, including any civil penalty.

If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2010). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondent to do to correct an on-going violation, if any, and, second, whether to order the respondent to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondent has subsequently eliminated the violation.

If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondent, only then does the Board consider the Act's Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount, such as the duration and gravity of the violation, whether the respondent showed due diligence in attempting to comply, any economic benefit that the respondent accrued from delaying compliance, and the need to deter further violations by the respondent and others similarly situated.

With Public Act 93-575, effective January 1, 2004, the General Assembly changed the Act's civil penalty provisions, amending Section 42(h) and adding a new subsection (i) to

¹ Section 42(b)(3) of the Act provides: "Any person that violates Sections 21(f), 21(g), 21(h) or 21(i) of this Act, or any RCRA permit or term or condition thereof, or any filing requirement, regulation or order relating to the State RCRA program, shall be liable to a civil penalty of not to exceed \$25,000 per day of violation." 415 ILCS 5/42(b)(3) (2010).

Section 42. Section 42(h)(3) now states that any economic benefit to respondent from delayed compliance is to be determined by the “lowest cost alternative for achieving compliance.” The amended Section 42(h) also requires the Board to ensure 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.”

Under these amendments, the Board may also order a penalty lower than a respondent’s economic benefit from delayed compliance if the respondent agrees to perform a “supplemental environmental project” (SEP). A SEP is defined in Section 42(h)(7) as an “environmentally beneficial project” that a respondent “agrees to undertake in settlement of an enforcement action . . . but which the respondent is not otherwise legally required to perform.” SEPs are also added as a new Section 42(h) factor (Section 42(h)(7)), as is whether a respondent has “voluntary self-disclosed . . . the non-compliance to the [Illinois Environmental Protection] Agency” (Section 42(h)(6)).² A new Section 42(i) lists nine criteria for establishing voluntary self-disclosure of non-compliance. A respondent establishing these criteria is entitled to a “reduction in the portion of the penalty that is not based on the economic benefit of non-compliance.”

Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any (including whether to impose a civil penalty), and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any (including a specific total dollar amount and the portion of that amount attributable to the respondent’s economic benefit, if any, from delayed compliance), and supporting its position with facts and arguments that address any or all of the Section 42(h) factors. The Board also directs the hearing officer to advise the parties to address these issues in any stipulation and proposed settlement that may be filed with the Board.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 12, 2012, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

² See also P.A. 97-519 (eff. Aug. 23, 2011) (adding Section 42(h)(8), which concerns whether the respondent has successfully completed a Compliance Commitment Agreement).