

ILLINOIS POLLUTION CONTROL BOARD
September 19, 2019

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 20-16
) (Enforcement - Land)
IRONHUSTLER EXCAVATING, INC., an)
Illinois corporation, RIVER CITY)
CONSTRUCTION, LLC, an Illinois limited)
liability company, and VENOVICH)
CONSTRUCTION CO., an Illinois)
corporation,)
)
Respondents.)

ORDER OF THE BOARD (by A. Palivos):

On September 16, 2019, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a seven-count complaint against Ironhustler Excavating Incorporated (Ironhustler), River City Construction (River City), and Venovich Construction Co. (Venovich), (collectively, respondents). The complaint concerns a site at the end of King Road and along the Mackinaw River near Delavan Community Unit School, District No. 703 in Delavan, Tazewell County. Accompanying the complaint, the People and Venovich submitted a stipulation, proposal for settlement, and request for relief from the hearing requirement. The People and Venovich therefore seek to settle the complaint without a hearing. Ironhustler and River City are not parties to the stipulation and proposed settlement. For the reasons below, the Board accepts the complaint and directs the Clerk to provide public notice of the People and Venovich’s stipulation, proposed settlement, and request for hearing relief.

COMPLAINT

Under the Environmental Protection Act (Act) (415 ILCS 5 (2018)), the Attorney General and the State’s Attorneys may bring actions before the Board to enforce Illinois’ environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2018); 35 Ill. Adm. Code 103. In this case, the People allege that respondents violated: (1) Section 21(a) of the Act, 415 ILCS 5/21(a) (2018), for open dumping waste; (2) Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2018), for open dumping resulting in litter; (3) Section 21(p)(4) of the Act, 415 ILCS 5/21(p)(4) (2018), for open dumping resulting in waste in standing or flowing water; (4) Section 21(p)(7)(i) of the Act, 415 ILCS 5/21(p)(7)(i) (2018), for open dumping of demolition debris; (5) Section 810.103 of the Board’s solid waste disposal regulations, 35 Ill. Adm. Code 810.103, for developing and operating a landfill without a permit; (6) Section 812.101(a) of the Board’s solid waste disposal regulations, 35 Ill. Adm. Code 812.101(a), for developing and operating a landfill in violation of Board regulations; and (7) Section 21(e) of the Act, 415 ILCS 5/21(e) (2018), for

waste disposal at an improper site. The Board finds that the complaint meets the applicable content requirements of the Board's procedural rules and accepts the complaint. *See* 35 Ill. Adm. Code 103.204(c).

STIPULATION AND PROPOSED SETTLEMENT

On September 16, 2019, simultaneously with the People's complaint, the People and Venovich filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2018)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2018)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a). Under the proposed stipulation, Venovich does not affirmatively admit the alleged violations and agrees to pay a civil penalty of \$2,500.

Unless the Board determines that a hearing is needed, the Board must cause notice of the stipulation, proposed settlement, and request for relief from the hearing requirement. Any person may file a written demand for hearing within 21 days after receiving the notice. If anyone timely files a written demand for hearing, the Board will deny the request for relief and hold a hearing. *See* 415 ILCS 5/31(c)(2) (2018); 35 Ill. Adm. Code 103.300(b), (c). The Board directs the Clerk to provide the required notice.

ANSWER AND HEARING

Because Ironhustler and River City are not parties to the stipulation and proposed settlement, the Board reminds them that a respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if a respondent 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 that respondent to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d).

The Board directs the hearing officer to proceed expeditiously to hearing with the People, Ironhustler, and River City. Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 103.108.

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) (2018). 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. These factors include the following: the duration and gravity of the violation; whether the respondent showed due diligence in attempting to comply; any economic benefits that the respondent accrued from delaying compliance based upon the "lowest cost alternative for achieving compliance"; the need to deter further violations by the respondent and others similarly situated; and whether the respondent "voluntarily self-disclosed" the violation. 415 ILCS 5/42(h) (2018). Section 42(h) 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." *Id.* Such penalty, however, "may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent." *Id.*

Accordingly, the Board further directs the hearing officer to advise the People, Ironhustler, and River City 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 People, Ironhustler, and River City to address these issues in any stipulation and proposed settlement that may be filed with the Board.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 19, 2019, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board