

ILLINOIS POLLUTION CONTROL BOARD
December 5, 2019

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 20-32
) (Enforcement - Water, NPDES, Land)
LANDFILL 33 LTD., an Illinois corporation,)
and WENDT FAMILY TRUST, an Illinois)
trust,)
)
Respondents.)

ORDER OF THE BOARD (by A. Palivos):

On November 27, 2019, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a nine-count complaint against Landfill 33 Ltd. and the Wendt Family Trust (respondents). The complaint concerns respondents’ municipal solid waste landfill business located at 1713 South Willow Street in Effingham, Effingham County. For the reasons below, the Board accepts the complaint for hearing.

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 the following:

Count I—Respondents violated Section 12(a) of the Act (415 ILCS 5/12(a) (2018)) by causing, threatening, or allowing the discharge of leachate into the environment so as to cause water pollution;

Count II—Respondents violated Section 304.106 of the Board water pollution regulations (35 Ill. Adm. Code 304.106) by causing or allowing “offensive discharges” thereby creating water pollution. By violating Section 304.106 of the Board’s regulations, respondents also violated Section 12(d) of the Act (415 ILCS 5/12(d) (2018)) by depositing contaminants on the land so as to create water pollution;

Count III—Respondents violated Section 302.203 of the Board’s water pollution regulations (35 Ill. Adm. Code 302.203) by causing or allowing the discharge of contaminants from its operating system to enter Salt Creek. By violating Section 302.203 of the Board’s regulations, respondents also violated Section 12(a) of the Act (415 ILCS 5/12(a) (2018)) by causing, threatening, or allowing the discharge of leachate into the environment so as to cause water pollution;

Count IV—Respondents violated Sections 304.120(a) of the Board’s water pollution regulations (35 Ill. Adm. Code 304.120(a)) by exceeding applicable effluent standards for five day biochemical oxygen demand. Respondents also thereby violated the board’s applicable water quality standards (35 Ill. Adm. Code 304.105) by exceeding applicable effluent standards. In turn, by violating Sections 304.120(a) and 304.105 of the Board’s regulations, respondents also violated Section 12(a) of the Act (415 ILCS 5/12(a) (2018)) by causing, threatening, or allowing the discharge of leachate into the environment so as to cause water pollution;

Count V—Respondents violated Section 12(d) of the Act (415 ILCS 5/12(d) (2018)) by depositing contaminants upon the land, specifically leachate, in a place and manner so as to create water pollution;

Count VI—Respondents violated Section 309.102(a) of the Board’s regulations (35 Ill. Adm. Code 309.102(a)) and Section 12(f) of the Act (415 ILCS 5/12(f) (2018)) by causing, threatening, or allowing the discharge of contaminants into waters of the State from a point source without an NPDES permit;

Count VII—Respondents violated Conditions II.2.b and II.2.c of permit modification No. 80 for conducting operations such that leachate flows entered waters of the State and exited landfill confines. By violating Conditions II.2.b. and II.2.c., respondents also violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2018)) by conducting waste-storage, waste-treatment, or waste-disposal operations in violation of permitted conditions;

Count VIII—Respondents violated Sections 21(o)(2) and (3) of the Act (415 ILCS 5/21(o)(2) and (3) (2018)) by allowing leachate flows from the facility to exit the confines thereof and enter the waters of the state; and

Count IX— Respondents, by violating the Act and causing the death of fish, are liable under Section 42(c) of the Act (415 ILCS 5/42(c) (2018)) for the reasonable value of the fish that were killed.

The People ask that the Board order respondents to cease and desist from any further violations and pay the maximum statutory civil penalties. The People also request that the Board award the People their costs and reasonable attorney fees.

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 respondents fail 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 respondents to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d).

The Board directs the hearing officer to proceed expeditiously to hearing. 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.

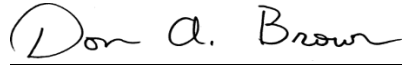
If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2018). Specifically, the Board considers the Section 33(c) factors in determining, first, what 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 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, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 5, 2019, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board