

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)	
ILLINOIS, by KWAME RAOUL,)	
Attorney General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB 20-32
)	(Enforcement – Water)
LANDFILL 33 LTD., an Illinois)	
corporation, and WENDT FAMILY)	
TRUST, an Illinois trust,)	
)	
Respondents.)	

NOTICE OF ELECTRONIC FILING

To: *See Service List*

PLEASE TAKE NOTICE that on the 22nd day of December, 2020, the attached Addendum to Post-Hearing Brief was filed with the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and is hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
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CERTIFICATE OF SERVICE

I, DANIEL ROBERTSON, an Assistant Attorney General, do certify that I caused to be served this 22nd day of December, 2020, the attached Addendum to Post-Hearing Brief upon the persons listed on the Service List *via email*.

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v.)	PCB No. 2020-32
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LANDFILL 33 LTD., an Illinois)	
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WENDT FAMILY TRUST,)	
an Illinois trust,)	
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ADDENDUM TO POST-HEARING BRIEF

Complainant, the People of the State of Illinois (“People”), files this addendum to post-hearing brief to clarify previous violations of the Illinois Environmental Protection Act (“Act”) by Respondents. For the reasons discussed below, however, the People restate the request that the Illinois Pollution Control Board (“Board”) impose the proposed civil penalty of \$18,000.00 as detailed in the February 24, 2020 Stipulation and Proposal for Settlement (“Settlement”), and accept the Settlement as filed.

I. BACKGROUND

The Settlement filed by the parties included a consideration of the factors of Section 42(h) of the Act, 415 ILCS 5/42(h) (2018). Section 42(h)(5) takes into consideration “the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent.” 415 ILCS 5/42(h)(5). In response to this factor, the parties in the Settlement stated that “Respondents have no previously adjudicated violations of the Act.” Settlement at 7.

On August 19, 2020, the Board held a hearing on the proposed Settlement. On September

1, 2020, the Board received one public comment (“PC1”) from a citizen following the public hearing. The citizen, Dan Borries, responded to the Settlement’s analysis of Section 42(h)(5) of the Act, 415 ILCS 5/42(h)(5) (2018), by stating “[p]lease reference prior violations.” PC1 at 2. The People, in their post-hearing brief filed on September 21, 2020 (“Post-Hearing Brief”), stated that they are unable to respond to this portion of the Public Comment without more specificity as to what previous violations the citizen is referencing. Post-Hearing Brief at 10.

On November 24, 2020, the Board held a second public hearing at which no members of the public participated. At that hearing, counsel for the People referenced the prior briefing exchange, stated that there had been prior alleged violations at the subject site, and stated that the People would file an additional post-hearing brief to address those prior violations. Hearing Transcript at 7 (Nov. 24, 2020). The Board received two additional public comments from Mr. Borries, one filed on December 7, 2020 (PC2), and one filed on December 8, 2020 (PC3). No additional public comments have been filed.

II. PRIOR ADJUDICATED VIOLATIONS

Prior to the second hearing in this matter, the People, upon further research, determined that there were five previously adjudicated matters involving this site. The five matters involve one enforcement action, and four administrative citations, all filed before the Board.

a. PCB 94-369 (Enforcement Action)

On December 1, 1994, the People of the State of Illinois filed a nine count complaint (“1994 Complaint”) against Landfill 33, LTD (“Landfill 33”). The 1994 Complaint alleged that Landfill 33 violated multiple sections of the Act and Illinois Administrative Code by failing to maintain adequate daily cover, accepting waste without the necessary permit, causing or allowing refuse in standing water, failing to adequately control site access, failing to control and collect litter, failing

to have sufficient on-site personnel, failing to adequately spread and compact waste, burning refuse, and depositing refuse from the top down.

On June 17, 1998, the parties to the 1994 Complaint filed a Stipulation and Proposal for Settlement (“1998 Settlement”). Landfill 33 in that settlement agreed to pay a civil penalty of \$27,500.00. 1998 Settlement at 6. Landfill 33 additionally agreed to a supplemental environmental project in which it set aside and made available 800 cubic yards of landfill space for use by the Illinois Environmental Protection Agency. *Id.* at 8. On July 23, 1998, the Board accepted the 1998 Settlement.

b. AC 00-73, AC 01-03, AC 07-06, AC 07-72 (Administrative Citations)

Mr. Borries states in his second public comment that the site at issue had two prior violations in 2006 and 2007. PC2 at 5. Specifically, Mr. Borries is referencing two prior administrative citations, AC 07-06 and AC 07-72. *Id.* at 11-12. The site at issue, however, has been the subject of four previous administrative citations, filed on March 28, 2000 (AC 00-73), July 13, 2000 (AC 01-03), August 7, 2006 (AC 07-06), and June 29, 2007 (AC 07-72). Landfill 33 was a co-respondent in all four administrative citations. Wendt Family Trust was a co-respondent in AC 07-72. Generally, these administrative citations either alleged (a) a violation of Section 21(o)(5) of the Act, 415 ILCS 5/21(o)(5) (2018), for conducting the landfill in a manner resulting in uncovered refuse remaining from a previous operating day or at the conclusion of an operating day; (b) a violation of Section 21(o)(12) of the Act, 415 ILCS 5/21(o)(12) (2018), for failing to collect and contain litter from the site at the end of each operating day; or (c) violations of both Sections 21(o)(5) and 21(o)(12) of the Act. None of the respondents filed a petition for review to contest any of the referenced administrative citations. The civil penalty for violating Section 21(o) of the Act is \$500 for each violation, and the civil penalties in each case therefore ranged between

\$500 and \$1,000.

c. **Alleged Violations Following the Leachate Release**

Mr. Borries states that the site “had further violations after the leachate violation.” PC2 at 5. Mr. Borries attaches to his comment two violation notices issued by the Illinois Environmental Protection Agency (“Illinois EPA”), on September 18, 2018, and June 8, 2020. *Id.* at 13-14. Based on handwritten notes on each notice, the first violation notice appears to relate to an alleged odor violation, and the second violation notice appears to relate to alleged odor and mud tracking violations. *Id.* These violation notices, however, do not refer to “adjudicated” violations but instead reference apparent violations to which Landfill 33 is given an opportunity to respond to and resolve with the Illinois EPA through a process afforded by Section 31 of the Act. 415 ILCS 5/31 (2018). “With due respect to the agency’s expertise, its issuance of a [violation] notice does not have the force of an adjudication.” *People v. Lincoln, Ltd.*, 2016 IL App (1st) 143487, ¶37. Rather, an “IEPA notice of violation is merely a notice of potential liability and is ‘a preliminary step in [IEPA’s] investigation of possible violations of the Act.’” *Id.*, citing *National Marine, Inc. v. Illinois Environmental Protection Agency*, 159 Ill.2d 381, 389 (1994).

Further, the Settlement in this matter only pertains to “violations of the Act and Board regulations that were the subject matter of the Complaint herein” and the Settlement’s release from liability “does not extend to any matters other than those expressly specified in [the People’s] Complaint filed on November 27, 2019.” Settlement at 9. In other words, while recognizing Mr. Borries’ concerns that “Landfill 33 continues to operate the Facility with negligence” (PC2 at 5), those violations may still become the subject of future enforcement actions or compliance commitment agreements with the Illinois EPA, assuming they have not already been resolved.

III. THE PROPOSED CIVIL PENALTY IS APPROPRIATE

The Board considers the factors of Section 42(h) of the Act when considering the appropriate civil penalty to be imposed. 415 ILCS 5/42(h) (2018). The People request that the Board takes notice of the above review of previously adjudicated violations in addition to the discussion of the other factors of Section 42(h) of the Act as provided in the Settlement. Settlement at 6-7. The People reviewed the prior adjudicated violations of the Act and believes that the proposed civil penalty of \$18,000.00 remains appropriate in this matter in light of the remaining factors of Section 42(h) of the Act, the time period and nature of the prior violations, Respondents' expedience in responding to the violations at issue in this matter, and the \$255,135.50 in additional costs resulting from the preventative measures undertaken by Respondents.

IV. ADDITIONAL MATTERS RAISED IN PUBLIC COMMENTS

Mr. Borries raises additional matters in his second and third public comments which the People address below. The People do not believe that any of these arguments raised by Mr. Borries require a civil penalty beyond that already agreed to in the Settlement.

a. Cause of the Release

Mr. Borries alleges that the parties disagree on the cause of the leachate release. PC2 at 4. The People in their Post-Hearing Brief reference the source of the leachate release (a crack in a pipe attached to the leachate pumping system) and do not take a position as to what caused the crack in the pipe. Post-Hearing Brief at 2. The People believe that the actions taken by Respondents have cured the violations that are the subject of the Complaint. Settlement at 5. Further, Respondent's additional preventative measures, including leachate control system piping and security upgrades, will aid in ensuring that a similar release does not occur in future. *Id.* at 4.

b. Clean-up of the Leachate Release

Mr. Borries disputes the People's allegations that the leachate release was subsequently cleaned. PC2 at 4. The People detail the clean-up and subsequent Illinois EPA inspections in its Post-Hearing Brief. Post-Hearing Brief at 6; Post-Hearing Brief Exhibit A, Affidavit of Dustin Burger.

c. Reference to Vandalism in Landfill 33's Permit Application

Mr. Borries states that Landfill 33, in its "Application for Permit or Construction Approval", affirmatively stated that the "pumping station and equipment [are] protected against vandalism." PC3 at 2. Mr. Borries further states that Landfill 33 "failed to protect their pumping station and equipment as outlined in this application." *Id.* Mr. Borries does not state with any specificity what deficiencies existed at the time Landfill 33 submitted the referenced permit application, but the implication is of course that whatever steps were taken were insufficient to protect against vandalism. The People agree that Respondent's actions (or lack thereof) generally caused or allowed the violations alleged in the Complaint, which is why the Complaint was brought against Respondents, why Respondents were required to take steps to bring the site back into compliance, and why Respondents are subject to a civil penalty in this action.

V. CONCLUSION

For the reasons discussed above and in the previously filed Post-Hearing Brief, the People request that the Board take notice of the prior adjudicated violations, find the civil penalty proposed in the Settlement appropriate, and accept the Settlement as filed.

Respectfully submitted,

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