

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 by KWAME RAOUL, Attorney General)
 of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 YOUTH FAIR CHANCE, INC.,)
 d/b/a CAPITOL REUSE CENTER,)
 an Indiana not-for-profit corporation, and)
 DALE ROWDEN, an individual,)
)
 Respondents.)

PCB No. 21-45

NOTICE OF FILING

To: See attached service list (Via Electronic Filing)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following **Motion to Deem Facts Admitted and for Summary Judgment** as to Respondent Dale Rowden, a copy of which is attached and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS
KWAME RAOUL, ATTORNEY GENERAL

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: s/Emma L. Hudspath
Emma L. Hudspath
Environmental Bureau
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62701
217/782-9031
Emma.Hudspath@ilag.gov

Dated: May 26, 2023

Service List

For the Respondent

Youth Fair Chance
d/b/a Capitol Reuse Center
c/o Danny Woodcock, Registered Agent
701 North Holt Road, Suite 1
Indianapolis, IN 46222 -4139

Dale Rowden
1216 Patton Street
Springfield, IL 62701

Dale Rowden
1222 Patton Street
Springfield, IL 62701

CERTIFICATE OF SERVICE

I hereby certify that I did on May 26, 2023, send true and correct copies of the document entitled **Notice of Filing, Motion to Deem Facts Admitted and for Summary Judgment and Certificate of Service**, via certified mail with postage thereon fully prepaid, by depositing in a United States Postal Office Box in Springfield, Illinois to:

Youth Fair Chance
d/b/a Capitol Reuse Center
c/o Danny Woodcock, Registered Agent
701 North Holt Road, Suite 1
Indianapolis, IN 46222 -4139

Dale Rowden
1216 Patton Street
Springfield, IL 62701

Dale Rowden
1222 Patton Street
Springfield, IL 62701

/s/ Katie Johnson
Katie Johnson
Environmental Bureau

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this certificate of service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

/s/ Katie Johnson
Katie Johnson
Environmental Bureau

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PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB No. 21-45
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d/b/a CAPITOL REUSE CENTER,)	
an Indiana not-for-profit corporation, and)	
DALE ROWDEN, an individual,)	
)	
Respondents.)	

**MOTION TO DEEM FACTS ADMITTED AND FOR SUMMARY JUDGMENT
AS TO RESPONDENT DALE ROWDEN**

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, pursuant to Sections 103.204 and 101.516 of the Illinois Pollution Control Board’s Procedural Rules, 35 Ill. Adm. Code 103.204 and 101.516, and hereby moves for the entry of an order deeming all material facts in Complainant’s Complaint as admitted against Respondent DALE ROWDEN. Further, Complainant moves this Illinois Pollution Control Board (“Board”) for summary judgment of the Complaint against Respondent DALE ROWDEN. In support thereof, Complainant states as follows:

1. On December 22, 2020, the Complainant filed its Complaint against Respondents, YOUTH FAIR CHANCE, INC., d/b/a CAPITOL REUSE CENTER, an Indiana not-for-profit corporation, (“CRC”) and DALE ROWDEN, an individual, (“ROWDEN”) for alleged violations that occurred at a parking lot located at 2521 Stockyard Road, Springfield, Sangamon County, Illinois (“Disposal Site”). Complainant alleged that approximately 150 1-gallon paint cans containing oil-based paint were inappropriately disposed of at the Disposal Site. Complainant also

alleged that the waste paint had belonged to Respondent CRC, who had paid Respondent Dale Rowden to dispose of the waste paint.

2. Respondent CRC entered into a Stipulation and Proposal for Settlement which was filed on December 20, 2021, and accepted by the Board on March 3, 2022. This Motion does not address Respondent CRC.

3. On April 15, 2022, Complainant filed its Proof of Service of the Complaint to Respondent ROWDEN with the Board.

4. The Proof of Service indicated that Respondent ROWDEN had been served with the Complaint on February 10, 2022. A true and correct copy of the Proof of Service is attached hereto as Exhibit 1.

5. As of the date of the filing of this Motion, Respondent ROWDEN has not filed an Answer, nor otherwise pled, to the Complaint.

6. Section 103.204(d) and (e) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204(d) and (e), provides as follows:

- (d) Except as provided in subsection (e), the respondent must file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.
- (e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506, the 60-day period to file an answer described in subsection (d) will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion.

7. By failing to answer the Complaint on or before April 10, 2022, and by failing to file a motion staying the 60-day period in which to file an Answer as required by Section

103.204(d) and (e) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204(d) and (e), Respondent ROWDEN has admitted the material allegations asserted in the Complaint.

8. Complainant therefore requests that the Board enter an order finding that pursuant to Section 103.204(d) and (e), 35 Ill. Adm. Code 103.204(d) and (e), Respondent ROWDEN has admitted all material allegations asserted in the Complaint.

9. Complainant's Complaint sufficiently states facts establishing the following violations of the Act and Board Air Pollution Regulations against Respondent DALE ROWDEN:

- Count I: Open Dumping of Waste
415 ILCS 5/21(a) (2018)
- Count II: Open Dumping Resulting in Litter
415 ILCS 5/21(p)(1) (2018)
- Count IV: Illegal Disposal of Special Waste
415 ILCS 5/21(e) (2018)
35 Ill. Adm. Code 808.121(c)(1)

10. Section 105.516(b) of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.516(b), provides as follows:

- (b) If the record, including pleadings, depositions and admission on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgement as a matter of law, the Board will enter summary judgment.

11. If the Board finds that Respondent ROWDEN has admitted all material allegations in Complainant's Complaint, then the record shows that there is no issue of material fact remaining for review. Therefore, pursuant to Section 101.516(b) of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.516(b), Complainant is entitled to summary judgment in its favor as a matter of law.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME

RAOUL, Attorney General of the State of Illinois, respectfully request that the Board issue an order in favor of Complainant and against Respondent DALE ROWDEN, as follows:

A. Ordering all material allegations in the Complaint admitted against Respondent DALE ROWDEN;

B. Finding that Respondent DALE ROWDEN violated Sections 21(a), (e), and (p)(1) of the Act, 415 ILCS 5/21(a), (e), (p)(1); and Section 808.121(c)(1) of the Board Regulations, 35 Ill. Adm. Code 808.121(c)(1);

C. Granting summary judgment in favor of Complainant and against Respondent DALE ROWDEN on Counts I, II, and IV of the Complaint; and

REMEDY

The January 27, 2021 Board Order in this cause provides, in pertinent part:

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 the delayed complaint), and supporting its position with facts and argument that address any or all of the Section 42(h) factors...

Pursuant to the January 27, 2021 Board Order, Complainant is proposing that Respondent ROWDEN be ordered to cease and desist from further violations of the Act and Board Regulations. In addition, Complainant requests that the Respondent ROWDEN be ordered to pay a civil penalty.

Impact on the Public Resulting from Respondent's Alleged Non-Compliance

In determining whether a civil penalty is warranted, the Board must consider the factors set forth in Section 33(c) of the Act, 415 ILCS 5/33(c). *Toyol Am., Inc. v. Illinois Pollution Control*

Board, 2012 IL App (3d) 100585, ¶ 28 (3d Dist. 2012). The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation. *People v. John Prior d/b/a Prior Oil Co. and James Mexo d/b/a Mezo Oil Co.*, (PCB 02-177), Slip. Op. at 29 (May 6, 2004). Section 33(c) of the Act, 415 ILCS 5/33(c) (2020), provides as follows:

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:

1. The character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. The social and economic value of the pollution source;
3. 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;
4. The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Complainant states the following:

1. Human health and the environment were threatened by the improper disposal of oil based paint at the Disposal Site by Respondent ROWDEN.
2. There is social and economic benefit to the proper disposal of waste, if conducted in a manner compliant with the Act and Board's Regulations.
3. The subject parking lot was not suitable for use as a waste disposal location.
4. Proper disposal of waste is technically practicable and economically reasonable.
5. Respondent ROWDEN did not subsequently comply with the Act and Board Regulations. The violations were ultimately resolved by Respondent CRC.

In consideration of these factors, the Board should enter an order requiring Respondent to

pay a civil penalty of at least Five Thousand Dollars (\$5,000) for its violations of the Act.

Explanation of Civil Penalty Requested

Section 2(b) of the Act, 415 ILCS 5/2(b) (2020), provides:

It is the purpose of this Act, as more specifically described in later sections, to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, and to ensure that adverse effects upon the environment are fully considered and borne by those who cause them.

The primary purpose of civil penalties is to aid in the enforcement of the Act. *See People v. McHenry Shores Water Co.*, 295 Ill. App. 3d 628 (2d Dist. 1998). Civil penalties should reflect the severity of the violation(s) of the Act. *Southern Illinois Asphalt Company, Inc. v. Pollution Control Board*, 60 Ill. 2d 204, 208 (5th Dist. 1975). However, the Act authorizes civil penalties regardless of whether violations resulted in actual pollution. *ESG Watts, Inc. v. Illinois Pollution Control Board*, 282 Ill. App. 3d 43, 52 (4th Dist. 1996). Moreover, the Act authorizes civil penalties regardless of whether violations resulted in actual pollution. *ESG Watts, Inc. v. Illinois Pollution Control Board*, 282 Ill. App. 3d 43, 52 (4th Dist. 1996). Moreover, the award of a civil penalty “serves the legislative purpose of aiding enforcement of the Act, for through penalties upon those who blatantly disregard applicable rules and regulations, others, who might consider cutting corners at the expense of the environment, are deterred.” *Wasteland, Inc. v. Illinois Pollution Control Board*, 118 Ill. App. 3d 1041, 1055 (3d Dist. 1983) (subsequently cited by the First District; *see e.g. Standard Scrap Metal Co. v. Pollution Control Board*, 142 Ill. App. 3d 655, 665 (1st Dist. 1986)).

Section 42 of the Act provides guidance for calculating civil penalties for violations of the Act. In particular, Section 42(a) of the Act, 415 ILCS 5/42(a) (2020), provides, in pertinent part, as follows:

- a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues;

Consideration of Section 42(h) Factors

Section 42(h) of the Act, 415 ILCS 5/42(h) (2020), provides as follows:

In determining the appropriate civil penalty to be imposed under ..., the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent 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 respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection I of this Section, the non-compliance to the Agency;
7. whether the respondent has agreed to undertake a 'supplemental environmental project,' which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and
8. whether the respondent has successfully completed a Compliance Commitment Agreement under the subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Complainant states as follows:

1. Respondent accepted payment for the disposal of waste paint, and was not properly licensed for the disposal of waste paint. Respondent then improperly disposed of the waste paint in a parking lot, in such a manner that some waste paint was observed to be leaking. Respondent did not assist in the cleanup of the waste paint.

2. Respondent failed to act diligently in this matter, in that he accepted payment for the disposal of waste paint when he was not licensed to dispose of special waste; he improperly disposed of the waste paint; and did not assist in the cleanup of the improperly disposed waste paint.

3. The civil penalty requested by Complainant in the amount of Five Thousand Dollars (\$5,000.00), includes any economic benefit that Respondent may have accrued as a result of its noncompliance.

4. A civil penalty in the amount of at least Five Thousand Dollars (\$5,000.00) will serve to deter further violations by Respondent and to otherwise aid in enhancing voluntary compliance with the Act and Board Regulations by Respondent and other persons similarly subject to the Act and Board Regulations.

5. To Complainant's knowledge, Respondent has had no previously adjudicated violations.

6. Self-disclosure is not at issue in this matter.

7. Respondent did not perform a supplemental environmental project.

8. A Compliance Commitment Agreement was not at issue in this matter.

In furtherance of the purposes of the Act "to assure that adverse effects upon the environment are fully considered and borne by those who cause them, 415 ILCS 5/2(b) (2020),

and based on the gravity of the violations and Respondent's lack of diligence to comply with the Act and Board's Regulations, the Board should assess against Respondent a civil penalty of no less than Five Thousand Dollars (\$5,000.00).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, respectfully requests that the Board grant its Motion to Deem Facts Admitted and for Summary Judgment against Respondent DALE ROWDEN, and award the relief requested herein, and take such other action as the Board believes to be appropriate and just.

Respectfully submitted,
PEOPLE OF THE STATE OF ILLINOIS
By KWAME RAOUL, Attorney General
of the State of Illinois

BY: /s/ Emma L. Hudspath
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STATE OF ILLINOIS

COUNTY OF

Sangamon

)SS.

CASE NUMBER: PCB 2021-045

AFFIDAVIT OF SERVICE

I, J. Anthony Willner, being first duly sworn, depose and state as follows:

I am an Investigator in the Office of the Attorney General, State of Illinois. Pursuant to 15 ILCS 205/4c investigators employed by the Attorney General have all the powers possessed by sheriffs.

I am over 21 years of age and not a party in this case.

I served the within NOTICE OF FILING and a copy of the attached COMPLAINT, AMENDED CERTIFICATE OF SERVICE, YOUTH FAIR CHANCE NOTICE upon Dale D. Rowden, on the 10th day of February, 2022 at approximately 8:00 am by:

PERSONAL service was made by giving a copy of the aforementioned Notice of Filing to Dale D. Rowden White, 51, Male

personally at 1222 N. Patton in Springfield Sangamon County, Illinois.

SUBSTITUTE service on _____ was made by handing the aforementioned _____ to _____, a member of the same household, (who is 13 years of age or older) _____

informing that person of the contents of the above cited document(s) on the _____ day of _____, 20____ at the hour of _____, at _____, in _____, County of _____, his/her usual place of residence and by placing the document(s) in the United States Mail on _____, with postage fully prepaid and addressed to the Respondent's last known address.

CORPORATION OR PARTNERSHIP service on _____ by leaving a copy of the _____ and of the cited document(s) with _____, Registered Agent / Officer or Agent.

[Signature]
Investigator
Office of the Attorney General

Subscribed and sworn to before me this 10th day of February, 20____ at _____

Brenda K. Frick
Notary Public

