

ILLINOIS POLLUTION CONTROL BOARD
January 18, 2024

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 23-129
) (Enforcement - Air)
 LEIF’S AUTO SALVAGE, INC., an Illinois)
 corporation,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by J. Van Wie):

On June 21, 2023, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a one-count complaint (Comp.) against Leif’s Auto Salvage, Inc. (Leif’s). The complaint concerns Leif’s Carroll County automobile salvage facility and alleges violations of the Environmental Protection Act (Act) and the Board’s air pollution regulations.

On December 18, 2023, the People filed a motion to deem facts admitted and for summary judgment (Mot.). Leif’s has not responded to the motion. For the reasons below, the Board grants the People’s motion to deem facts admitted and for summary judgment, finding that Leif’s violated Section 9(a) of the Act (415 ILCS 5/9(a) (2022)), and Section 201.302(a) of Board’s air pollution regulations (35 Ill. Adm. Code 201.302(a)) as alleged in the People’s complaint.

In this opinion and order, the Board first reviews the procedural history, provides statutory and regulatory background, and summarizes the People’s complaint. The Board then addresses the People’s motion to deem facts admitted and the uncontested facts. The Board next considers the People’s motion for summary judgment and proposed remedy. The Board then reaches its conclusions and issues its order.

PROCEDURAL HISTORY

On June 21, 2023, the People filed their complaint, and the Board accepted it for hearing on July 6, 2023. On July 7, 2023, the People filed a certified mail return receipt showing service of the complaint on Leif’s on June 29, 2023. Leif’s has not filed an answer or any pleading responding to the complaint and has not requested an extension of the deadline to do so.

On December 18, 2023, the People filed a motion to deem facts admitted and for summary judgment. Leif’s has not responded to the motion or requested to extend the response deadline.

STATUTORY AND REGULATORY BACKGROUND

Section 9(a) of the Act provides that no person shall:

[c]ause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act. 415 ILCS 5/9(a) (2022).

Section 3.165 of the Act defines “contaminant” as “any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.” 415 ILCS 5/3.165 (2022).

Section 3.315 of the Act defines “person” as “any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.” 415 ILCS 5/3.315 (2022).

Section 201.302(a) of the Board’s air pollution regulations provides that

[t]he owner or operator of any emission unit or air pollution control equipment meeting the applicability criteria contained in 35 Ill. Adm. Code 254.102 shall submit to the Agency as a minimum, annual reports detailing the nature, specific emission units and total annual quantities of all specified air contaminant emissions; provided, however, that the Agency may require more frequent reports when necessary to accomplish the purposes of the Act and this Chapter. 35 Ill. Adm. Code 201.302(a).

Section 211.370 of the Board’s air pollution regulations defines “air pollutant” as

an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material and byproduct material) substance or matter which is emitted into or otherwise enters the atmosphere. Such term includes any precursors to the formation of any air pollutant, to the extent that the relevant statute or rule has identified such precursor or precursors for particular purpose for which the term "air pollutant" is used. 35 Ill. Adm. Code 211.370.

Section 211.1950 of the Board’s air pollution regulations defines “emission unit” as “any part or activity at a stationary source that emits or has the potential to emit any air pollutant.” 35 Ill. Adm. Code 1950.

Section 211.4370 of the Board’s air pollution regulations defines “owner or operator” as “any person who owns, operates, leases, controls, or supervises a source, an emission unit or other air pollution equipment.” 35 Ill. Adm. Code 211.4370.

Section 211.6370 of the Board’s air pollution regulations defines “stationary source” as “any building, structure, facility, or installation that emits or may emit any air pollutant.” 35 Ill. Adm. Code 211.6370.

Section 254.102(b) of the air pollution regulations of the Illinois Environmental Protection Agency (Agency) provides that “Subpart C of this Part [Reporting Requirements for Other Sources] applies to the owner or operator of any source of regulated air pollutants required to have an operating permit in accordance with 35 Ill. Adm. Code 201 that is not subject to subsection (a) of this Section.” 35 Ill. Adm. Code 254.102(b).

Section 254.132(a) of the Agency’s air pollution regulations provides that “[f]ailure to file a complete Annual Emissions Report by the applicable deadlines prescribed in Section 254.137(a) of the Subpart shall be a violation of this Part and 35 Ill. Adm. Code 201.302(a).” 35 Ill. Adm. Code 254.132(a).

Section 254.137(a) provides that “[a]ll Annual Emissions Reports are due by May 1 of the year following the year in which the emissions took place.” 35 Ill. Adm. Code 254.137(a).

COMPLAINT

In its single count, the complaint alleges that Leif’s violated Section 201.302(a) of Board’s air pollution regulations (35 Ill. Adm. Code 201.302(a)) and Section 9(a) of the Act, 415 ILCS 5/9(a) (2022)). The People allege that Leif’s committed these violations by failing to timely submit a complete and accurate Annual Emission report (AER) for calendar year 2020. Comp. at 5.

MOTION TO DEEM FACTS ADMITTED

The Board’s procedural rules provide that, except under circumstances not presented in this case, “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” 35 Ill. Adm. Code 103.204(d).

The People argue that, by failing to answer the complaint within 60 days or filing a motion to extend that deadline, Leif’s “has admitted the material allegation asserted in the Complaint.” Mot. at 2, citing 35 Ill. Adm. Code 103.204. The People request that the Board find that Leif’s has admitted all material allegations in the complaint. Mot. at 3.

Leif’s failed to answer the complaint within 60 days after service, *i.e.*, by Monday, August 28, 2023. Leif’s did not file a motion to extend the 60-day deadline. *See* 35 Ill. Adm. Code 103.204(d), 101.506. Leif’s also failed to respond to the People’s motion to deem facts admitted and waives objection to the Board granting it. *See* 35 Ill. Adm. Code 101.500(d). The Board grants the People’s unopposed motion to deem facts admitted and deems admitted the material allegations in the People’s complaint. *See* Ill. Adm. Code 103.204(d).

FACTS

At all times relevant to the People’s complaint, Leif’s “owned an automobile salvage facility located at 3331 Morrison Road in Chadwick, Carroll County” (Facility). Comp. at 2. Under the definitions in the Board’s air pollution rules, Leif’s is an “owner or operator.” *Id.* at 4, citing 35 Ill. Adm. Code 211.4370. Leif’s “has been and is an Illinois corporation registered and in good standing with the Illinois Secretary of State’s Office.” Comp. at 1. As an Illinois corporation, Leif’s “is a ‘person’ as that term is defined in Section 3.315 of the Act.” *Id.* at 2, citing 415 ILCS 5/3.315 (2022).

Under the definitions in the Board’s air pollution rules, the Facility is a “stationary source” where Leif’s operates an “emission unit” capable of emitting particulate matter, which is an “air pollutant.” Comp. at 4-5, citing 35 Ill. Adm. Code 211.370, 211.1950, 211.6370. Particulate matter is also a ‘contaminant’ as that term is defined in Section 3.165 of the Act.” Comp. at 2, citing 415 ILCS 5/3.165 (2022).

At all times relevant to the complaint, the Facility was a source required to have an operating permit under Part 201 of the Board’s rules and was not subject to other requirements of Section 254.102(a) of the Agency’s air pollution rules. Comp. at 3, citing 35 Ill. Adm. Code 201, 254.102(a). Accordingly, “the Facility is a minor source required to have an operating permit” under Part 201 of the Board’s air pollution rules and therefore meets the applicability criteria for reporting requirements in Section 254.102(b) of the Agency’s air pollution rules. Comp. at 3.

On October 26, 1998, the Agency issued Leif’s Lifetime Operating Permit No. 98050046. Comp. at 3. At all times relevant to the People’s complaint, Leif’s “has and continues to have an active and enforceable operating permit for an aluminum sweat furnace, which is capable of emitting particulate matter into the environment.” *Id.*

From 1997 or a date better known to it and continuing to the date of the filing of the People’s complaint, Leif’s as owner or operator of an emission unit was required by the Board’s and Agency’s air pollution rules to submit AERs to the Agency by May 1 each year for the preceding year. Comp. at 5, citing 35 Ill. Adm. Code 201.302(a), 254.132(a), 254.137(a). Leif’s did not timely submit its AER to the Agency for calendar year 2020. Comp. at 5.

MOTION FOR SUMMARY JUDGMENT

The People argue that, if deemed admitted by Leif’s, the facts alleged in the complaint are sufficient to establish that Leif’s violated Section 201.302(a) of Board’s air pollution regulations (35 Ill. Adm. Code 201.302(a)) and Section 9(a) of the Act (415 ILCS 5/9(a) (2022)). Mot. at 3. The People assert that there are no genuine issues of fact and that the People are entitled to judgment as a matter of law. *Id.*

A party has 14 days from receiving a motion for summary judgment to respond. 35 Ill. Adm. Code 101.516(a). If no response is filed, “the party waives objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d); *see* People v. Env’tl. Health and

Safety Svcs., Inc., PCB 05-51, slip op. at 13 (July 23, 2009). Leif's did not respond to the People's motion or request that the Board extend the response deadline. Leif's has waived any objection to the Board granting the motion for summary judgment.

The Board next provides the standard for considering motions for summary judgment and then decides the motion.

Standard for Summary Judgment

Summary judgment is appropriate when the pleadings, depositions, admissions, affidavits, and other items in the record show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 35 Ill. Adm. Code 101.516(b); Adames v. Sheahan, 233 Ill. 2d 276, 295, 909 N.E.2d 742, 753 (2009); Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). When determining whether a genuine issue of material fact exists, the record "must be construed strictly against the movant and liberally in favor of the opponent." Adames, 233 Ill. 2d at 295-96, 909 N.E.2d at 754; Purtill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). "It is well established that in deciding a motion for summary judgment the court may draw inferences from undisputed fact." Makowski v. City of Naperville, 249 Ill. App. 3d 110, 119, 617 N.E. 2d 1251 (1993); Loyola Academy v. S & S Roof Maintenance, Inc., 146 Ill. 2d 263, 272, 586 N.E.2d 1211 (2d Dist. 1992). "However, where reasonable persons could draw divergent inferences from undisputed facts, the trier of fact should decide the issues and the summary judgment motion should be denied." Makowski, 249 Ill. App. 3d at 119; Pyne v. Witmer, 129 Ill. 2d 351, 358, 543 N.E.2d 1304.

Ruling on Motion for Summary Judgment

The People argue that the facts alleged in the complaint and deemed admitted by Leif's are sufficient to establish that Leif's committed the violations alleged in the complaint. Mot. at 3. The People assert that there are no genuine issues of material fact and that the People are entitled to summary judgment as a matter of law. *Id.*

The admitted facts show that Leif's owned an automobile salvage facility in Carroll County. Leif's is an "owner or operator" under the Board's rules and is a "person" under the Act. Leif's facility is a "stationary source" where it operates an "emission unit" capable of emitting particulate matter, which is an "air pollutant." Under the Act, particulate matter is also a "contaminant."

The admitted facts show that Leif's facility was a source required under Part 201 of the Board's rules to have an operating permit and was not subject to other requirements of Section 254.102(a) of the Agency's air pollution rules. The Facility is a minor source required to have an operating permit under Part 201 of the Board's air pollution rules and therefore meets the applicability criteria for reporting requirements in Section 254.102(b) of the Agency's air pollution rules.

On October 26, 1998, the Agency issued Leif's Lifetime Operating Permit No. 98050046. Comp. at 3. Leif's has and continues to have an active and enforceable operating permit for an aluminum sweat furnace, which is capable of emitting particulate matter into the environment.

From 1997 or a date better known to it and continuing to the date of the filing of the People's complaint, Leif's as owner or operator of an emission unit was required by the Board's and Agency's air pollution rules to submit AERs to the Agency by May 1 each year for the preceding year. Leif's did not timely submit its AER to the Agency for calendar year 2020.

On summary judgment, to determine whether a genuine issue of material fact exists, the Board must construe the record strictly against the People as movant and liberally in favor of Leif's as the non-moving party. Doing so, the Board finds that this case presents no genuine issue of material fact. The facts deemed admitted by Leif's establish that Leif's violated Section 201.302(a) by failing to timely submit a complete and accurate AER for calendar year 2020. By violating this Board regulation, Leif's caused, threatened, or allowed the discharge or emission of contaminants into the environment so as to violate regulations adopted by the Board, violating Section 9(a) of the Act. Accordingly, the Board finds that the People are entitled to judgment as a matter of law.

The Board grants the People's motion for summary judgment, finding that Leif's violated Section 201.302(a) of Board's air pollution regulations and Section 9(a) of the Act.

REMEDY

Having found that Leif's violated Section 201.302(a) of Board's air pollution regulations and Section 9(a) of the Act, the Board must now determine an appropriate remedy including any penalties.

In evaluating the record to determine a remedy, the Board considers the factors of Section 33(c) of the Act (415 ILCS 5/33(c) (2022)). If, after considering those factors, the Board concludes to impose a civil penalty, then the Board considers the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2022)) to determine the appropriate amount of the penalty.

Section 33(c) of the Act states:

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. 415 ILCS 5/33(c) (2022).

The People's motion addresses these factors: 1) Leif's violations hindered the Agency's information-gathering responsibilities; 2) "[t]here is social and economic benefit to the facility"; 3) "[o]peration of the facility was and is suitable for the area in which it is located"; 4) timely submitting complete and accurate AERs is both technically practicable and economically reasonable; and 5) Leif's subsequently complied with the Act and Board regulations. Mot. at 5. Based on these factors, the People ask the Board to assess a civil penalty of at least \$15,000. *Id.* at 4, 5, 8.

The Board agrees with the People that Leif's violations hindered the Agency's ability to gather information. The Board weighs this first Section 33(c) factor against Leif's.

The Board also agrees with the People that Leif's gasoline dispensing facility is suitable for the area in which it is located and that the facility has social and economic value. The Board weighs the second and third factors weigh in Leif's favor.

The Board finds that timely submission of complete and accurate AERs is both technically practicable and economically reasonable. The Board weighs this fourth factor against Leif's.

The People report that Leif's has subsequently complied with the Act and Board regulations, and the Board weighs this fifth factor in favor of Leif's.

Leif's violations hindered the Agency's ability to gather information. The Board places particular weight on its finding that timely submitting a complete and accurate AER is both technically practicable and economically feasible. After considering them, the Board finds that the Section 33(c) factors favor requiring Leif's to pay a civil penalty.

Having concluded that the Section 33(c) factors support assessing a civil penalty, the Board next applies the factors of Section 42(h) to consider the \$15,000 civil penalty requested by the People. Section 42(h) of the Act states that,

[i]n determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), (b)(5), (b)(6), or (b)(7) of this Section, 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 subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In determining the appropriate civil penalty to be imposed under subsection (a) or paragraph (1), (2), (3), (5), (6), or (7) of subsection (b) of this Section, the Board shall ensure, in all cases, 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. However, such civil penalty may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent. 415 ILCS 5/42(h) (2022).

The People’s motion addresses these factors. First, the People report that Leif’s did not file its AER for 2020 due on May 1, 2021, until September 2, 2021. Leif’s violation continued over four months. Comp. at 7. Second, the People assert that Leif’s failed to act diligently, “as evidence by its failure to timely submit a complete and accurate AER for calendar year 2020. *Id.* at 8. Third, the People state that the requested \$15,000 penalty includes any economic benefit

Leif's may have accrued as a result of noncompliance. *Id.* Fourth, the People assert that the requested penalty will deter further violations by Leif's and encourage future compliance by Leif's and others similarly situated. *Id.* Fifth, the People report that they do not know of any previously adjudicated violations by Leif's. *Id.* Finally, the People report that neither self-disclosure nor a Compliance Commitment Agreement was at issue and that Leif's did not offer to perform a supplemental environmental project. *Id.*

Although the People report that Leif's ultimately complied with the Act and Board rules, its violations continued for four months. Leif's showed a lack of diligence in complying with these requirements, and its violations hindered the Agency's ability to gather information. This information is vital to ensure compliance with the Agency's emissions limitations requirements. The Board weighs the first two Section 42(h) factors against Leif's.

The Board agrees with the People that the requested civil penalty of \$15,000 includes any economic benefit that Leif's may have accrued as a result of its noncompliance. The Board also finds that the suggested \$15,000 penalty will deter further violations by Leif's and ensure voluntary compliance with the Act and the Board's air pollution regulations. The third and fourth weigh against Leif's and support the People's requested penalty.

The People report that they do not know of any previously adjudicated violations by Leif's. The Board weighs this fifth factor in its favor.

Neither self-disclosure nor a Compliance Commitment Agreement were at issue, and Leif's did not offer to perform a supplemental environmental project. The Board does not weigh any of these last three factors in considering the People's requested penalty.

Based on this record and the statutory factors, the Board finds that the People's requested civil penalty is appropriate given the duration of the violations, the lack of diligence in complying with the Act and regulations, and the resulting hindrance of the Agency's information gathering. The Board concludes that the People's requested penalty will encourage future compliance by Leif's and others similarly situated and recoup any economic benefit Leif's may have accrued from its noncompliance. In its order below, the Board assesses a civil penalty of \$15,000.

CONCLUSION

The Board grants the People's unopposed motion to deem facts admitted. Based on the facts admitted, the Board finds that there is no genuine issue of material fact and that the People are entitled to judgment as a matter of law. The Board accordingly grants the People's motion for summary judgment against Leif's. The Board finds that Leif's violated Section 201.302(a) of Board's air pollution regulations (35 Ill. Adm. Code 201.302(a)) and Section 9(a) of the Act (415 ILCS 5/9(a) (2022)) as alleged in the People's complaint. Having considered the factors of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c), 42(h) (2022)), the Board enters an order requiring Leif's to pay a civil penalty of \$15,000, as requested by the People.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board grants the People's unopposed motion to deem facts admitted and for summary judgment and finds that Leif's violated Section 201.302(a) of the Board's air pollution regulations (35 Ill. Adm. Code 201.302(a)) and Section 9(a) of the Act (415 ILCS 5/9(a) (2022)).
2. Leif's must pay a civil penalty of \$15,000 no later than Tuesday, February 20, 2024, which is the first business day after 30 days from the date of this order. Payment must be made by certified check or money order payable to the Environmental Protection Trust Fund. The case number and case name must be included on the respective certified check or money order.
3. Leif's must send the certified check or money order to:

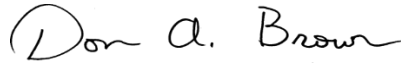
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2022)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2022)).

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2022); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board
Illinois Attorney General's Office Attn.: Molly Kordas, Asst. Attorney General Environmental Bureau 69 West Washington Street, Suite 1800 Chicago, Illinois 60602 Molly.Kordas@ilag.gov	Illinois Pollution Control Board Attn.: Don A. Brown, Clerk 60 E. Van Buren Street, Suite 630 Chicago, Illinois, 60605 don.brown@illinois.gov
Leif's Auto Salvage, Inc. Attn.: Terry A. Leif, Registered Agent 3331 Morrison Road Chadwick, Illinois 60114	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 18, 2024, by a vote of 4-0.



Don A. Brown, Clerk
 Illinois Pollution Control Board