

ILLINOIS POLLUTION CONTROL BOARD

July 23, 2026

ANGELA GRIFFIN AND MICHAEL	)	
GRIFFIN,	)	
	)	
Complainants,	)	
	)	PCB 26-42
v.	)	(Citizens Enforcement - Noise)
	)	
KNIGHT HAWK COAL, LLC, a Virginia	)	
limited liability company,	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by M. Gibson):

On December 17, 2025, Michael Griffin and Angela Griffin (the Griffins or Complainants) filed a *pro se* complaint against Knight Hawk Coal, LLC¹ (Knight Hawk or Respondent). The complaint concerns noise from Knight Hawk’s underground coal mining operation with the entrance located at 1720 IL-154, and the exhaust fan for the underground mining operations located at 4281 New Church Road, both in Pinckneyville, Perry County.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2024)), any person may bring an action before the Board to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2024); 35 Ill. Adm. Code 103. In this case, the Griffins allege that Knight Hawk violated Section 901.102 of the Board’s noise regulations (35 Ill. Adm. Code 901.102) and by causing or allowing noise emissions from its underground exhaust fan and coal mining operations so as to unreasonably interfere with their enjoyment of life and their property.

Knight Hawk timely filed a motion to dismiss the complaint, and the Griffins filed a response to the motion to dismiss. The Griffins then filed an amended complaint. Knight Hawk timely filed a motion to strike or dismiss the amended complaint. The Griffins filed a response to Knight Hawk’s motion, accompanied by a motion for leave to file a response out of time.

For the reasons below, the Board denies Knight Hawk’s motion to dismiss the complaint for frivolousness. The Board denies Knight Hawk’s motion to strike or dismiss the amended complaint as being duplicative. Finally, the Board accepts the complaint, as modified by this order, for hearing, and gives Knight Hawk 60 days from receipt of this order to file an answer.

In this opinion, the Board first describes the procedural background of the case, including addressing the motion for leave to file a response out of time. Next, the Board summarizes the

¹ The caption of the complaint lists the respondent as “Knight Hawk Coal Company,” but this is corrected in future filings and in this caption to “Knight Hawk Coal, LLC” per Knight Hawk’s correction in its motion to dismiss.

filings, starting with the complaint. The Board then discusses and rules on the motions to dismiss the complaint for frivolousness and for being duplicative. The Board also corrects the caption to reflect the correct name of the Respondent. The Board concludes the opinion by directing the hearing officer to proceed expeditiously to hearing and by issuing its order.

PROCEDURAL BACKGROUND

On December 17, 2025, the Griffins filed a *pro se* citizens' complaint (Comp.) against Knight Hawk. The complaint alleges violations of the Board's noise regulations. On January 14, 2026, Knight Hawk timely filed a motion to dismiss the complaint (Mot. Dis.). *See* 35 Ill. Adm. Code 103.212(b). Knight Hawk argues the complaint is frivolous for failing to state a cause of action upon which the Board can grant relief. Specifically, Knight Hawk argues that the complaint failed to allege a violation of the Act. On January 26, 2026, the Griffins filed a response to the motion to dismiss (Resp. Mot. Dis.).

On March 24, 2026, the Griffins filed an amended complaint (Am. Comp.). On April 13, 2026, Knight Hawk filed a motion to strike or dismiss the amended complaint (Mot. Str.). On June 18, 2026, the Griffins filed a response to Knight Hawk's motion (Resp. Mot. Str.) accompanied by a motion for leave to file a response out of time.

Griffins' Motion for Leave to File a Response Out of Time

The Griffins seek leave to file a response in opposition to Knight Hawk's motion to strike or dismiss the amended complaint. The Griffins argue that the noise from the exhaust fan has caused them severe, ongoing fatigue and health complications that affect their ability to represent themselves *pro se*. Resp. to Mot. Str. At 1. The Griffins argue that no party will be prejudiced by allowing the response, as the Board has not yet ruled on the underlying motion, and no timeline has been set. *Id.* Knight Hawk did not file an objection to the motion. The Board finds that the Griffins' motion shows good cause for preventing the Griffins as *pro se* complainants from facing undue prejudice were they not allowed an opportunity to respond to Knight Hawk's pending motion. 35 Ill. Adm. Code 101.522. The Board grants the Griffins' motion for leave to file a response out of time and takes the response with the motion to strike or dismiss below.

FILINGS

Griffins' Complaint

The Griffins allege that Knight Hawk operates an underground mining operation that has an exhaust fan for its underground mining operation. Comp. at 3. The alleged nuisance noise "continues all the time" and consists of "howling" from the exhaust fan, which is exacerbated when the wind is blowing from the southwest and "when air humidity is optimum for sound transmission," as well as noise from Knight Hawk's nearby rock dust silo operation. *Id.* at 4. The Griffins describe the fan as a ten-foot diameter, 2,500 horsepower, radial underground mine ventilation exhaust fan. *Id.* The Griffins allege that the fan is located about 1,300 feet from their property line, 1,600 feet from their nearest outbuilding, and 1,800 feet from their bedroom window. *Id.* The Griffins allege that the exhaust fan has been "running 24 hours a day 7 days a

week since January 12, 2025,” with the Griffins noting only two occasions of the fan seemingly not running: October 19, 2025 and November 8, 2025. *Id.*

The Griffins state that the rock dust silo operation is located approximately 1,000 feet from their property line, 1,200 feet from an outbuilding, and 1,400 feet from their residence. Comp. at 4. The Griffins describe the alleged nuisance noise from the rock dust silo operation as coming from an air blower used by semi-trucks “as a motive force to fill the silos” when the trucks make deliveries and allege that this noise “adds to the noise emitted by Knight Hawk Coal.” *Id.* The Griffins allege that the deliveries “take place multiple times per day, at all hours of the day and night, seven days a week.” *Id.* The Griffins allege that the unloading station is “fully exposed” and that no attempt was made to temper the noise it emits. *Id.*

The complaint alleges that Knight Hawk’s operations violate the Board’s numerical noise standards for property line noise sources. Comp. at 3. The complaint alleges that Knight Hawk has violated Part 901 of the Board’s noise regulations by emitting sound from Class C land beyond the property line of the Griffins’ Class A land in excess of the Section 901.102 numerical sound emission standards and limitations for property line noise sources. Comp. at 3; *see* 35 Ill. Adm. Code 901.102. Specifically, the complaint alleges that Knight Hawk’s operations violate subparts (a) and (b) of Section 901.102, Sound Emitted to Class A Land, by emitting sound from Knight Hawk’s Class C land beyond its property lines to the Griffins’ home on Class A land at “daytime and night time hours,” constituting “violations in excess of allowed [decibels] and frequency bands causing nuisance and noise pollution.” Comp. at 4; 35 Ill. Adm. Code 901.102(a), (b).

The complaint alleges that the noise “unreasonably interferes with, and deprives [the Griffins] of, the enjoyment of life and [their] property.” Comp. at 4; *see* 35 Ill. Adm. Code 901.102(a), (b). Specifically, the Griffins allege that the noise “disturbs the peaceful tranquility of the countryside” where they resided for 25 years prior to experiencing the alleged nuisance noise and that it is difficult to enjoy activities in their yard. Comp. at 5. The Griffins further allege that they cannot open their home’s windows due to the noise pollution and that they are “forced [] to wear earplugs to sleep at night,” and are often unable to sleep in their bedroom because of its proximity to the noise. *Id.* The Griffins allege that their interrupted sleep due to the sounds of the exhaust fan and dust bin trucks greatly affects their ability to do their jobs and relax and enjoy activities in their home. *Id.* at 5-6. The Griffins also allege that they believe their property value has decreased due to the noise being emitted onto their property from Knight Hawk’s operations. *Id.* at 6.

The Griffins included sound measurements in their complaint. The Griffins allege that sound measurements taken in their home on four dates with an “Extech 407730 (Calibration verified with 407660 sound calibrator) Sound Level Meter” registered noise levels in violation of the Board’s standards: November 12, 2025, at 5:01pm (72 decibels (dB)); December 13, 2025, at 11:00pm (71dB); December 14, 2025, at 3:00am (73dB); and December 14, 2025, at 10:50am (67.1dB). Comp. at 5-6. The Griffins allege that the sound level meter did not register a reading on the day the exhaust fan was out of service (November 8, 2025) because the sound measured was below the threshold for the meter. *Id.* at 6. The Griffins also included as attachments to the complaint photographs that they allege show: (1) a satellite photo of their property and the

neighboring properties from which the noise is coming (*Id.* at 9); (2) the exhaust fan (*Id.* at 10); (3) the rock dust silo (*Id.*); and (4) the rock dust silo as seen from their bedroom window (*Id.* at 11). The Griffins allege the exhaust fan was “installed and put into operation with no notification to the affected community.” *Id.* at 4. The Griffins further allege that Knight Hawk has monetarily benefitted from its operations by not spending money on “a compliant installation” of its exhaust fan. *Id.* at 7.

The Griffins ask the Board to require Knight Hawk to mitigate the noise it emits from its operations “to a level such that it doesn’t infringe on [their] right to enjoy [their] property,” and restore their quality of life to “the condition that existed prior to the installation and operation of the fan.” Comp. at 7. The Griffins also ask that the Board impose a civil penalty on Knight Hawk for “willfully installing the fan and causing noise pollution, and interfering with [their] enjoyment of life,” consisting of a daily penalty from the date the fan started until the violation is corrected. *Id.*

Knight Hawk’s Motion to Dismiss

Knight Hawk asks the Board to dismiss the complaint as frivolous because it fails to allege which specific sections of the Act are violated and therefore fails to state a cause of action on which the Board can grant relief. Mot. to Dis. at 1-2; *see* 415 ILCS 5 (2024). Knight Hawk argues that the complaint “references Title 35 Environmental Protection subtitle H: Noise but fails to cite any violation of State authorities.” *Id.* at 1. Knight Hawk alleges that, while Sections 24 and 25 of the Act govern the types of actions a private citizen can bring before the Board, it is “unclear which, if any, state statute is alleged to have been violated and which, if any administrative regulations are to be applied in measurement procedures” in this complaint. *Id.* Knight Hawk also argues that because the complaint does not allege a violation of a specific section of the Act, Knight Hawk is “unable to form an answer” to the complaint. *Id.* at 1-2.

Additionally, in the motion, Knight Hawk noted its correct name is “Knight Hawk Coal, LLC,” a Virginia limited liability company. The Board accordingly directs the Clerk to correct the caption in this matter to refer to respondent as “Knight Hawk Coal, LLC, a Virginia limited liability company.”

Griffins’ Response

In their response, the Griffins argue that the complaint is not frivolous because it clearly alleges violations of applicable Board noise regulations, specifically Section 901.102. Resp. at 2. The Griffins assert that they provide sufficient factual support for the allegations in the complaint, including identification of the noise source, exact distance from the source to their property line, sound measurements, and specific types of disruptions to their lives caused by the noise. *Id.* The Griffins argue that the facts alleged in the complaint are “more than sufficient to allow Knight Hawk to form an answer and for the Board to evaluate jurisdiction and potential relief.” *Id.*

The Griffins further assert that the complaint is not frivolous because it seeks relief the Board is authorized to grant, including orders requiring pollution abatement, modification of

Respondent's operations, and applicable civil penalties. *Id.* at 3. The Griffins argue that failure to invoke Sections 24 and 25 of the Act does not equate to failure to invoke citizens' enforcement authority for relief the Board is authorized to grant. *See id.* Finally, the Griffins argue that dismissal of the complaint at this stage would be improper because the complaint: (1) has alleged facts which, if proven, would constitute a violation of applicable regulations, and (2) seeks relief which the Board has authority to grant. *Id.* The Griffins assert that, when determining whether to accept a complaint, the Board does not weigh evidence, but rather determines whether these two factors have been satisfied. *Id.*

Griffins' Amended Complaint

In their amended complaint, the Griffins allege the same violations as in the original complaint, 35 Ill. Adm. Code, Subtitle H, specifically Part 901, Section 901.102, but add Sections 24 and 25 of the Act as jurisdictional authority for bringing the complaint. Am. Comp. at 1, par. 2-3; *see* Comp. at 3, par. 5. The amended complaint provides additional information about the nature of Knight Hawk's operations, including the extent to which the exhaust fan is insulated and sound muffled, the Mine Permit number for the fan, and the time of day at which the rock dust silo operations commence. Am. Comp. at 1-2, par. 4, 7. The amended complaint also describes the sound measurements taken by the Griffins with additional detail. *Id.* at 2, par. 6, 8. Finally, the Griffins specifically request that the Board find Knight Hawk to be in violation of the Act and Part 901 of the Board's noise regulations, require Knight Hawk to implement controls to abate its noise emissions and prevent future violations, to impose civil penalties in accordance with Sections 33(c) and 42(h) of the Act, and grant other relief the Board deems just and proper. *Id.* at 2, par. 9.

Knight Hawk's Motion to Strike or Dismiss

Knight Hawk moves to strike or dismiss the amended complaint on the grounds that it is duplicative because it merely reiterates the allegations in the original complaint. Mot. Str. Dis. at 1. Knight Hawk also contends that the amended complaint should be dismissed because it was filed without the Griffins requesting leave to do so. *Id.* To support this contention, Knight Hawk asserts that the Board, though not bound by them, may look to the Code of Civil Procedure (735 ILCS 5 (2024)) and Illinois Supreme Court Rules for guidance. *Id.* Knight Hawk points to the Code of Civil Procedure requirement that an amended complaint cannot be filed without leave of court to argue that the Board should dismiss the Griffins' amended complaint for failure to request leave to file. *Id.* (*citing* 735 ILCS 5/2-609 (2024)). Knight Hawk asserts that the Board should strike the amended complaint for failure to request leave to file, and rule on the contested pending motion to dismiss as a matter of procedure. Mot. Str. Dis. at 2.

Griffins' Response

The Griffins argue that their amended complaint is neither duplicative nor frivolous. Resp. Mot. Str. Dis. at 1. The Griffins assert that they clearly allege a valid claim under Section 24 of the Act (415 ILCS 5/24 (2024)) and under Subpart H of the Board's noise regulations. Resp. Mot. Str. Dis. at 1-2. The Griffins argue that Knight Hawk's operations as described in the amended complaint clearly violate Subpart H standards for noise emissions in a way that affects

their health and wellbeing, and assert that the Board has the authority to grant the specific relief requested. *Id.* at 2-3.

BOARD DISCUSSION

Statutory and Regulatory Background

“The Board shall have authority to conduct proceedings upon complaints charging violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order.” 415 ILCS 5/5(d) (2024). Any person may bring an action before the Board to enforce Illinois’ environmental requirements. 415 ILCS 5/3.315, 31(d)(1) (2024); 35 Ill. Adm. Code 103.200. The complaint must contain information including a reference to the provision of the Act or regulations that the respondent is alleged to be violating. 415 ILCS 5/31(c)(1), (d)(1) (2024).

Section 31(d)(1) of the Act provides that “[u]nless the Board determines that [the] complaint is duplicative or frivolous, it shall schedule a hearing.” 415 ILCS 5/31(d)(1) (2024); *see also* 35 Ill. Adm. Code 103.212(a). Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(b). “Unless the Board determines that [the] complaint is duplicative or frivolous, it shall schedule a hearing.” 415 ILCS 5/31(d)(1) (2024); 35 Ill. Adm. Code 103.212(a). A complaint is duplicative if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. A complaint is frivolous if it requests “relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the Board can grant relief.” *Id.* When deciding a motion to dismiss, the Board takes all well-pleaded factual allegations as true and draws all reasonable inferences from them in favor of the non-movant. *See, e.g., Beers v. Calhoun*, PCB 04-204, slip op. at 2 (July 22, 2004).

Whether the Complaint is Frivolous

The Board first addresses whether the complaint is frivolous. As stated above, a complaint is frivolous if it requests “relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202. Here, the complaint is brought pursuant to Subpart H of the Board’s noise regulations and claims that Knight Hawk’s mining operations violate Section 901.102 of the Board’s noise regulations by emitting noise from Class C land to the Griffins’ home on Class A land in excess of the daytime and nighttime decibel limits for sound emissions for those classifications. Comp. at 3-6; 35 Ill. Adm. Code 901.102. The complaint describes in detail the location of the noise in relation to the Griffins’ home and how the noise violations affect the Griffins’ health and enjoyment of their lives and property. Comp. at 4-7. The complaint provides the dates that the noise violations began and through which they continued as of the time of filing the complaint. *Id.* at 4. Finally, the complaint requests that the Board order Knight Hawk to modify its operations to be in compliance with Section 901.102 and to impose civil penalties on Knight Hawk for its noncompliance with applicable regulations during the time period alleged in the complaint. *Id.* at 9.

Taking all well-pleaded allegations of fact in the complaint as true and drawing all reasonable inferences from those alleged facts in favor of Complainants, the Board cannot find that no set of facts could be proven that would entitle Complainants to prevail against Knight Hawk. “Section 31(d)(1) of the Act allows any person to bring a complaint before the Board to enforce Illinois environmental requirements.” Mahomet Valley, PCB 13-22, slip. op. at 60. Specifically, “[a]ny person may file with the Board a complaint . . . against any person allegedly violating this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order.” 415 ILCS 5/31(d)(1) (2024). A complaint therefore need not allege violations of *all* applicable authorities, merely “any” of them, to state a cause of action for which the Board may grant relief. The complaint here does allege violations of the Board’s noise regulations. The Board’s noise regulations were adopted pursuant to the Board’s authority under the Act. *See* 415 ILCS 5/25 (2024). Further, the Board has authority to require compliance with the Act and Board regulations and to award civil penalties in citizens’ enforcement actions. 35 Ill. Adm. Code 103.416(c), 103.502; 415 ILCS 5/33, 42 (2024). Therefore, although Knight Hawk’s dismissal motion is correct in that the original complaint only alleges violations of the Board’s noise regulations and does not allege a specific violation of the Act, Knight Hawk is incorrect that this requires dismissal of the complaint. The Board therefore denies Knight Hawk’s motion to dismiss the complaint for frivolousness.

The Board now takes the complaint with the amended complaint for consideration below.

Whether the Amended Complaint is Duplicative

The Board next addresses whether the amended complaint is duplicative. As noted above, a complaint is duplicative if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. The record does not show that a complaint alleging a noise violation by Knight Hawk is being adjudicated before the Board or in another forum. At the time the Griffins filed the amended complaint, the Board had not yet accepted the original complaint. Knight Hawk’s motion does not argue that the original complaint is duplicative.

Based on the record now before it, the Board finds that the amended complaint is not duplicative. The amended complaint does not allege any new violations of additional statutes or regulations. The amended complaint does cite Sections 24 and 25 of the Act as conferring jurisdiction for the complaint. Am. Comp. at 1, par. 2. However, the amended complaint alleges the same violations as the original complaint: 35 Ill. Adm. Code, Subtitle H, specifically Part 901, Section 901.102. Am. Comp. at 1, par. 3; *see* Comp. at 3, par. 5. The amended complaint *does* provide additional information and adds detail to the allegations in the original complaint, including specificity to the timing of the violations, as well as to the relief requested, but these allegations and requests do not change from the original complaint. Am. Comp. at 2, par. 6, 7, 9.

Knight Hawk also argues that, under the Code of Civil Procedure, the Griffins should have filed a motion for leave to file their amended complaint. While the Board may look to the Code of Civil Procedure for guidance where the Board’s rules are silent, the Board’s rules require a complainant to seek permission to file an amended complaint where that amended complaint “sets forth a new or modified claim” against a person. *See* 35 Ill. Adm. Code

103.206(d). The Board has already found that the amended complaint does not set forth a new or modified claim. The Board in its discretion finds that the amended complaint may be filed without leave.

Further, the Board finds that it is procedurally efficient to construe the original complaint and amended complaint as one filing. First, the Board had not accepted the original complaint at the time the Griffins filed an amended complaint, so there was not yet a Board case against which the amended complaint could be compared and determined duplicative. Second, the amended complaint merely provides additional information adding detail to the original complaint and does not add or modify any violations. Considering this, and because in other cases the Board would simply direct Complainants to re-file an amended complaint with a motion for leave to file, the Board finds here that it is in the interest of judicial economy to take the amended complaint along with the not-yet-accepted original complaint. Finally, there is no need to strike the amended complaint in order to evaluate Knight Hawk's motion to dismiss the original complaint because the Board has now already evaluated and concluded to deny that motion to dismiss. *See, supra* at 7. Taking all well-pleaded allegations of fact in the complaint as true and drawing all reasonable inferences from those alleged facts in favor of Complainants, the Board cannot conclude that no set of facts could be proven that would entitle Complainants to prevail against Knight Hawk. The Board, construing the two complaints as one filing, finds the amended complaint is not duplicative and denies Knight Hawk's motion to strike or dismiss the amended complaint.

The Board notes that the arguments made in the Griffins' response to the motion to strike or dismiss that allege violations of Section 24 of the Act (415 ILCS 5/24 (2024)) are not considered part of the violations alleged in the complaint construed as one filing, as the violations of Section 24 were not alleged in the complaint or the amended complaint. *See* Resp. Mot. Str. Dis. at 1; *see generally*, Comp., Am. Comp. If in the future the Griffins wish to add a violation of Section 24, or add or modify any other violation of the Act or Board regulations, to the allegations of their complaint, any such future amendments to the complaint will need to be filed as an amended complaint with the accompanying request for leave to file. 35 Ill. Adm. Code 103.206(d).

Hearing and Answer

The Board finds that the complaint, modified by this order to include the information in the amended complaint, meets the content requirements of the Board's procedural rules and accepts the complaint as modified by this order for hearing. *See* 35 Ill. Adm. Code 103.204(c), (f), 103.212(a); *see* 415 ILCS 5/31 (2024). A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if Knight Hawk 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 Knight Hawk to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d). Knight Hawk's timely filing of its motion to dismiss stayed the 60-day period for filing an answer to the complaint, which stay ends today with the Board's ruling on the motion. *See* 35 Ill. Adm. Code 103.204(e). Knight Hawk therefore has 60 days from receipt of this order to file an answer to the complaint, as amended by today's rulings. *See* United City of

Yorkville v. Hamman Farms, PCB 08-96, slip op. at 26 (Oct. 16, 2008) (setting 60-day deadline after ruling on motion to dismiss).

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) (2024). 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) (2024). 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

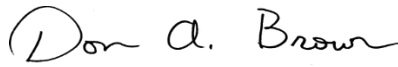
compliance), and supporting its position with facts and arguments that address any or all of the Section 42(h) factors. The Board also directs the hearing officer to advise the parties to address these issues in any stipulation and proposed settlement that may be filed with the Board.

ORDER

1. The Board grants the Griffins' motion for leave to file a response out of time objecting to Knight Hawk's motion to strike or dismiss the amended complaint for being duplicative.
2. The Board denies Knight Hawk's motion to dismiss the complaint.
3. The Board denies Knight Hawk's motion to strike or dismiss the amended complaint.
4. The Board accepts the Griffins' complaint, which is modified to include the information in the amended complaint, for hearing.
5. The caption in this matter is corrected to refer to Respondent as "Knight Hawk Coal, LLC, a Virginia limited liability company."

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 23, 2026, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board