

ILLINOIS POLLUTION CONTROL BOARD  
September 6, 2001

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 98-148  
) (Enforcement – Land)  
DOREN POLAND, LLOYD YOHO, and )  
BRIGGS INDUSTRIES, INC. a/k/a BRIGGS )  
PLUMBING PRODUCTS, INC., )  
)  
Respondents. )

BRIGGS INDUSTRIES, INC., )  
)  
Third-Party Complainant, )  
)  
v. ) PCB 98-148  
) (Citizens Enforcement – Land)  
LOREN WEST and ABINGDON SALVAGE ) (Third-Party Complaint)  
COMPANY, INC., )  
)  
Third-Party Respondents. )

THOMAS DAVIS, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF  
COMPLAINANT;

JOEL A. BENOIT OF MOHAN, ALEWELT, PRILLAMAN, AND ADAMI, APPEARED ON  
BEHALF OF RESPONDENT, BRIGGS INDUSTRIES, INC.;

DOREN POLAND APPEARED *PRO SE*; and

LLOYD YOHO APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by E.Z. Kezelis):

This enforcement action comes before the Board on a three-count complaint filed by the Illinois Attorney General, on behalf of the People of the State of Illinois (complainant), and at the request of the Illinois Environmental Protection Agency (Agency), against Doren Poland (Poland), Lloyd Yoho (Yoho), and Briggs Industries, Inc., a/k/a Briggs Plumbing Products, Inc. (Briggs). Complainant alleges various violations of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2000)) and Board regulations related to respondents' operation of a permitted landfill (old landfill) and an unpermitted site (unpermitted site), both of which are located in Knox County, Illinois.

Specifically, in count one, complainant alleges that Poland, Yoho, and Briggs violated Sections 21(a), (d), (e), and (p)(1) of the Act (415 ILCS 5/21(a), (d), (e), (p)(1) (2000)), by causing or allowing open dumping of waste, by conducting a waste-storage or waste-disposal operation without a permit, by disposing or storing waste at a site that does not meet the requirements of the Act and Board regulations, and by causing or allowing open dumping resulting in litter. In count two, complainant alleges that Poland, Yoho, and Briggs violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2000)) and Sections 807.201 and 807.202(a) of the Board's waste disposal regulations (35 Ill. Adm. Code 807.201, 807.202(a)), by causing or allowing the development and operation of a waste disposal site without first obtaining the necessary development and operating permits. In count three, complainant alleges that Poland and Yoho violated Sections 811.102, 811.103, 811.104, 811.302, 811.303, 811.304, 811.306, 811.307, 811.308, 811.309, 811.317, 811.318, 811.319(a), 811.501, and 811.700 of the Board's waste disposal regulations (35 Ill. Adm. Code 811.102, 811.103, 811.104, 811.302, 811.303, 811.304, 811.306, 811.307, 811.308, 811.309, 811.317, 811.318, 811.319(a), 811.501, 811.700). Complainant also alleges in count three that Poland violated Sections 811.315 and 811.323 of the Board's waste disposal regulations (35 Ill. Adm. Code 811.315, 811.323), and that Poland, Yoho, and Briggs violated Sections 812.101 and 813.102 of the Board's waste disposal regulations (35 Ill. Adm. Code 812.101, 813.102). Each of the violations alleged in count three is predicated on respondents' purported failure to comply with various standards for new solid waste landfills, including standards regarding: landfill location; surface water drainage; survey control; design period; foundation and mass stability; liner; leachate drainage and management; hydrogeology; groundwater impact and monitoring; detection monitoring; load checking; construction quality assurance; financial assurance; and landfill applications.

Board Hearing Officer Steven C. Langhoff conducted hearings on behalf of the Board on November 28 and 29, 2000. Post-hearing briefs were filed.<sup>1</sup>

A number of procedural matters have arisen since the conclusion of the November hearing. These procedural matters, a majority of which involved discovery disputes over two engineering documents in the possession of Briggs, have all been addressed in previous Board orders. In addition to these procedural matters, there is also a third-party complaint, filed by Briggs, which is still pending and which will not be resolved in this opinion and order. Finally, there is also a counterclaim filed by Briggs against fellow respondents Poland and Yoho. In this opinion and order the Board will resolve the violations alleged by the complainant in its April 30, 1998 complaint, and the allegations by Briggs in its counterclaim, filed on September 25, 2000, and amended on December 6, 2000.

### **FINDINGS OF FACT**

---

<sup>1</sup> Complainant's brief is referred to as "Comp. Br. at \_\_\_." Yoho's brief is referred to as "Yoho Br. at \_\_\_." Poland's brief is referred to as "Poland Br. at \_\_\_." Briggs' brief is referred to as "Briggs Br. at \_\_\_." Complainant's reply brief is referred to as "Reply Br. at \_\_\_." Briggs' response to new matters raised in complainant's reply brief is referred to as "Briggs Reply at \_\_\_." Complainant's supplemental brief is referred to as "Supp. at \_\_\_."

Briggs owns and operates a ceramics manufacturing plant (plant) in Knox County, Illinois. On April 19, 1979, the Agency issued an operating permit to respondents Briggs, Poland, and Yoho for a 15.8 acre landfill (old landfill). Comp. Exh. 5. The Agency-issued permit allowed for the disposal of waste vitreous china, scrap clay, bricks, and broken portland cement concrete. Comp. Exh. 2. Although Poland and Yoho owned and operated the landfill from 1979 to 1993, Briggs was a co-permittee.

From 1979 to 1993, Briggs disposed of its ceramics waste at the old landfill. Its ceramics waste included scrap clay, waste vitreous china, bricks, and waste concrete. Prior to closure of the old landfill, Poland and Briggs sought and obtained Agency approval to reduce the size of the old landfill from 15.8 to 4.6 acres. The 4.6-acre site was covered and closed in 1993. During this 1979-1993 time period, Briggs participated actively in the operations of the old landfill. For example, when compliance issues arose with the Agency, it was Briggs who notified the Agency that, “corrective measures [had] been taken to eliminate any future violations.” Comp. Br. at 2, citing Comp. Exh. 9. In 1984, Briggs applied to the Agency for a modification of the permit. Comp. Exh. 13. An employee of Briggs, Jim Willis, signed the application as site owner. *Id.* The Agency issued a supplemental permit to Briggs in 1984. Comp. Exh. 14. In September and October 1992, Briggs posted financial assurance in the form of letters of credit and a trust agreement. Comp. Exhs. 17-20, 23. During the life of the old landfill, Briggs was also responsible for paying half of the operating expenses of the site. Tr. at 88.

In 1993, the Agency granted a supplemental permit to Poland which approved the closure/post-closure care plan and which reduced the size of the permitted landfill from 15.8 acres to 4.6 acres. Comp. Exh. 21. During a November 29, 1993 inspection of the old landfill, Agency personnel observed that waste had been deposited in an unpermitted area of the site. Briggs Exh. B20.

Waste from Briggs’ manufacturing plant was disposed of at the unpermitted site from approximately 1993 to 1997. Despite various efforts over time by one or more of the respondents to secure a permit for the unpermitted site, an Agency permit was never obtained.

### **REGULATORY FRAMEWORK**

Section 21 of the Act (415 ILCS 5/21 (2000)) forms the basis for the allegations of the complaint. Section 21 of the Act provides, in pertinent part:

No person shall:

- (a) Cause or allow the open dumping of any waste.

\* \* \*

- (d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:
  - (1) without a permit granted by the Agency or in violation of any conditions imposed by such permit . . . ; [or]

- (2) in violation of any regulations or standards adopted by the Board under this Act; or
- (e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

\* \* \*

- (p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:
  - (1) litter;

\* \* \*

415 ILCS 5/21(a), (d), (e), (p) (2000).

Also pertinent to the Board's review of the alleged violations in this case are Sections 807.201 and 807.202(a) of the Board's solid waste regulations (35 Ill. Adm. Code 807.201, 807.202(a)). Section 807.201 provides:

Subject to such exemption as expressly provided in Section 21(e) . . . of the Act as to the requirement of obtaining a permit, no person shall cause or allow the development of any new solid waste management site or cause or allow the modification of an existing solid waste management site without a Development Permit issued by the Agency. 35 Ill. Adm. Code 807.201.

Section 807.202(a) provides:

New Solid Waste Management Sites. Subject to such exemption as expressly provided in Section 21(e) of the Act . . . as to the requirement of obtaining a permit, no person shall cause or allow the use or operation of any solid waste management site for which a Development Permit is required under Section 807.201 without an Operating Permit issued by the Agency, except for such testing operations as may be authorized by the Development Permit. 35 Ill. Adm. Code 807.202(a).

The following definitions are also helpful in considering the alleged violations:

“OPEN DUMPING” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill. 415 ILCS 5/3.24 (2000).

“SANITARY LANDFILL” means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation

and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation. 415 ILCS 5/3.41 (2000).

“REFUSE” means waste. 415 ILCS 5/3.31 (2000).

“WASTE” means any garbage, . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities . . . . 415 ILCS 5/3.53 (2000).

“SITE” means any location, place or tract of land used for waste management. A site may include one or more units. 35 Ill. Adm. Code 807.104.

“SOLID WASTE MANAGEMENT” means “waste management.” 35 Ill. Adm. Code 807.104

“WASTE MANAGEMENT” means the process of storage, treatment, or disposal of waste, not including hauling or transport. 35 Ill. Adm. Code 807.104.

### **VIOLATIONS**

The complainant alleges violations in its complaint pertaining to waste disposal operations at the unpermitted site. The complainant maintains that the “liability of Poland and Yoho as both owners and operators of the unpermitted site is clear and convincing.” Comp. Br. at 3. The complainant also maintains that Briggs should be held liable in light of a recent appellate court decision in which a person was found to be an operator of a landfill, “due to his substantial involvement in the operations” of the site. Comp. Br. at 4, citing People v. Bishop, 35 Ill. App. 3d 976, 735 N.E.2d 754 (5th Dist. 2000).

As a preliminary matter, the Board finds that a majority of the facts pertaining to the alleged violations are not in dispute. For example, there is no dispute as to the fact that waste from Briggs’ plumbing fixtures plant was deposited over the course of four years at a site which was not properly permitted and which does not satisfy the terms of the Act or Board regulations. Furthermore, it is also undisputed that the waste currently remains in place and uncovered.

### **Count I: Open Dumping**

In count I of the complaint, the complainant alleges that Poland, Yoho, and Briggs have violated Sections 21(a), (d), (e), and (p)(1) of the Act (415 ILCS 5/21(a), (d), (e), (p)(1) (2000)), by causing or allowing the open dumping of waste on a site (the unpermitted site) that does not meet the requirements of the Act or Board regulations and for which a permit is lacking. Complainant further alleges that Poland, Yoho, and Briggs have failed to remove any of the waste from the unpermitted site.

The old permitted landfill completed closure activities in 1993. At that time, Poland and Yoho ceased accepting waste for disposal at the old landfill. During an Agency inspection by James Jones (Jones) in November 1993, waste was discovered in the unpermitted site. Tr. at 23. Jones testified that the area of open dumping was less than one acre in size. Tr. at 24. As evidenced by witness Jones during subsequent inspections, waste continued to be deposited in the unpermitted site after 1993, and is still present today. Tr. at 25. The majority of waste deposited in the unpermitted site was the ceramic-type waste from Briggs' facility. Tr. at 28-29.

### **Poland and Yoho**

The evidence presented by the complainant is clear that open dumping did occur on a site that is not permitted to receive waste. Neither Poland nor Yoho dispute the fact that dumping took place in the unpermitted site. As owners of the site, Poland and Yoho are clearly liable for the violations alleged in count I of the complaint.

Poland and Yoho both maintain that they repeatedly made efforts to obtain a permit for the unpermitted site, but were never successful. *See generally* Poland Br. and Yoho Br. Furthermore, Poland stated that during a meeting with Agency officials, he was told that he could continue to dump on the site so long as they were attempting to obtain a permit. Poland Br. at 1. Each of the Agency witnesses deny making this statement to Poland (Tr. at 155, 163, 172, 265) and, in fact, testified that they did not have the authority to allow open dumping to continue without a permit (Tr. at 162, 170, 176).

On this count, the record is clear. As owners of the unpermitted site, Poland and Yoho caused or allowed the open dumping of refuse on a site that was not permitted to receive waste. The Board finds that Poland and Yoho violated Sections 21(a), (d), (e), and (p)(1) of the Act (415 ILCS 5/21(a), (d), (e), (p)(1) (2000)).

### **Briggs**

Complainant alleges that Briggs is also liable for the violations alleged in count I. Complainant maintains that from 1993 until 1997, Briggs continued to send its waste for disposal at the unpermitted site. During this time, Briggs contributed financially to the daily operations of the site and to the permitting efforts undertaken by Poland and Yoho. Tr. at 374; Comp. Br. at 6. Robert Orton, Briggs' plant manager, testified that Briggs, "paid [Abingdon Salvage] a flat daily fee, and then we agreed to pay half of the cost of bulldozing the landfill and half the cost of the consulting services necessary to permit the landfill." Tr. at 374.

Complainant also alleges that Briggs' involvement with the permitting efforts is further documented by the fact that the consultant continually copied Briggs on correspondence between it and the Agency. Comp. Br. at 8. Additionally, complainant argues that Briggs recently retained another consultant, Andrews Engineering, to take samples from the unpermitted site in furtherance of continuing attempts to obtain a permit. *Id.* Although Briggs maintains that this was done in an attempt to assist Poland and Yoho (Tr. at 380-81), complainant argues that this is further evidence of Briggs "exercising control over the premises and, in doing so, conducting landfill operations." Comp. Br. at 8.

Complainant relies on People v. Bishop, 315 Ill. App. 3d 976, 735 N.E.2d 754 (5th Dist. 2000), in support of its argument that in deciding whether a person is an operator, “depends on the specific facts of the case as a whole.” Comp. Br. at 8, citing Bishop, 315 Ill. App. 3d at 979, 735 N.E.2d at 757. According to complainant, the Bishop court relied on Board cases and concluded that, “whether a party’s name is listed as an operator in the permit is not the determining factor of whether one is an operator.” *Id.*, citing Bishop, 315 Ill. App. 3d at 979, 735 N.E.2d at 758.

Complainant also relies upon People v. McFalls, 313 Ill. App. 3d 223, 728 N.E.2d 1152 (3rd Dist. 2000), in support of its argument that Briggs should be held liable for the open dumping of waste at the unpermitted site. Comp. Br. at 9. Specifically, complainant states that the court in McFalls ruled that, “neither ownership, nor control, of an allegedly illegal disposal site is necessary to effect the consolidation of refuse there.” Comp. Br. at 9-10, citing McFalls, 313 Ill. App. 3d at 227, 728 N.E.2d at 1155. Complainant argues:

Briggs may be considered liable as an off-site generator in the context of People v. McFalls because its actions effectuated open dumping at the unpermitted site. Additionally, Briggs may be also considered liable as an operator in the context of People v. Bishop because of its active and direct involvement in the operations of the permitted and unpermitted landfills, to wit: Briggs applied for and obtained the original development and operating permits, Briggs posted financial assurance, and Briggs made expenditures for landfill activities and engineering. Comp. Br. at 10.

Briggs argues that, for a number of reasons, it should not be held liable for the violations alleged in the complaint. First, Briggs maintains that it was solely because of its status as “generator” of the waste, that the Agency referred it to the People for prosecution. Briggs Br. at 24; *See* Tr. at 270. Briggs argues that pursuant to the Board’s order in People v. Waste Hauling, PCB 95-91 (May 21, 1998), its status as generator of the waste is irrelevant for purposes of culpability.

Second, Briggs argues that because the alleged violations involve only the unpermitted site, its involvement with the old landfill is not relevant. Briggs Br. at 25. Moreover, Briggs argues generally that the complainant has failed to provide sufficient evidence in support of its claim that Briggs is an operator of the unpermitted site. Briggs argues that for it to be considered an operator of the unpermitted site, there must be some evidence of a “joint venture.” Briggs Br. at 37.

Briggs claims that a “joint venture must include a community of interest between the parties; a proprietary interest in a subject matter; the right of joint control over the venture; and sharing of both profits and losses.” Briggs Br. at 37, citing Pros v. Mid-America Computer Corp., 142 Ill. App. 3d 458, 469, 491 N.E.2d 851, 862 (2nd Dist. 1986). Briggs claims that since it did not share in the profits and losses of the landfilling activities, it cannot be considered a joint venturer, and therefore, cannot be considered an operator of the unpermitted site. Briggs Br. at 37.

Briggs specifically disputes the alleged violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2000)), arguing that complainant has failed to prove the presence of litter at the unpermitted site. Briggs Br. at 32.

### **Analysis**

But for the alleged violation of Section 21(p)(1) of the Act, there is no dispute that the violations alleged in count I occurred. The issue, however, is whether Briggs is responsible for the alleged violations.

**Section 21(a).** Section 21(a) of the Act provides that “[n]o person shall cause or allow the open dumping of any waste.” 415 ILCS 5/21(a) (2000). Complainant’s evidence, coupled with admissions by Poland and Yoho, prove that Poland and Yoho “caused or allowed” the open dumping of waste at the unpermitted site. Equally convincing is the evidence that Briggs “caused or allowed” the open dumping of waste at the unpermitted site.

While not an owner of the unpermitted site, Briggs is nevertheless responsible for the open dumping. Briggs knew that its waste was being disposed at a site for which permits had not been obtained. Despite this knowledge, Briggs continued to send its waste to the site and continued to pay half of the bulldozing and engineering expenses for the unpermitted site. Briggs’ own manager, Orton, testified that this was a “good deal” for Briggs. Tr. at 375. The evidence is clear that Briggs had a long-standing arrangement with Poland and Yoho whereby Poland and Yoho would provide the land on which Briggs’ waste would be deposited and Briggs would provide financial and engineering assistance. This arrangement began with a permitted landfill and continued, to Briggs’ benefit, after the old landfill had closed. Only when this arrangement ceased to be financially attractive to Briggs, did Briggs cease sending waste to the unpermitted site. Tr. at 376.

The Board finds that Poland, Yoho, and Briggs are each liable for violation of Section 21(a) of the Act (415 ILCS 5/21(a) (2000)).

**Section 21(d) and (e).** Again, the evidence is clear that Poland and Yoho conducted waste disposal operations without a permit and at a site not meeting the requirements of the Act or Board regulations.

With regard to Briggs, the Board finds that it also is responsible for the alleged violations. Section 807.104 of the Board’s waste disposal regulations defines “operator” as, “[a] person who conducts a . . . waste disposal operation.” 35 Ill. Adm. Code 807.104. There was no permit for the unpermitted site. Therefore, there was no permitted operator. Accordingly, the Board must examine and weigh the facts of this particular situation to determine what person (or persons) was responsible for the operation and maintenance of this unpermitted site.

Briggs urges the Board to take a very narrow view of what types of activities might constitute “operating” a waste disposal site. Complainant, on the other hand, urges the Board to follow the guidance established in Bishop. The Board is persuaded by this authority.

Specifically, in Bishop, the court looked beyond the permit and found that a person could be liable as an operator of a landfill based on actual involvement in the day-to-day operations and



maintenance of the site. Bishop, 315 Ill. App. 3d at 979-80, 735 N.E.2d at 757-58. Briggs was involved in the day-to-day operations of the unpermitted site. Briggs was responsible for half of the bulldozing expenses and half of the engineering fees related to the site. While Briggs claims that it did not profit from the disposal activities at the unpermitted site, Briggs' manager testified that, even considering the bulldozing and engineering fees paid, this arrangement was still a "good deal" for Briggs. Tr. at 275. Evidence was also presented to the effect that Briggs installed a gate at the unpermitted site and that it, in late 2000, hired its own engineers to make further attempts to secure a permit.

The Board concludes that Briggs' involvement in the unpermitted site is more than merely a generator of the waste, and that the weight of its involvement constituted "operation." Briggs is liable for the violations of Section 21(d) and (e) of the Act, as an operator of the unpermitted site.

**Section 21(p)(1).** Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2000)) prohibits open dumping that results in litter. The Act does not define "litter," but in similar cases, the Board has looked to the definition of "litter" in the Litter Control Act (415 ILCS 105/1 *et seq.* (2000)). *See generally* IEPA v. White, AC 98-41 (February 18, 1999). Section 3(a) of the Litter Control Act defines "litter" as follows:

"Litter" means any discarded, used or unconsumed substance or waste. "Litter" may include, but is not limited to, any garbage, trash, refuse, debris, rubbish . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly. 415 ILCS 105/3(a) (2000).

According to this definition, the Board finds that the accumulation of discarded ceramic waste on the unpermitted site constitutes litter under Section 21(p)(1) of the Act. The Board further finds that Poland, Yoho, and Briggs are responsible for the open dumping that resulted in this litter, and that they are therefore, in violation of Section 21(p)(1) of the Act.

## **Count II: Development and Operation of Landfill Without Permits**

In count II, complainant alleges that Poland, Yoho, and Briggs violated the Act and Board regulations by causing or allowing the development and operation of a new solid waste management site without first obtaining from the required development and operating permits. Again, it is undisputed that a new solid waste management site (unpermitted site) was developed and operated on property owned by Poland and Yoho without the requisite permits.

### **Poland and Yoho**

As owners of the property on which the unpermitted site was first developed and operated, the liability of Poland and Yoho is clear. Neither Poland nor Yoho dispute the lack of permits for the unpermitted site. Neither Poland nor Yoho dispute the fact that waste was deposited at an unpermitted site.

The Board concludes that Poland and Yoho violated Sections 807.201 and 807.202 of the Board's waste disposal regulations (35 Ill. Adm. Code 807.201, 807.202) and Section 21(p)(2) of the Act (415 ILCS 5/21(p)(2) (2000)).

**Briggs**

As in count I, complainant alleges that Briggs is also responsible for causing or allowing the development and operation of a new solid waste management site without required permits. Briggs argues that since it was neither the owner nor operator of the unpermitted site, it could not be liable under count II for failing to obtain development and operating permits. Briggs Br. at 40. Briggs incorporates the arguments it made in response to count I in response to these allegations as well. Briggs Br. at 39-40.

The evidence presented by the complainant demonstrates that the continuation of dumping activities after closure of the old landfill occurred with the knowledge and agreement of the three respondents. Between them, Briggs, Poland, and Yoho, owned and operated the old landfill. The evidence is clear that this relationship continued, albeit without a permit, even after closure of the old landfill.

Briggs argues that its involvement in the old landfill is not relevant to the Board's consideration of the alleged violations at the unpermitted site. The Board disagrees. The evidence regarding Briggs' involvement with the old landfill (providing financing for maintenance, engineering, and financial assurance), provides the Board with information regarding the relationship between the three respondents at the time when the old landfill was closing and the unpermitted site was beginning to accept waste. The only difference between Briggs' involvement in the old landfill and the unpermitted site is the lack of a permit specifically naming Briggs as an operator of the site.

Having previously found that the extent of Briggs' involvement with the unpermitted site qualifies as "operation" for purposes of the applicable regulations, the Board finds that Briggs is liable for the violations of 35 Ill. Adm. Code 807.201 and 807.202 and Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2000)) as alleged in the complaint.

**Count III: Violations of Standards for New Solid Waste Landfills**

Complainant alleges that Poland and Briggs violated various provisions under the Board's solid waste regulations. Specifically, complainant alleges that Poland and Briggs: (1) failed to comply with landfill location requirements (35 Ill. Adm. Code 811.102, 811.302); (2) failed to comply with surface water drainage requirements (35 Ill. Adm. Code 811.103); (3) failed to comply with the survey control requirements (35 Ill. Adm. Code 811.104); (4) failed to comply with the design period assessment requirements (35 Ill. Adm. Code 811.303); (5) failed to comply with the foundation and mass stability analysis requirements (35 Ill. Adm. Code 811.304); (6) failed to comply with liner requirements (35 Ill. Adm. Code 811.306); (7) failed to comply with leachate drainage, collection, and management system requirements (35 Ill. Adm. Code 811.307, 811.308, 811.309); (8) failed to comply with groundwater impact assessment and groundwater monitoring requirements (35 Ill. Adm. Code 811.317, 811.318); (9) failed to comply with detection monitoring program requirements (35 Ill. Adm. Code 811.319(a)); (10) failed to comply with construction quality assurance program requirements (35 Ill. Adm. Code 811.501); (11) failed to comply with financial assurance requirements (35 Ill. Adm. Code 811.700); and (12) failed to comply with permit application requirements (35 Ill. Adm. Code 812.101, 813.102).

Complainant alleged that Briggs also failed to comply with the permit application requirements of 35 Ill. Adm. Code 812.101 and 813.102.

In addition to the above-referenced violations, complainant also alleged that Poland, alone, violated Sections 811.315 and 811.323 of the Board's waste disposal regulations (35 Ill. Adm. Code 811.315, 811.323), by failing to conduct a hydrogeological site investigation and failing to establish a load checking program to detect and discourage attempts to dispose of regulated hazardous wastes.

In its brief, complainant states that, "[t]here is no genuine issue of material fact regarding the violations by . . . Poland and . . . Yoho as to . . . the total lack of compliance with the numerous Part 811 standards and requirements." Comp. Br. at 5. Neither Poland nor Yoho deny any of the alleged violations.

The Part 811 landfill requirements (35 Ill. Adm. Code 811) apply to landfills as defined in 35 Ill. Adm. Code 810.103. The Board finds that pursuant to the definitions of Section 810.103, an open dump may be considered a landfill for purposes of the Part 811 standards. Specifically, the definitions of "landfill" and "waste pile" provide:

"Landfill" means a unit or part of a facility in or on which waste is placed and accumulated over time for disposal, and which is not a land application unit, a surface impoundment or an underground injection well. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, landfills include waste piles, as defined in this Section.

"Waste pile" means an area on which non-containerized masses of solid, non flowing wastes are placed for disposal. For purposes of this Part and 35 Ill. Adm. Code 811 through 815, a waste pile is a landfill, unless the operator can demonstrate that the wastes are not accumulated over time for disposal. . . . 35 Ill. Adm. Code 810.103.

Accordingly, the Board finds that the waste deposited at the unpermitted site constitutes a waste pile under the definitions of 35 Ill. Adm. Code 810.103, and is thus also considered a landfill for purposes of the Part 811 requirements.

While the Board finds that the Part 811 requirements do apply to the unpermitted site, the Board finds that the complainant has failed to prove respondents' liability for a majority of the alleged violations. Specifically, the Board finds that the complainant failed to prove violations of the following regulations: 35 Ill. Adm. Code 811.302, 303, 304, 306, 307, 308, 309, 315, 317, 318, 319(a), and 323. These regulations specifically apply to landfills accepting chemical and putrescible wastes, which are defined as:

"Chemical waste" means a non-putrescible solid whose characteristics are such that any contaminated leachate is expected to be formed through chemical or physical processes, rather than biological processes, and no gas is expected to be formed as a result.

“Putrescible waste” means a solid waste that contains organic matter capable of being decomposed by microorganisms so as to cause a malodor, gases, or other offensive conditions, or which is capable of providing food for birds and vectors. Putrescible wastes may form a contaminated leachate from microbiological degradation, chemical processes, and physical processes. Putrescible waste includes, but is not limited to, garbage, offal, dead animals, general household waste, and commercial waste. All solid wastes which do not meet the definitions of inert or chemical wastes shall be considered putrescible wastes. 35 Ill. Adm. Code 810.103.

The evidence presented during hearing suggests that the material disposed of in the unpermitted site is inert waste, which is defined as:

“Inert waste” means any solid waste that will not decompose biologically, burn, serve as food for vectors, form a gas, cause an odor, or form a contaminated leachate, as determined in accordance with 35 Ill. Adm. Code 811.202(b). Such inert wastes shall include only non-biodegradable and non-putrescible solid wastes. Inert wastes may include, but are not limited to bricks, masonry, and concrete (cured for 60 days or more). 35 Ill. Adm. Code 810.103.

The Board finds that the complainant has failed to prove that the wastes deposited in the unpermitted site are chemical or putrescible wastes. The Board notes that respondents have attempted and failed to obtain a permit for the unpermitted site which would classify the site as an inert waste landfill. The Board, however, does not interpret the lack of a permit as evidence suggesting that the wastes in the unpermitted site are not inert. The Board finds that there is insufficient evidence in the record at the present time to definitively classify the wastes as either inert or chemical/putrescible. Accordingly, the Board finds that there have been no proven violations of 35 Ill. Adm. Code 811.302, 303, 304, 306, 307, 308, 309, 315, 317, 318, 319(a), or 323.

The Board also finds that there is no violation of Part 700, which requires owners or operators, “of a permitted waste disposal facility” to provide financial assurance. 35 Ill. Adm. Code 700. There is no dispute that this is an unpermitted site, and accordingly, there can be no violation of the financial assurance requirements, which, by their own terms, apply specifically to permitted waste disposal facilities.

The Board is left then, with alleged violations by Poland and Yoho of 35 Ill. Adm. Code 811.102, 103, 104, and 501. Also remaining are alleged violations of 35 Ill. Adm. Code 812.101 and 813.102 by Poland, Yoho, and Briggs. These regulations involve facility location, surface water drainage, land surveys, construction quality assurance program requirements, and permitting applications.

Regarding the alleged violations of the Part 811 standards, complainant offered no specific proof during the hearing. In its brief, complainant merely stated, “[t]here is no genuine issue of material fact regarding the violations by Doren Poland and Lloyd Yoho as to the operation of the unpermitted landfill and as to the total lack of compliance with the numerous Part 811 standards and requirements.” Comp. Br. at 5.

These allegations are not specifically addressed by Poland or Yoho either. In response to its alleged violation of 35 Ill. Adm. Code 812.101 and 813.102, Briggs states as follows:

[t]he Board has never held anyone liable for violating these provisions, nor do reported Board opinions indicate that anyone has ever previously been charged with violating these provisions. The People’s Brief does not discuss these charges. . . . [a]s Briggs was neither [owner nor operator], Briggs never applied for a permit application, complete, on the proper forms, or otherwise. Briggs Br. at 40-41.

The burden of proof in an enforcement action is on the complainant. In this case, complainant has put forward no proof in support of the alleged violations of 35 Ill. Adm. Code 811.102, 103, 104, 501, and 813.102. As for the alleged violation of 35 Ill. Adm. Code 812.101, the Board finds that insofar as this Section requires owners or operators of a landfill to apply for and obtain development and operating permits, this violation has been proved as to each of the three respondents.

In conclusion, therefore, the Board finds that Poland, Yoho, and Briggs have violated Section 812.101 of the Board’s waste disposal regulations (35 Ill. Adm. Code 812.101). As for the other alleged violations in count III, the Board finds that the complainant has failed to satisfy its burden of proof or that the section for which a violation is alleged is inapplicable to this situation (35 Ill. Adm. Code 811.700).

## **REMEDY**

### **Compliance/Penalty/Attorney Fees**

The complainant seeks both a technical remedy and a monetary remedy. Complainant seeks a Board order directing the removal and proper disposal of the waste from the unpermitted site. Complainant maintains that this is “critical to the efficacy of a cease and desist order [and] it is not enough that the Respondents be directed not to dispose of any additional wastes at the dump site.” Comp. Br. at 12. Complainant concedes that the removal and proper disposal of the waste will be costly, but that it is necessary, along with a monetary penalty, to deter others from similar violations. Comp. Br. at 13.

Furthermore, in its reply brief, complainant was able to argue that the documents produced by Briggs after a post-hearing motion to compel (Andrews documents<sup>2</sup>) reveal the existence of a potential threat to the environment from both the old landfill and unpermitted site. Comp. Reply Br. at 16. Complainant argues that the sampling results contained in the Andrews documents indicate that “there is a point of discharge that appears to seep directly from the fill . . . [there] may be further complications at the facility’ [and] that ‘[a]ny exceedance in any round of sampling for the entire post-closure care period of the facility will result in reclassification of the site as a Putrescible and Chemical Waste Facility.” Comp. Reply Br. at 17, citing Exh. 73.

---

<sup>2</sup> Over the objection of Briggs, the Andrews documents were allowed into the record and are known as Exhibits 73 and 74.

Complainant argues that the Andrews documents contain information that suggests that the wastes are not as benign as Poland, Yoho, and Briggs maintain.

In addition to the technical remedy, complainant also seeks an award of a monetary penalty, apportioned among the respondents as follows: (a) Poland - \$5,000; (b) Yoho - \$5,000; and (c) Briggs - \$25,000. Finally, complainant seeks an award of attorney fees totaling \$10,104, to be assessed against Briggs, alone.

Poland, Yoho, and Briggs disagree with complainant's assertion that removal of the waste is necessary. Poland states that the costs of removing and properly disposing of the waste, "could cost as much as a million dollars." Poland Br. at 2. Poland and Yoho both emphasize that the same "inert" materials found in the unpermitted site are buried at numerous other locations in Knox County and that they pose no threat to human health or the environment. Poland Br. at 2; Yoho Br. at 2. Yoho requests that they be allowed to cover the waste in place. Yoho Br. at 2.

Briggs also disputes the need to move the waste. Briggs notes that, "[t]he People do not explain why they are seeking the removal of the waste or how such removal will benefit the environment." Briggs Br. at 47. Briggs maintains that the wastes do not threaten the environment and that the hearing record demonstrates that the "material is benign." *Id.* Briggs argues that, "[t]he Board, with its expertise, can evaluate and consider the harm posed by this material, especially in light of the fact that the 2.3 acre [unpermitted site] is adjacent to the 4.6 acre [old landfill] containing exactly the same type of material." Briggs Br. at 47, citing IEPA v. Welin, PCB 80-125 (May 13, 1982). Briggs suggests that an appropriate technical remedy would be to cover the material in place. Briggs Br. at 48.

Briggs relies on three prior Board cases in support of its argument that the waste should be allowed to remain in place. According to Briggs, IEPA v. Fischbach, PCB 76-59 (Sept. 15, 1976), Welin, PCB 80-125 (May 13, 1982), and IEPA v. Ficklin, PCB 79-271 (Nov. 20, 1980), all support the conclusion that,

where the material deposited at an unpermitted site has not been shown to pose a threat to the environment, the appropriate remedy is a cease and desist order, an order requiring that the material be covered with soil and vegetated, and a penalty which is mitigated by the cost of applying cover. Briggs Br. at 49.

### **Compliance**

The Board concludes that there is currently insufficient information in the record before it to determine whether the wastes disposed of at the unpermitted site pose such a risk to the environment to require removal. Although the wastes appear, from the testimony presented, to be inert, there is also insufficient evidence for the Board to conclude definitively that they are, in fact, inert, and as such, could be safely covered and monitored in place. Accordingly, the Board directs the parties back to hearing on the issue of technical relief. The hearing officer is directed to contact the parties to determine how they wish to proceed with this aspect of the case.

### **Penalty/Attorney Fees**

Because the Board cannot fully consider the issue of penalty without also making a determination as to the appropriate technical relief, the Board will refrain from making a final determination on penalty until after further hearings are completed. The Board will also address the issue of attorney fees in its final opinion and order in this case.

### **BRIGGS' COUNTERCLAIM**

Briggs filed a counterclaim seeking contribution from Poland and Yoho on September 25, 2000, and amended it on December 6, 2000. Briggs seeks contribution from Poland and Yoho on the basis that Poland and Yoho “directly and proximately caused” the violations alleged in the complaint. Amended Counterclaim at 2.

Having previously found that Briggs is also liable as an operator of the unpermitted site, the Board concludes that Briggs’ counterclaim must fail. Briggs has failed to demonstrate that it is entitled to the relief requested therein, and accordingly, the counterclaim and the relief requested therein is denied.

### **CONCLUSION**

For the reasons set forth herein, the Board finds that Poland, Yoho, and Briggs have violated various provisions of the Act and Board regulations as alleged in the complaint. Specifically, the Board finds that Poland, Yoho, and Briggs have each violated Sections 21(a), (d), (e), and (p)(1) of the Act (415 ILCS 5/21(a), (d), (e), (p)(1) (2000)) and Sections 807.201, 807.202(a), and 812.101 of the Board’s waste disposal regulations (35 Ill. Adm. Code 807.201, 807.202(a), 812.101), by causing or allowing open dumping of waste, by allowing the development and operation of a waste-storage or waste-disposal operation without a permit, by disposing or storing waste at a site that does not meet the requirements of the Act and Board regulations, and by causing or allowing open dumping resulting in litter.

The Board has also concluded that complainant failed to satisfy its burden of proof with regard to the alleged violations of Sections 811.102, 811.103, 811.104, 811.302, 811.303, 811.304, 811.306, 811.307, 811.308, 811.309, 811.315, 811.317, 811.318, 811.319(a), 811.323, 811.501, 811.700, and 813.102 of the Board’s waste disposal regulations (35 Ill. Adm. Code 811.102, 811.103, 811.104, 811.302, 811.303, 811.304, 811.306, 811.307, 811.308, 811.309, 811.315, 811.317, 811.318, 811.319(a), 811.323, 811.501, 811.700, 813.102).

Finally, the Board denies Briggs counterclaim and the relief requested therein.

Having found the above-referenced violations, the Board remands this matter to the hearing officer for further hearings on the appropriate technical relief, *e.g.*, removal of waste or cover and monitor in place.

### **ORDER**

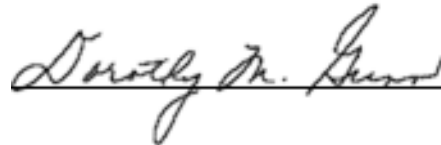
1. The Board finds that Doren Poland, Lloyd Yoho, and Briggs Industries, Inc., a/k/a Briggs Plumbing Products, Inc. (Briggs), have violated the following provisions of the Act and Board regulations: Sections 21(a), (d), (e), and (p)(1) of the Act (415 ILCS 5/21(a), (d), (e), (p)(1) (2000))

and Sections 807.201, 807.202(a), and 812.101 of the Board's waste disposal regulations (35 Ill. Adm. Code 807.201, 807.202(a), 812.101).

2. The Board finds that Briggs has failed to demonstrate its entitlement to the relief requested in its counterclaim and accordingly denies the counterclaim and the relief requested therein.
3. The Board orders further hearings be held to determine the appropriate relief, *e.g.*, removal of waste or cover and monitor in place.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on September 6, 2001, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board