

ILLINOIS POLLUTION CONTROL BOARD  
November 7, 2002

|   |   |                      |
|---|---|----------------------|
| PEOPLE OF THE STATE OF ILLINOIS,        | ) |                      |
|   | ) |                      |
| Complainant,                            | ) |                      |
|   | ) |                      |
| v.                                      | ) | PCB 97-66            |
|   | ) | (Enforcement - Land) |
| D'ANGELO ENTERPRISES, INC., an Illinois | ) |                      |
| corporation,                            | ) |                      |
|   | ) |                      |
| Respondent.                             | ) |                      |

OPINION AND ORDER OF THE BOARD (by C. A. Manning):

Today, the Board orders D'Angelo Enterprises, Inc. (D'Angelo) to reimburse the Office of the Attorney General, on behalf of the People of the State of Illinois (People), for reasonable costs and attorney fees incurred during litigation of this enforcement case. Previously, the Board held that D'Angelo must pay \$70,000 for violating numerous provisions of the hazardous waste and special waste requirements of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2000)) and Board regulations. People v. D'Angelo Enterprises, Inc., PCB 97-66, slip op. at 20, (Sept. 19, 2002). D'Angelo mishandled and mismanaged more than 3,000 gallons of hazardous waste and violated over 20 provisions of the Act and Board regulations.

Because D'Angelo knew it was violating the Act and Board regulations and D'Angelo repeatedly committed several violations, the Board exercises its discretion and awards the People \$7,893 in reimbursement of costs and attorney fees. Before turning to the Board's assessment of the People's petition for costs and attorney fees, the Board summarizes its prior decisions in this case.

**SUMMARY OF THE BOARD'S PRIOR DECISIONS**

D'Angelo manufactures circuit boards and other electroplated products in Franklin Park, Cook County. As a result of this business, D'Angelo stored over 3,000 gallons of hazardous waste, including paint/ink solvents, plating sludge, and bifluoride waste. Although D'Angelo stored hazardous waste, it did not obtain a hazardous waste permit as required by the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §§ 6921 *et seq.* (2000)) and the Act (415 ILCS 21(f) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002). D'Angelo also failed to satisfy basic requirements for hazardous waste safety training, inspections, and emergency precautions. Several of D'Angelo's violations endured for over three years.

On October 3, 1996, the People filed an 11-count complaint against D'Angelo. The People alleged that D'Angelo violated provisions of the Act and Board regulations on handling and disposing hazardous waste and special waste. Each count alleged multiple violations. In 1998 and 1999, the Board ruled on the People's motion for summary judgment and D'Angelo's

counter-motion for summary judgment. The Board found that D'Angelo violated 22 provisions of the Act and Board regulations. D'Angelo committed the violations in part by storing hazardous plating sludge and bifluoride wastes without a RCRA permit for at least three years, by not satisfying record keeping and filing requirements, by not training personnel in hazardous waste management procedures, and by not adopting a contingency plan to minimize health and environmental hazards in case of a fire, explosion, or hazardous waste release. *See People v. D'Angelo Enterprises, Inc.*, PCB 97-66, slip op. at 18-19 (Nov. 19, 1998). In its next order, the Board concluded that a civil penalty was proper in this case (*People v. D'Angelo Enterprises, Inc.*, PCB 97-66, slip op. at 3-5 (Jan. 7, 1999)), but did not set the \$70,000 penalty amount until its September 19, 2002 order.

In the September 19, 2002 order, the Board concluded that D'Angelo violated eight provisions of the Act and Board regulations. The Board found that D'Angelo stored hazardous paint/ink solvent waste without a RCRA permit, failed to timely determine the hazardous waste status of generated paint/ink solvents, and failed to provide manifests when disposing of special waste. *People v. D'Angelo Enterprises, Inc.*, PCB 97-66, slip op. at 11-13, (Sept. 19, 2002). Furthermore, the Board found the People's requested civil penalty of \$70,000 appropriate and directed the People to submit an affidavit for its costs and attorney fees. *Id.* at 18.

The People's October 3, 2002 petition for costs and attorney fees and accompanying affidavits are now before the Board.<sup>1</sup> D'Angelo has not filed any response to the petition.

### **COSTS AND ATTORNEY FEES**

The People request \$7,893 in costs and attorney fees pursuant to Section 42(f) of the Act (415 ILCS 5/42(f) (2000)), which provides in part:

Without limiting any other authority which may exist for the awarding of attorney's fees and costs, the Board or a court of competent jurisdiction may award costs and reasonable attorney's fees, including the reasonable costs of expert witnesses and consultants, to the State's Attorney or the Attorney General in a case where he has prevailed against a person who has committed a willful, knowing or repeated violation of the Act. 415 ILCS 5/42(f) (2000).

Of the People's requested \$7,893 in fees and costs, \$7,560 represents attorney fees and \$333 represents costs. The attorney fees consist of 64 hours at \$120 per hour. Pet., Exh. A. The costs consist of copying fees only. Pet., Exh. B. The People seek reimbursement for fees and costs incurred since August 1998 although fees and costs may have been incurred prior to that date. Pet. at 2. The requested fees and costs are supported by affidavits. *See* Pet., Mackoff and Partee Affid. D'Angelo did not respond to the People's petition.

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<sup>1</sup> The People's petition is cited as "Pet. at \_\_\_." Attached exhibits are cited as "Pet., Exh. \_\_\_." The affidavits of Mike Mackoff and Michael Partee are attached to the People's petition. Those affidavits are cited as "Pet., [affiant] Affid."

The Board previously concluded that the People are entitled to reimbursement of their costs and attorney fees after finding that D'Angelo committed knowing and repeated violations of the Act. People v. D'Angelo Enterprises, Inc., PCB 97-66, slip op. at 18, (Sept. 19, 2002). D'Angelo admitted that it was aware of its environmental regulatory responsibilities. However, D'Angelo repeatedly failed to timely determine that it was generating hazardous waste, to inspect hazardous waste container areas weekly, and to label its more than 60 hazardous waste containers with the accumulation dates and contents. *Id.* Furthermore, D'Angelo failed to train personnel in hazardous waste management procedures, and failed to adopt a contingency plan to minimize health and environmental hazards in case of a fire, explosion, or hazardous waste release. Noting that D'Angelo did not respond to the People's petition for fees and costs, the Board reiterates that D'Angelo's violations of the Act were committed in a knowing and repeated manner.

The Board has held that the hourly rate of the People's attorney fees is reasonable. People v. Panhandle Eastern Pipe Line Co., PCB 99-191, slip op. at 37 (Nov. 15, 2001). Furthermore, the People's request for the cost of copying at 15 cents a page is reasonable. Consequently, the Board finds that the People are entitled to the \$7,893 in costs and attorney fees as requested. Under Section 42(f), D'Angelo must pay these costs and attorney fees to the Hazardous Waste Fund. *See* 415 ILCS 5/42(f) (2000).

### **CONCLUSION**

D'Angelo violated over 20 provisions of the Act and Board regulations. Many of the violations were repeated for at least three years. D'Angelo's infractions of the Act and Board regulations included failing to timely determine that it was generating hazardous waste, failing to inspect hazardous waste container areas weekly, and failing to label its more than 60 hazardous waste containers with the accumulation dates and contents. Furthermore, D'Angelo knowingly committed these repeated violations.

Consequently, the Board orders D'Angelo to cease and desist further violations of the Act and Board regulations and to pay a civil penalty of \$70,000. The Board awards the People \$7,893 in costs and attorney fees.

In this final opinion and order, the Board incorporates the findings of fact and conclusions of law from its September 19, 2002 interim opinion and order (People v. D'Angelo Enterprises, Inc., PCB 97-66 (Sept. 19, 2002)).

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

### **ORDER**

1. The Board finds that D'Angelo committed the following violations:
  - a. Storing hazardous waste (plating sludge, bifluoride wastes, and paint/ink solvents) without a RCRA permit, in violation of Section 21(f)(1) and

(f)(2) of the Act and 35 Ill. Adm. Code 703.121(a) and (b) and 728.150(a)(1);

- b. Failing to determine the hazardous waste status of wastes (plating sludge, bifluoride wastes, paint/ink solvents, paint filters, and pretreatment filters) as required by Section 21(f)(2) of the Act and 35 Ill. Adm. Code 722.111;
  - c. Failing to determine if waste (plating sludge, bifluoride wastes, and paint/ink solvents) is restricted from land disposal as required by Section 21(f)(2) of the Act and 35 Ill. Adm. Code 728.107(a);
  - d. Failing to provide training to personnel in hazardous waste management and failing to maintain hazardous waste records, in violation of Section 21(f)(2) of the act and 35 Ill. Adm. Code 725.116(a) and (d);
  - e. Failing to maintain adequate aisle space at the facility to allow the unobstructed movement of emergency personnel and equipment, in violation of Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.135;
  - f. Failing to make arrangements with local emergency response authorities, in violation of Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.137;
  - g. Failing to maintain a hazardous waste contingency plan, in violation of Section 21(f)(2) of the act and 35 Ill. Adm. Code 725.151;
  - h. Failing to appoint an emergency coordinator, in violation of Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.155;
  - i. Failing to inspect the hazardous waste container storage areas weekly, in violation of Section 21(f)(2) of the Act and 35 Ill. Adm. Code 725.274; and
  - j. Failing to provide manifests when disposing special waste, in violation of 35 Ill. Adm. Code 809.301.
2. D'Angelo must cease and desist from violating any provisions of the Act or Board regulations.
  3. D'Angelo must pay a civil penalty of \$70,000 for committing the violations of the hazardous waste and special waste provisions of the Act and the Board's regulations discussed in this Order.
  4. The Board grants the People's petition for costs and attorney fees in the amount of \$7,893.

5. No later than January 6, 2003, which is the 60th day after the date of this order, D'Angelo must pay \$70,000 in civil penalties and \$7,893 in costs and attorney fees of the People of the State of Illinois. D'Angelo must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. D'Angelo must pay the costs and attorney fees by certified check or money order, payable to the Hazardous Waste Fund. The case number, case name, and D'Angelo's social security number or federal employer identification number must be included on each certified check or money order.
6. D'Angelo must send each certified check or money order to:
 

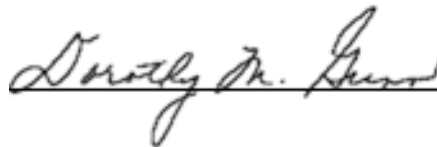
Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276
7. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2000)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2000)).

IT IS SO ORDERED.

Board Member W.A. Marovitz dissented.

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) (2000); 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.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 7, 2002, by a vote of 5-1.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board