

ILLINOIS POLLUTION CONTROL BOARD
January 23, 2003

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 01-135
) (Enforcement – Land)
 PATRICK ROBERT LAND TRUST,)
)
 Respondent.)

SALLY A. CARTER., ASSISTANT ATTORNEY GENERAL, OFFICE OF THE ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT

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

Today, the Board issues its final order in this case. The Board orders Patrick Robert Land Trust to reimburse the Office of the Attorney General, on behalf of the People of the State of Illinois (People), for reasonable attorney fees incurred during the litigation of this enforcement case. Previously, the Board held that Patrick Robert Land Trust must pay \$12,000 for violating numerous provisions of the Environmental Protection Act (Act) and Board regulations.

The Board exercises its discretion and awards the People \$2,730 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

On April 3, 2001 the People filed a complaint against Respondent for violating the Environmental Protection Act and Board regulations at its facility, known as the Old Weaver Landfill. This landfill is located in Washington Township, Tazewell County. The complaint alleged that the respondent caused or allowed the open dumping of waste resulting in litter; caused, allowed, or threatened the discharge of contaminants into the environment so as to cause or tend to cause water pollution; and lacked a permit from the Illinois Environmental Protection Agency (Agency) to conduct a waste storage, treatment, or disposal facility.

On April 4, 2002, the Board granted summary judgment in favor of complainant and sent the case to hearing on the issue of penalties. On July 12, 2002, a hearing was held on the issue of penalties. In a September 19, 2002, interim opinion and order, after review of the July 12, 2002 hearing record and briefs, the Board ordered respondent to pay a penalty in the amount of \$12,000. Additionally, the Board found that an award of attorney fees to complainant would be appropriate, and directed complainant to file an affidavit of costs.

The People's November 1, 2002 petition for attorney fees and accompanying affidavit are now before the Board. William LeRoy filed a response on November 8, 2002.

COSTS AND ATTORNEY FEES

The People request \$2,730 in attorney fees pursuant to Section 42(f) of the Act (415 ILCS 5/42(f) (2002)), 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 fees, including the reasonable costs of expert witnesses and consultants, to the State's Attorney or the Attorney General in 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) (2002).

The People request \$2,730 in attorney fees, calculated at 22.75 hours at \$120 per hour. The requested fees are supported by affidavits. Mr. LeRoy argues that the People wasted 22.75 attorney hours harassing and persecuting Patrick Robert Land Trust.

In paragraph 3 of the September 19, 2002 interim opinion and order, the Board stated that it would strike any response not filed by an attorney. As discussed in that opinion at page 3, Mr. LeRoy is not an attorney. Consequently, his November 8, 2002 filing is stricken.

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). Consequently, the Board finds that the People are entitled to \$2,730 in attorney fees as requested. Under Section 42(f), Patrick Robert Land Trust must pay these attorney fees to the Hazardous Waste Fund. *See* 415 ILCS 5/42(f) (2002).

CONCLUSION

Patrick Robert Land Trust's infractions of the Act and Board regulations included causing or allowing the open dumping of waste resulting in litter; causing, allowing, or threatening the discharge of contaminants into the environment so as to cause or tend to cause water pollution; and lacking a permit from the Agency to conduct a waste storage, treatment, or disposal facility. Furthermore, respondent knowingly committed these violations.

Consequently, the Board orders Patrick Robert Land Trust to cease and desist further violations of the Act and Board regulations and to pay a civil penalty of \$12,000. The Board awards the People \$2,730 in 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.

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

ORDER

1. Patrick Robert Land Trust violated Section 12(a), 21(a), (d) and (p) of the Act (415 ILCS 5/12(a), 21(a), (d), (p) (2002)) and Section 812.101(a) of the Board's regulations (35 Ill. Adm. Code 812.101(a)).
2. Patrick Robert Land Trust must cease and desist from further violations.
3. Patrick Robert Land Trust must pay a civil penalty of \$12,000 for committing violations of the Act and Board regulations.
4. The Board grants the People's petition for attorney fees in the amount of \$2,730.
5. No later than February 24, 2003, which is 30 days after the date of this order, Patrick Robert Land Trust must pay \$12,000 in civil penalties and \$2,730 in attorney fees of the People of the State of Illinois. Patrick Robert Land Trust must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. Patrick Robert Land Trust must pay the attorney fees by certified check or money order, payable to the Hazardous Waste Fund. The case number, case name, and Patrick Robert Land Trust's social security number or federal employer identification number must be included on each certified check or money order.
6. Patrick Robert Land Trust 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) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a)(2002)).

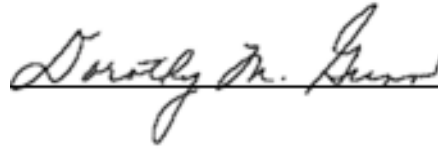
IT IS SO ORDERED.

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) (2002); 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 101.502; 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 January 23, 2003, by a vote of 5-1.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board