

ILLINOIS POLLUTION CONTROL BOARD

February 19, 2004

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 04-139
)	(Enforcement - Land)
DECATUR FOUNDRY, INC., an Illinois)	
corporation,)	
)	
Respondent.)	

ORDER OF THE BOARD (by A.S. Moore):

On February 6, 2004, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Decatur Foundry, Inc. The complaint concerns the company's foundry at 1745 North Illinois Street, Decatur, Macon County. For the reasons below, the Board accepts the complaint for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)), the Attorney General and the State's Attorneys may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2002); 35 Ill. Adm. Code 103. In this case, the People have brought a four-count complaint against Decatur Foundry. In count I, the People allege that Decatur Foundry violated the Act and Board hazardous waste regulations by failing to determine if the waste it generated was hazardous waste (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 722.111), failing to properly contain and mark waste accumulations (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 722.134(a)(1), (2), (3)), shipping hazardous waste without proper manifests and annual reports (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 722.120, 722.140, 722.141), and improperly storing and disposing of hazardous waste (415 ILCS 5/21(e) (2002)).

In count II, the People allege that Decatur Foundry violated the Act and Board hazardous waste regulations by failing to analyze waste (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 725.113(a), (b)), failing to inspect waste areas (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 725.115(a), (b), (d)), failing to train personnel (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 725.116), failing to test and maintain equipment (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 725.133), failing to make emergency arrangements with local authorities (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 725.137); failing to develop and maintain a contingency plan (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 725.151, 725.153), failing to provide an on-scene emergency coordinator (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 725.155), failing to keep an operating record (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 725.173), failing to submit an annual report (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 725.175), failing to provide a closure plan, a post-closure plan, and a cost estimate and financial assurance for closure (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 725.212(a), 725.218(a), 725.242(a), 725.243(a)), operating without conducting

inspections (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 725.274), and failing to install two or more liners and a leachate collection and removal system (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 725.401(a)).

In count III, the People allege that Decatur Foundry violated the Act and Board special waste regulations by disposing of baghouse dust and cupola scrubber waste as non-special waste without first certifying that the waste was not special waste (415 ILCS 5/22.48 (2002); 35 Ill. Adm. Code 808.121(a)). Lastly, in count IV, the People allege that Decatur Foundry violated the Act and Board hazardous waste regulations by operating a hazardous waste facility and storing and disposing of hazardous waste without submitting a Resource Conservation and Recovery Act (RCRA) Part A permit application and without a RCRA permit (415 ILCS 5/21 (2002); 35 Ill. Adm. Code 703.121(a), 703.150).

As relief for the four counts of alleged violations, the People ask the Board to order Decatur Foundry to cease and desist from further violations, to pay civil penalties, and to pay the People's costs and attorney fees.

The Board finds that the complaint meets the content requirements of the Board's procedural rules and accepts the complaint for hearing. *See* 35 Ill. Adm. Code 103.204(c), (f), 103.212(c). A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if Decatur Foundry 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 Decatur Foundry to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d).

The Board directs the hearing officer to proceed expeditiously to hearing. 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) (2002). 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, such as the duration and gravity of the violation, whether the respondent showed due diligence in attempting to comply, any economic benefit that

the respondent accrued from delaying compliance, and the need to deter further violations by the respondent and others similarly situated.

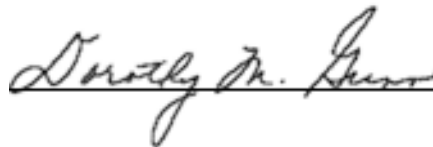
With Public Act 93-575, effective January 1, 2004, the General Assembly changed the Act's civil penalty provisions, amending Section 42(h) and adding a new subsection (i) to Section 42. Section 42(h)(3) now states that any economic benefit to respondent from delayed compliance is to be determined by the "lowest cost alternative for achieving compliance." The amended Section 42(h) also 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."

Under these amendments, the Board may also order a penalty lower than a respondent's economic benefit from delayed compliance if the respondent agrees to perform a "supplemental environmental project" (SEP). A SEP is defined in Section 42(h)(7) as an "environmentally beneficial project" that a respondent "agrees to undertake in settlement of an enforcement action . . . but which the respondent is not otherwise legally required to perform." SEPs are also added as a new Section 42(h) factor (Section 42(h)(7)), as is whether a respondent has "voluntary self-disclosed . . . the non-compliance to the [Illinois Environmental Protection] Agency" (Section 42(h)(6)). A new Section 42(i) lists nine criteria for establishing voluntary self-disclosure of non-compliance. A respondent establishing these criteria is entitled to a "reduction in the portion of the penalty that is not based on the economic benefit of non-compliance."

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.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 19, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board