ILLINOIS POLLUTION CONTROL BOARD
January 5, 2006

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 06-115
	)	(Enforcement - Land, Water)
NATIONAL CITY ENVIRONMENTAL, LLC, an Illinois limited liability corporation, and NATIONAL CITY RECYCLING, LLC, an Illinois limited liability corporation,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by G.T. Girard):

On December 27, 2005, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against National City Environmental, LLC and National City Recycling, LLC (respondents). *See* 415 ILCS 5/31(c)(1) (2004); 35 Ill. Adm. Code 103.204. The complaint concerns respondents' automobile and white goods shredding, recycling, and disposal facility at National City, St. Clair County. For the reasons below, the Board accepts the complaint for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq*. (2004)), 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 (2004); 35 Ill. Adm. Code 103. In this case, the People allege that respondents violated Sections 12(a) and (d) and 21(d)(1), (d)(2), (e), and (p)(1) of the Act (415 ILCS 5/12(a) and (d) and 21(d)(1), (d)(2), (e), and (p)(1) (2004)); 35 Ill. Adm. Code 620.405, 620.410; and various conditions in two permits.

The People further allege that respondents violated these provisions by (1) conducting waste disposal operations without an operating permit; (2) failing to submit an approved application for a significant modification of a permit or a modified design; (3) failing to submit an approved application for significant modification of a permit to address groundwater issues; (4) failing to timely install groundwater monitoring wells; (5) failing to submit an approved application for significant modification of a permit containing applicable groundwater quality standards (AGQSs); (6) failing to submit an approved maximum allowable predicted concentration (MAPC) list as a permit application; (7) failing to submit an approved application for significant modification of a permit to begin an assessment monitoring program; (8) failing to submit an approved assessment report; (9) failing to submit groundwater sampling data whether Class I groundwater quality standards had been exceeded; (10) failing to submit a groundwater assessment plan; (11) disposing of waste at a site that did not meet the requirements for the Act and Board regulations; (12) conducting waste disposal operations in violation of Board regulations or standards; (13) depositing contaminants on land in such a place and manner as to

cause violation of groundwater quality standards for boron, iron, manganese, sulfate, total dissolved solids, and vinyl chloride; (14) depositing contaminants on land in such a place and manner as to create a water pollution hazard; (15) causing, threatening, or allowing the release of contaminants into the groundwater as to cause violation of groundwater quality standards for boron, iron, manganese, sulfate, total dissolved solids, and vinyl chloride; (16) disposing , storing, or transporting waste that did not meet the requirements of the Act and Board regulations; and (17) causing or allowing the open dumping of waste in a manner that resulted in litter. The People ask the Board to order respondents to cease and desist from further violation and pay a civil penalty of $50,000 per violation and $10,000 for each day the violations continued.

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 respondents fail 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 respondents to have admitted the allegation. 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) (2004). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondent to do to correct an ongoing 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.

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 of unreasonable financial hardship."

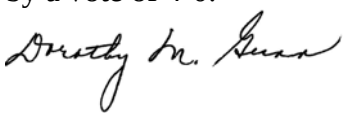
Under these amendments, the Board may also order a penalty lower than a respondent's economic benefit from delayed compliance if the respondent agrees to perform a "supplemental

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 January 5, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board