ILLINOIS POLLUTION CONTROL BOARD
October 4, 2007

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 08-27
	)	(Enforcement - Water)
CITY OF HOMETOWN, a municipal corporation,	)	
	)	
	)	
Respondent.	)	

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

On October 1, 2007, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against the City of Hometown (Hometown). Hometown is located approximately eight miles southwest of downtown Chicago, Cook County, and is a satellite water supply that purchases finished Lake Michigan water from the City of Chicago. The complaint concerns Hometown's two "meter vaults," a primary meter vault located at 87th Street and Kostner Avenue and another meter vault located at 87th Street and Rumsey Avenue in Hometown, Cook County. According to the complaint, the water flows from these two locations to Hometown's residents. For the reasons below, the Board accepts the complaint for hearing.

Section 23 of the Public Water Supply Operations Act provides:

> Authority is hereby vested in the Illinois Pollution Control Board to conduct hearings on complaints charging that any public water supply owner, owner's manager or agent, official custodian, municipal, state or other official has violated or aided and abetted the violation of Section 1 of this Act, or has refused or neglected to comply with any order issued by the Director, as herein provided for. Based on the determinations of the Illinois Pollution Control Board, the violator shall be penalized by the Illinois Pollution Control Board not less than $100.00 nor more than $1000.00 for each offense. 415 ILCS 45/23 (2006).

In count I of the complaint, the People allege that Hometown violated Section 1 of the Public Water Supply Operations Act (415 ILCS 45/1 (2006)) by not having a certified operator responsible for its public water supply over a period of time in 2005 and 2006. The People ask the Board to order Hometown to cease and desist from further violations of Section 1 of the Public Water Supply Operations Act and pay a civil penalty of not less than $100 or not more than $1,000 for each offense of Section 1.

Under the Environmental Protection Act (415 ILCS 5 (2006)), 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 (2006); 35 Ill. Adm. Code 103. In count II of the complaint, the People allege that Hometown violated Sections 603.102, 603.103(a), 603.105(b) of the Board's public water supply regulations (35 Ill. Adm. Code 603.102, 603.103(a), 603.105(b)) by failing to have a certified operator responsible for the public water supply and failing to notify the Illinois Environmental Protection Agency of the personnel responsible for the public water supply. By violating these regulations, according to the complaint, Hometown violated Section 18(a)(2) of the Environmental Protection Act (415 ILCS 5/18(a)(2) (2006)). The People ask the Board to order Hometown to cease and desist from further violations of the Environmental Protection Act and Board regulations and pay a civil penalty of $50,000 for each violation and an additional $10,000 for each day of violation.

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 Hometown 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 Hometown 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 of the Environmental Protection Act, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Environmental Protection Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2006). 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 Environmental Protection 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 Environmental Protection Act's civil penalty provisions, amending Section 42(h) and adding a

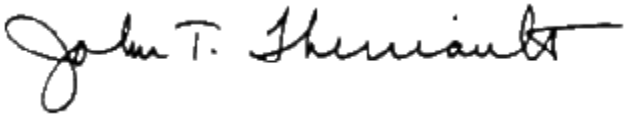
new subsection (i) to Section 42. Section 42(h)(3) now states that any economic benefit to respondent from delayed compliance is to be determined by the "lowest cost alternative for achieving compliance." The amended Section 42(h) also requires the Board to ensure that the penalty is "at least as great 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, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 4, 2007, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board