

ILLINOIS POLLUTION CONTROL BOARD
August 19, 2010

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 10-71
)	(Enforcement - Land)
87th & GREENWOOD, LLC, a Delaware)	
Limited Liability Company, INNOVATIVE)	
RECYCLING TECHNOLOGIES, INC., a)	
Connecticut corporation, and LAND)	
RECLAMATION SERVICES, INC., an)	
Illinois corporation,)	
)	
Respondents.)	

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

On March 19, 2010, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint (Complaint or Comp.) against Land Reclamation Services, Inc. (LRS), 87th & Greenwood, LLC (Greenwood), and Innovative Recycling Technologies, Inc. (IRT). *See* 415 ILCS 5/31 (2008); 35 Ill. Adm. Code 103. The complaint concerns Greenwood’s storage facility at 1040 E. 87th Street, Chicago, Cook County (excavation site) and LRS’s clean construction and demolition debris fill business at 1127 South Chicago Street, Joliet, Will County (LRS site). The People allege that respondents violated Section 21(a) and (e) of the Environmental Protection Act (Act) (415 ILCS 21(a), (e) (2008)) by causing and allowing the disposal of waste from the excavation site at the LRS site (count 1) and disposing of waste at the LRS site which was not permitted for waste disposal by the Illinois Environmental Protection Agency (Agency) (count 2). In addition, the People allege that LRS violated Section 21(d)(1) of the Act (415 ILCS 21(d)(1) (2008)) by causing and allowing the disposal of approximately 350 truckloads of waste at the LRS Site, thereby conducting a waste disposal operation without a permit from the Agency (count 3).

Today the Board decides an uncontested motion to deem facts admitted and for summary judgment filed against LRS only by the People on June 1, 2010. For the reasons discussed below, the Board grants the People’s motion to deem facts admitted and for summary judgment and finds that LRS violated Sections 21(a), (d)(1), and(e) of the Act (415 ILCS 5/21(a), (d)(1), and (e)). The Board accordingly directs LRS to pay a civil penalty of \$20,000.00. The remaining respondents are not subject to this order and the Board will amend the caption to remove LRS with the next order in this case.

This Board first reviews the procedural history of the case and then addresses the motion to deem facts admitted. The Board next summarizes the facts of the case and follows with a

summary of the People's complaint. The Board then sets forth the relevant statutory provisions and describes the standards of review applied by the Board in motions for summary judgment. The Board then summarizes the motion for summary judgment. Finally, the Board discusses the reasons for the finding of violation and the imposition the civil penalty.

PROCEDURAL HISTORY

On March 19, 2010, the People filed a three-count complaint against Greenwood, IRT, and LRS (collectively, respondents). On April 1, 2010, the Board accepted the complaint for hearing. On June 1, 2010, the People filed a Motion to Deem Facts Admitted and for Summary Judgment (Mot.) against LRS only.

LRS has not filed an answer to the complaint and raised no affirmative defenses. LRS has also not responded to the motion, nor has LRS participated in any status conference held by the hearing officer in this matter. *See e.g.* Hearing Officer Order 5/20/10.

PEOPLE'S MOTION TO DEEM FACTS ADMITTED

The People's complaint against LRS was filed on March 19, 2010, and service was made on LRS' registered agent on March 23, 2010. Mot. at 1-2. Section 103.204 of the rules, requires that an answer be filed within 60 days of the receipt of the complaint and if no answer is timely filed "all material allegations of the complaint will be taken as admitted". As of June 1, 2010, the date of the filing of the People's motion, 69 days had passed since the People's complaint was served upon LRS. Mot. at 2. The People have therefore requested that the Board find, pursuant to Section 103.204 of the rules (35 Ill. Adm. Code 103.204) that all material allegations of the complaint are deemed to be admitted by LRS.

As detailed above, LRS had 60 days after receipt of the People's complaint to file an answer. 35 Ill. Adm. Code 103.204(d). "All material allegations of the complaint will be taken as admitted if no answer is filed." *Id.* Furthermore, LRS had 14 days to respond to the People's Motion for Summary Judgment: "If no response is filed, the party will be deemed to have waived objection to the granting of the motion." 35 Ill. Adm. Code 101.500(d). Thus, LRS has waived objection to the granting of the motion to deem facts admitted. Under these provisions, LRS' failure to answer the complaint has caused the material allegations of the complaint to be taken as admitted.

FACTS

At all times relevant to this complaint, LRS was an Illinois corporation duly authorized to do business in the State of Illinois. LRS was involuntarily dissolved by the Illinois Secretary of State on January 1, 2009. Comp. at 2.

There are two other respondents against whom the original complaint was made, Greenwood and IRT. Comp. at 2. The complaint alleges that Greenwood began development and construction of a storage facility on property located in Cook County. *Id.* In October 2005, a laboratory analysis of the soil from the excavation site was performed. *Id.* The analysis

showed that the soil was contaminated with a number of non-naturally occurring compounds at levels which exceeded background levels for both the City of Chicago and the Chicago Metropolitan Area. *Id.* Greenwood retained IRT for removal and disposal of materials excavated from the excavation site. *Id.*

On November 16, 2005, LRS reviewed the October, 2005 soil analysis test results, and advised Greenwood and IRT that LRS would accept the soil at the LRS site. Comp. at 3. LRS owned and operated a clean construction and demolition debris fill business; however the LRS site was not covered by an Illinois Environmental Protection Agency (Agency) Permit for the storage or disposal of waste. *Id.* Beginning on or about January 15, 2006, the three respondents arranged for soil from the excavation site, containing compounds at levels above background for urban areas, to be brought to the LRS site. *Id.* For a fee paid by IRT to LRS, the soil was deposited on the ground at the LRS site. *Id.* Between January 15, 2006, and February 15, 2006, the three respondents arranged for approximately 350 truckloads of soil from the excavation site to be dumped at the LRS site.

On February 8, 2006, Agency inspectors visited the LRS site, and observed several piles of the soil brought from the excavation site. Comp. at 3. The Agency inspectors took samples of the soil for analysis, the results of which confirmed that the soil taken from the excavation site contained a number of compounds at levels which exceeded background levels for both the City of Chicago and the Chicago Metropolitan Area. *Id.* These contaminants included benzo(a)anthracene, carbazole, cadmium, copper, iron, lead, magnesium, beryllium, antimony, and total chromium. Comp. at 3-4. At the direction of the Agency, beginning August 15, 2006, the soil from the excavation site was removed from the LRS site and taken to a permitted disposal facility in Hammond, Indiana. Comp. at 4.

On April 3, 2006, the Agency sent a Violation Notice to LRS by certified mail, alleging violations of the Act related to the dumping of the excavated soil at the LRS site. Comp. at 4. On July 10, 2006, LRS submitted a proposed Compliance Commitment Agreement (CCA) to the Agency. Comp. at 4. On September 14, 2006, the Agency sent LRS a letter rejecting the proposed CCA by certified mail. *Id.* On June 14, 2007, the Agency sent a Notice of Intent to Pursue Legal Action to LRS by certified mail. Comp. at 5.

PEOPLE'S COMPLAINT

The Board will summarize the allegation in each of the counts below.

Count I

In Count I of the complaint, the People allege that LRS is a “person” as that term is defined by Section 3.315 of the Act (415 ILCS 5/3.315 (2008)). Comp. at 5. The People also allege that the soil from the excavation site contained compounds at levels above background for urban areas, and was dumped at the LRS site. As such, the People allege the soil was “discarded material” and therefore “waste” as that term is defined by Section 3.535 of the Act, and also “refuse” as defined by Section 3.385 of the Act (415 ILCS 5/3.535, 3.385 (2008)). Comp. at 6. The People further allege that LRS caused or allowed waste to be deposited on the LRS site in

such a manner that waste could enter the environment or be emitted into the air, and that as a result the LRS site is a “disposal site” as those terms are defined and used in Sections 3.185 and 3.460 of the Act. (415 ILCS 5/3.185 and 3.460 (2008)). *Id.*

The People maintain that the LRS site was not permitted by the Agency for the disposal of waste, and thus did not fulfill the requirements of a sanitary landfill as defined by Section 3.445 of the Act (415 ILCS 5/3.445 (2008)). Comp. at 7. The People allege that by causing or allowing the disposal of waste from the excavation site at the LRS site, a site that did not fulfill the requirements of a sanitary landfill, LRS caused or allowed the open dumping of waste, in violation of Section 21(a) of the Act (415 ILCS 5/21(a) (2008)). *Id.*

Count II

The People argue that LRS disposed of waste at the LRS site, a site that was not permitted for waste disposal by the Agency. The site therefore did not meet the requirements of the Act. Comp. at 8. The People allege that LRS thereby violated Section 21(e) of the Act (415 ILCS 5/21(e) (2008)).

Count III

The complaint states that in approximately January, 2006, LRS caused and allowed the disposal of approximately 350 truckloads of waste at the LRS site, for which LRS accepted a fee. Comp. at 10. The People allege that by doing so, LRS conducted a waste disposal operation without having applied for or obtained a permit from the Agency. *Id.* The People allege that LRS violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) by conducting a waste disposal operation without a permit.

STATUTORY AND REGULATORY PROVISIONS

Section 3.185 of the Act provides as follows:

“DISPOSAL” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters. 415 ILCS 5/3.185 (2008).

Section 3.305 of the Act provides as follows:

“OPEN DUMPING” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill. 415 ILCS 5/3.305 (2008).

Section 3.315 of the Act provides as follows:

“PERSON” is an individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns. 415 ILCS 5/3.315 (2008).

Section 3.385 of the Act provides, as follows:

“WASTE” means any garbage ... or any other discarded material, including any solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities . . . 415 ILCS 5/3.385 (2008).

Section 3.445 of the Act provides, in pertinent part, as follows:

“SANITARY LANDFILL” means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder . . . 15 ILCS 5/3.445 (2008).

Section 3.460 of the Act, provides, as follows:

“SITE” means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations thereunder. 415 ILCS 5/3.460 (2008).

Section 21 of the Act provides, in pertinent part, as follows:

No person shall:

(a) Cause or allow the open dumping of any waste.

(d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

(1) Without a permit granted by the Agency or in violation of any conditions imposed by such permit.

(e) Dispose, treat, store, or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder. 415 ILCS 5/21 (2008).

Section 33(c) of the Act provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- (ii) the social and economic value of the pollution source;
- (iii) the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges, or deposits resulting from such pollution source; and
- (v) any subsequent compliance. 415 ILCS 5/33(c) (2008)

Section 42(h) of the Act provides as follows:

In determining the appropriate penalty to be imposed ... the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

- (i) the duration and gravity of the violation;
- (ii) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provide by this Act;
- (iii) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
- (iv) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
- (v) the number, proximity in time, and gravity of previously adjudicated violations of the Act by the respondent;
- (vi) whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency; and

- (vii) whether the respondent has agreed to undertake a “supplemental environmental project,” which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform. 415 ILCS 5/42(h)

STANDARD OF REVIEW FOR MOTIONS FOR SUMMARY JUDGMENT

Summary judgment is appropriate when the pleadings, deposition, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). In ruling on a motion for summary judgment, the Board “must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party.” *Id.* Summary judgment “is a drastic means of disposing of litigation,” and therefore it should be granted only when the movant’s right to relief “is clear and free from doubt.” Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E. 2d 358, 370 (1998), citing Purtill v. Hess, 111 Ill. 2d 299, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on the pleadings, but must “present a factual basis which would arguably entitle [it] to judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

As LRS failed to respond to the complaint and the Board has found that all facts alleged in the complaint are deemed admitted, there are no issues of material fact and summary judgment is appropriate.

MOTION FOR SUMMARY JUDGMENT

The People have alleged three violations of the Act against LRS, specifically Sections 21(a) [Count I], 21(e) [Count II], and 21(d)(1) [Count III]. 415 ILCS 5/21(a), (d)(1), (e) (2008). Mot. at 2. The People claim that if the Board deems all material facts to be admitted, the facts alleged are sufficient to prove the violations. *Id.* Below the Board summarizes the People’s argument on each count.

Count I

The People argue that the facts establish that LRS owned and operated a business not covered by an Agency permit for the storage or disposal of waste. Mot. at 3. The People maintain that LRS had knowledge of the contaminated nature of the soil from the excavation sited and accepted the materials for disposal. *Id.* The Agency’s testing established that the soil was contaminated and that the soil contained contaminants in levels above background levels. The People assert that these facts establish that LRS violated Section 21(a) of the Act (415 ILCS 5/21(a) (2008)) by causing or allowing the open dumping of waste at the LRS site. Mot. at 3-4.

Count II

The People argue that LRS disposed of 350 truckloads of discarded contaminated soil at the LRS site. Mot. at 4. The LRS site was not a permitted disposal site and as a result, the People maintain that LRS violated Section 21(e) of the Act (415 ILCS 5/21(e) (2008)). *Id.*

Count III

The People argue that LRS did not obtain a permit for the storage of waste. Mot. at 4. The People maintain that LRS solicited the dumping of the contaminated soil at the site and reviewed sample data before agreeing to accept the soil. *Id.* Further, the People note that LRS charged a fee for accepting the soil. Therefore, the People assert that LRS violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)) by operating a waste disposal operation without a permit. *Id.*

DISCUSSION

The Board will discuss each count of the complaint in turn and then address the remedy.

Count I

The record demonstrates that LRS caused or allowed the open dumping of waste. Specifically, the record shows that LRS obtained and reviewed analytical test results which indicated that soil excavated from the excavation site was contaminated with a number of non-naturally occurring compounds. Despite knowledge of contamination, LRS agreed to accept the materials for disposal. Between January 15, 2006, and February 15, 2006, LRS accepted approximately 350 truckloads of the contaminated soil from the excavation site for dumping at the LRS site, for which LRS charged a fee. Comp. at 3.

“Open dumping” is defined to include consolidation of refuse (defined as being equivalent to “waste”), at a facility which does not meet the requirements of the Act. 415 ILCS 5/21(a) (2008). As an unpermitted facility, the LRS site did not meet the requirements of the Act that a permit for waste disposal operations is required (*see, e.g.*, 415 ILCS 5/21(d)(1) (2008)). The loads of contaminated soil were discarded by LRS at the LRS site. As discarded material, the contaminated soil meets the definition of “waste” found in Section 3.535 of the Act (415 ILCS 5/3.535 (2008)).

By causing and allowing the disposal of approximately 350 truckloads of contaminated soil at the LRS site, LRS caused and allowed the consolidation of refuse at a disposal site that did not meet the requirements of the Act, and thereby caused and allowed the open dumping of waste, in violation of Section 21(a) of the Act (415 ILCS 5/21(a) (2008)).

The Board finds that the facts deemed admitted pursuant to Section 103.204(d) of the rules (35 Ill. Adm. Code 103.204(d)) are sufficient to prove that LRS violated Section 21(a) of the Act (415 ILCS 5.21(a) (2008)). The Board further finds that the People are entitled to judgment as a matter of law and the Board grants the motion for summary judgment to Count I.

Count II

Section 21(e) of the Act prohibits the disposal, storage, or abandonment of waste, except at a facility which meets the requirements of the Act. 415 ILCS 5/21(e) (2008). The record demonstrates that because the LRS site was not covered by an Agency-issued permit, it did not meet the Act's requirements for a waste storage or disposal facility. However, LRS knowingly disposed of approximately 350 truckloads of discarded, contaminated soil at the Site, in clear violation of Section 21(e) of the Act (415 ILCS 5/21(e) (2008)).

The Board finds that the facts deemed admitted pursuant to Section 103.204(d) of the rules (35 Ill. Adm. Code 103.204(d)) are sufficient to prove that LRS violated Section 21(e) of the Act (415 ILCS 5.21(e) (2008)). The Board further finds that the People are entitled to judgment as a matter of law and the Board grants the motion for summary judgment to Count II.

Count III

Section 21(d)(1) of the Act prohibits a person from conducting waste disposal operations without a permit. 415 ILCS 5/21(d)(1) (2008). The record indicates that LRS did not seek or obtain a permit for the LRS site for the storage or disposal of waste. However, LRS clearly solicited the dumping of the contaminated soil in this matter. LRS reviewed sample data prior to agreeing to accept the contaminated soil. The contaminated soil was "waste". By soliciting and accepting disposal of the contaminated soil at the LRS site, and by accepting a fee for the dumping, LRS conducted a waste disposal operation without a permit. By doing so, LRS violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2008)).

The Board finds that the facts deemed admitted pursuant to Section 103.204(d) of the rules (35 Ill. Adm. Code 103.204(d)) are sufficient to prove that LRS violated Section 21(d)(1) of the Act (415 ILCS 5.21(d)(1) (2008)). The Board further finds that the People are entitled to judgment as a matter of law and the Board grants the motion for summary judgment to Count III.

Remedies

Having found that LRS committed all of the violations alleged in the complaint, the Board will now determine an appropriate remedy by considering all facts and circumstances pertaining to the violations, including the factors set forth in Section 33(c) of the Act. *See* 415 ILCS 5/33(c) (2008). The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violations, 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 violations. The People request that the Board enter an order assessing a civil penalty of \$20,000 against LRS. Mot. at 5. The People believe that this sum is appropriate because of LRS' active involvement in the acceptance of the contaminated soil. *Id.*

Section 33(c) Factors

The People believe that Sections 33(c)(i) and 33(c)(v) of the Act strongly support assessment of a civil penalty. 415 ILCS 5/33(c)(i), (c)(v) (2008). The Board will consider each of the factors below.

The character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people (415 ILCS 5/33(c)(i) (2008)).

The People argue that LRS' acceptance of contaminated soil at a facility unsuitable for disposal of such waste constitutes a significant interference with the protection of the health, welfare, and property of the People. Mot. at 5. The People opine that the Act requires parties who engage in the business of waste disposal to take extensive protection measures that may include the installation of an engineered liner, collection and control of leachate, the provision of financial assurance for long-term care, and other requirements intended to ensure that contaminants will not negatively impact local residents, or the environment. *Id.* The Agency evaluates risk and imposes conditions on waste disposal activities through the permitting process. Mot. at 5.

The People argue that LRS avoided oversight of the waste disposal activities by failing to seek or obtain a permit from the Agency. Mot. at 5. Furthermore, the People assert, LRS knowingly accepted contaminated soil for a fee, without taking the steps required to prevent off-site impact from the dumping activities. Mot. at 6.

The Board agrees with the People that LRS' violations created a significant risk to the environment and persons situated near the LRS site. Therefore, the Board finds that this factor weighs against LRS and in favor of imposing a penalty.

The social and economic value of the pollution source (415 ILCS 5/33(c)(ii) (2008)).

The complaint and thus the facts deemed admitted do not indicate the social and economic value of the LRS site. Therefore, the Board finds that his factor weighs neither for nor against LRS.

The suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved (415 ILCS 5/33(c)(iii) (2008)).

The complaint and thus the facts deemed admitted do not indicate the suitability or unsuitability of the LRS site. Therefore, the Board finds that his factor weighs neither for nor against LRS.

The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source (415 ILCS 5/33(c)(iv) (2008)).

The People state that the admitted facts show that disposal of the contaminated soil at a suitable and properly-sited facility was both possible and economically reasonable. Mot. at 6. Once the illegal dumping came to the Agency's attention, the materials solicited for dumping by LRS were removed to a permitted facility in Indiana. *Id.*

The Board agrees that the facts show that the materials could have been taken to a permitted waste disposal facility. Therefore, the Board finds that this factor weighs against LRS and in favor of imposing a penalty.

Any subsequent compliance (415 ILCS 5/33(c)(v) (2008)). The People concede that the wastes were relocated from the LRS site after the Agency began the enforcement process. Mot. at 6. The People argue that this removal should not be viewed as “voluntary” subsequent compliance.

The Board agrees that the relocation of the contaminated soil to the permitted facility in Indiana was done pursuant to the Agency’s enforcement process, and should not be equated with voluntary compliance. However, the LRS site is now in compliance. Therefore, the Board finds that this factor weight neither for nor against LRS.

Finding on Section 33 (c) Factors. The Board finds that the Section 33(c) factors relevant to this issue justify requiring LRS to pay a civil penalty. To determine the proper penalty amount, the Board below considers factors listed in Section 42(h) of the Act. *See* 415 ILCS 5/42(h) (2008).

Section 42(h) Factors

Section 42(h) of the Act sets forth factors that may mitigate or aggravate the amount of a civil penalty. 415 ILCS 5/42(h) (2008). Those factors include 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 other entities that are similarly situated. The Board will examine each of the factors below.

Duration and Gravity (415 ILCS 5/42(h)(i) (2008)). The People argue that the facts show dumping of approximately 350 truckloads of contaminated soil over a period of approximately 30 days. Mot. at 7. The Board finds that this factor weighs in aggravation of a penalty.

Due Diligence (415 ILCS 5/42(h)(ii) (2008)). The People assert that LRS was not diligent in attempting to be in compliance when LRS accepted contaminated soil after having reviewed test results which clearly indicated high levels of non-naturally occurring compounds. Mot. at 7. The Board finds that this factor weighs in aggravation of a penalty.

Economic Benefits Accrued (415 ILCS 5/42(h)(iii) (2008)). The People maintain that the facts show that LRS realized dumping profits from accepting the contaminated soil. Comp. at 7. LRS also avoided the costs of applying for and obtaining a waste disposal permit from the Agency, including application fees and engineering costs. Mot. at 7. Because LRS has neither appeared nor participated in this case, information on costs incurred in relocating the waste to a permitted facility are not available. Even absent detailed information, the Board finds that this factor weighs in aggravation of a penalty.

Deterrence, Prior Violations, Disclosure, and Environmental Projects (415 ILCS 5/42(h) (iv), (v), (vi), (vii)). The People argue that a civil penalty of \$20,000.00 will serve to deter violations by other persons similarly subject to the Act. Mot. at 7. The People are not

aware of any previously adjudicated violations by LRS. *Id.* LRS did not self-disclose the noncompliance and no supplemental environmental project has been proposed by LRS. *Id.* The Board finds that these factors weigh in aggravation of a penalty.

Board Finding on Section 42(h) Factors. The Board finds for the above reasons that the imposition of a civil penalty upon LRS is justified. Each of LRS' three separate violations of the Act (415 ILCS 5/21(a), (d)(1), (e) (2008)) may bring with it a civil penalty of \$50,000.00, with an additional civil penalty of \$10,000.00 for each day of violation of each of the three Sections of the Act. LRS was in violation of Sections 21(a), (d)(1), (e) of the Act (415 ILCS 5/21(a), (d)(1), (e) (2008)) for approximately 30 days, from January 15, 2006 until February 15, 2006. Therefore, the maximum civil penalty which might legitimately be assessed against LRS would total over \$1,000,000. The Board consequently finds the People's requested \$20,000 total civil penalty reasonable in light of these facts.

CONCLUSION

The Board grants the People's unopposed motion to deem facts admitted. Therefore, the Board finds that there are no issues of material fact and summary judgment is appropriate. Based on the facts, the Board finds that the People have established that LRS violated Sections 21(a), (d)(1), (e) of the Act (415 ILCS 5/21(a), (d)(1), (e) (2008)) and the motion for summary judgment is granted. The Board finds that the People's requested \$20,000 civil penalty is appropriate and reasonable after considering Section 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2008)). The Board directs LRS to pay a civil penalty of \$20,000.

This Order constitutes the Board's findings of fact and conclusions of law as to Land Reclamation Services, Inc. only. The case against 87th & Greenwood, LLC and Innovative Recycling Technologies, Inc. remains open.

ORDER

1. The Board finds that against Land Reclamation Services, Inc. (LRS) has violated Sections 21(a), (d)(1), and (e) of the Act (415 ILCS 5/21(a), (d)(1), (e) (2008)).
2. LRS must pay a civil penalty of \$20,000.00 no later than September 20, 2010, which is the first business day following the 30th day after the date of this order. Such payment must be made by certified check, money order, or the electronic transfer of funds, payable to the Environmental Protection Trust Fund. The case number, case name, and LRS' federal employer identification number must be included on the face of the certified check or money order.
3. LRS must send the certified check, money order, or confirmation of electronic funds transfer by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East

P.O. Box 19276
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).

IT IS SO ORDERED.

Section 41(a) of the 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) (2008); *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 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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 19, 2010 by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board