ILLINOIS POLLUTION CONTROL BOARD
April 19, 2007

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 07-95
	)	(Enforcement - Land)
AET ENVIRONMENTAL, INC., a Colorado corporation, and E.O.R. ENERGY, LLC, a Colorado limited liability company,	)	
	)	
Respondents.	)	

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

On March 23, 2007, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against AET Environmental, Inc. (AET Environmental) and E.O.R. Energy, LLC (E.O.R. Energy). *See* 415 ILCS 5/31(c)(1) (2004); 35 Ill. Adm. Code 103.204. The complaint concerns E.O.R. Energy's two oil fields near Pawnee. The first oil field is located north of 2050 N Road and 400 E Road, South Fork Township, Christian County. The second oil field is located along Township Road 4.25E South East of the junction with Township Road 13S, Pawnee, Cotton Hill Township, Sangamon County. For the reasons below, the Board accepts the complaint for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (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 in count I of the complaint that AET Environmental and E.O.R. Energy violated Section 21(e) of the Act (415 ILCS 21(e) (2004)) by transporting wastes, including hazardous wastes, into this State for storage and disposal at a site that does not meet the requirements of the Act and Board regulations.

Count II of the complaint alleges that E.O.R. Energy violated Sections 21(e) and (f)(1) of the Act (415 ILCS 5/21(e), (f)(1) (2004)) by storing, disposing, or abandoning wastes, including hazardous wastes, at a site that does not meet the requirements of the Act and Board regulations and by conducting a hazardous waste-storage operation without a Resource, Conservation and Recovery Act (RCRA) permit. According to count III of the complaint, E.O.R. Energy violated Section 21(f)(2) of the Act (415 ILCS 5/21(f)(2) (2004)) and 35 Ill. Adm. Code 703.121(a), (b), and 703.150(a)(2) by storing hazardous waste acid without a RCRA permit, by failing to have a RCRA permit to store hazardous waste at a facility during its active life, and by failing to apply for a RCRA permit within 30 days after being subject to the standards of 35 Ill. Adm. Code 725 or 726.

The People allege in count IV that E.O.R. Energy violated Section 21(f)(2) of the Act (415 ILCS 5/21(f)(2) (2004)) and 35 Ill. Adm. Code 725.111, 725.113, 725.114, 725.115, 725.116, 725.117, 725.131, 725.132, 725.137, 725.151(a), 725.155, 725.171(c), 725.173, 725.175, 725.212(a), 725.242(a), 725.243(a), 725.274, and 725.278. The People allege that E.O.R. Energy violated these provisions as follows: (1) by failing to acquire a United States Environmental Protection Agency (USEPA) identification number; (2) by failing to first obtain a detailed chemical and physical analysis of the hazardous waste acid; (3) by failing to employ required measures to prevent unauthorized entry into its facility; (4) by failing to conduct inspections according to a written schedule; (5) by failing to follow the proper procedures for training and documenting personnel; (6) by failing to take all necessary precautions to prevent the ignition or reaction of ignitable or reactive wastes; (7) by failing to properly maintain and operate the facility; (8) by failing to implement and maintain communications, alarm, spill control and fire protection systems at the facility; (9) by failing to familiarize the local police, fire department, and hospital concerning the type of hazardous waste stored at the site; (10) by failing to develop a contingency plan for the facility; (11) by failing to designate an employee of the facility as the emergency coordinator with the responsibility to coordinate all emergency response measures; (12) by failing to prepare Illinois Environmental Protection Agency manifests and make sure the manifests accompanied the hazardous waste acid from the facility to the oil wells; (13) by failing to keep a written operating record for the hazardous waste acid; (14) by failing to prepare and submit annual reports for the hazardous waste acid stored at the site; (15) by failing to develop a closure plan for the storage of the hazardous waste acid; (16) by failing to prepare a detailed written estimate, in current dollars, of the cost of closing the storage unit for the hazardous waste acid; (17) by failing to establish financial assurance for closure of the facility; (18) by failing to have facility personnel inspect the building containing the hazardous waste acid containers at least weekly for leaks or deterioration; and (19) by failing to make a determination on the average volatile organic concentration of the containerized hazardous waste acid.

According to count V of the complaint, E.O.R Energy violated Section 12(g) of the Act (415 ILCS 5/12(g) (2004)) and 35 Ill. Adm. Code 704.121 by injecting hazardous waste acid into wells without having an Underground Injection Control permit or authorization by rule. The People further allege that E.O.R. Energy failed to comply with the requirements of 35 Ill. Adm. Code 704.203 and thereby violated Section 12(g) of the Act (415 ILCS 5/12(g) (2004)). For the alleged violations in the five-count complaint, the People seek a cease and desist order and civil penalties of not more than the statutory maximum.

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. *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) (2004). 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.

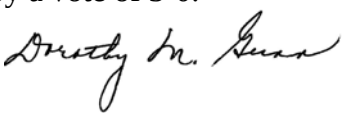
With Public Act 93-575, effective January 1, 2004, the General Assembly changed the Act's civil penalty provisions, amending Section 42(h) and adding a new subsection (i) to Section 42. Section 42(h)(3) now states that any economic benefit to respondent from delayed compliance is to be determined by 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 April 19, 2004, by a vote of 3-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board