

the Fishers acknowledge that Rhonda Fisher was the sole shareholder, officer, and director of DEG. Mot. at 1. Edward Fisher volunteered his services to DEG but was never a shareholder, officer, or director. *Id.* Based on these statements in the complaint and motion, the parties dispute facts concerning Rhonda Fisher's relationship to DEG and Edward Fisher's relationship to DEG. Such a factual dispute precludes summary judgment at this time.

Additionally, even if these factual disputes were not dispositive, the Fishers have not presented a legal argument supporting summary judgment. The Fishers contend that DEG is responsible for demolition at the high school and not them. Mot. at 2. This is because the Fishers were performing normal activities for an employee or volunteer and are not liable for DEG's activities. *Id.* Yet, the Fishers list eleven examples in the complaint of alleged activities performed by the Fishers. *Id.* To be liable under the Act, a corporate officer must be personally involved or actively participate in the violation. People ex rel. Madigan v. J.T. Einoder, Inc., 2015 IL 117193, ¶40. The complaint alleges the Fishers actively participated and were personally involved in decisions and actions resulting in open dumping at the site. The allegations include that the Fishers personally supervised and managed demolition activities at the site, and supervised the disposal of demolition waste. Comp. at 2-3. These allegations are sufficient to allow the People to proceed to prove alleged violations of the Act. *See People v. Community Landfill, Inc.*, PCB 97-193, slip op. at 7 (Apr. 20, 2006) (Board denied summary judgment where a complaint set forth facts establishing personal liability for individuals actively participating in company operations).

The Board finds that there is a genuine issue of material fact precluding summary judgment at this time. The Board also finds that the complaint sets forth sufficient facts that, if proven, may establish personal liability for Rhonda and Edward Fisher. Therefore, the Board denies the Fishers' motion for summary judgment.

HEARING

The Board directs the hearing officer to proceed expeditiously to hearing. The hearing may be held by videoconference. In deciding whether to hold the hearing by videoconference, the Board or the hearing officer will consider cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 103.108.

The hearing officer is responsible for ensuring a complete record. 35 Ill. Adm. Code 101.610. A complete record includes addressing the appropriate remedy for the alleged violations, such as civil penalty.

REMEDY

Demolition at the former Pekin High School has been the subject of a previous case before the Board for waste transported to different properties. *See People v. Demolition Excavating Group, Inc., et al.*, PCB 14-2 (March 19, 2015). In that case, the Board ordered respondents to pay a civil penalty of \$75,000. The People allege that the high school site was

clean as of May 7, 2014. Comp. at 6. If the People prove a violation of the Act, the parties should address these circumstances in any argument pertaining to the appropriate remedy.

The Board considers factors in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for a violation of the Act. *See* 415 ILCS 5/33(c), 42(h) (2014). Specifically, the Board considers Section 33(c) factors in determining what to order the respondent to do to correct an on-going violation, and whether to order 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 interference with public health, the technical practicability and economic reasonableness of compliance, and whether the respondent eliminated the violation.

If the Board decides to impose a civil penalty, the Board then considers the Act's Section 42(h) factors to determine the amount. Section 42(h) factors may mitigate or aggravate the civil penalty amount. These factors include: the duration and gravity of the violation; whether the respondent showed due diligence in attempting to comply; any economic benefit to the respondent from delaying compliance based on the lowest cost alternative for achieving compliance; the need to deter further violations by the respondent and others similarly situated; and whether the respondent voluntarily self-disclosed the violation. 415 ILCS 5/42(h) (2014). Section 42(h) requires the Board to ensure that the penalty is at least as great as the economic benefits to the respondent unless the Board finds that such penalty would result in an arbitrary or unreasonable financial hardship. *Id.* Such penalty, however, may be offset by a supplemental environmental project. *Id.*

CONCLUSION

The Board denies Rhonda and Edward Fisher's motion for summary judgment, and accepts the People's complaint for hearing. The Board orders Rhonda Fisher and Edward Fisher to answer the complaint by June 12, 2017.

IT IS SO ORDERED.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 12, 2017, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive, flowing style.

Don A. Brown, Assistant Clerk
Illinois Pollution Control Board