

ILLINOIS POLLUTION CONTROL BOARD
December 21, 2017

SIERRA CLUB, PRAIRIE RIVERS)	
NETWORK, and NATIONAL)	
ASSOCIATION FOR THE ADVANCEMENT)	
OF COLORED PEOPLE,)	
)	
Complainants,)	
)	
v.)	PCB 18-11
)	(Enforcement – Water)
CITY OF SPRINGFIELD, OFFICE OF)	
PUBLIC UTILITIES d/b/a CITY WATER,)	
LIGHT AND POWER,)	
)	
Respondent.)	

ORDER OF THE BOARD (by K. Papadimitriu):

On September 27, 2017, Sierra Club, Prairie Rivers Network, and the National Association for the Advancement of Colored People (Citizen Groups) filed a complaint against the respondent, City of Springfield, Office of Public Utilities, doing business as “City Water, Light and Power” (CWLP). The complaint concerns CWLP’s Dallman Station, a coal-burning power plant located on Lake Springfield in Springfield, Sangamon County. The complaint also concerns CWLP’s former Lakeside Station, another coal-burning plant on the same site.

The complaint alleges that CWLP violated Sections 12(a) and (d) of the Environmental Protection Act (Act) (415 ILCS 5/12(a), (d) (2016)) and Sections 620.115, 620.301(a), and 620.405 of the Board’s groundwater quality rules (35 Ill. Adm. Code 620.115, 620.301(a), 620.405). According to the complaint, CWLP violated these provisions by causing water pollution through its coal ash disposal ponds, landfill, unconsolidated coal ash fill, and other coal ash and coal combustion waste repositories at the Dallman Station site. Citizen Groups ask the Board to declare that CWLP violated the Act and to impose civil penalties. Citizen Groups also ask that the Board order CWLP to (1) cease and desist from causing or threatening to cause water pollution, (2) modify its coal ash and coal combustion waste disposal and storage practices to avoid future groundwater contamination, and (3) remediate the contaminated groundwater so that it meets applicable groundwater quality standards.

On November 3, 2017, CWLP filed a motion to dismiss the complaint or, alternatively, strike its alleged violation of Section 620.301(a). In this order, the Board denies CWLP’s motion to dismiss and strike and accepts the complaint for hearing for the reasons stated below. Contrary to CWLP’s arguments, the Board finds that the complaint (1) is sufficiently pled, (2) is not duplicative, (3) is not frivolous, and (4) is not barred as untimely. If CWLP wishes to file an answer to the complaint, it must do so by January 22, 2017.

Before turning to CWLP's motion and accepting the complaint for hearing, the Board provides relevant procedural and legal background.

PROCEDURAL BACKGROUND

On November 2, 2017, a Board order directed the Citizen Groups to file documentation of service containing the respondent's signature. On November 3, 2017, the Citizen Groups filed proof of service, documenting that CWLP received the complaint on October 5, 2017.

On November 3, 2017, CWLP filed a motion to dismiss the Citizen Groups' complaint or, alternatively, strike one of its alleged violations. On November 17, 2017, the Citizen Groups filed their response opposing CWLP's motion.

On December 1, 2017, CWLP filed a motion for leave to file a reply to the Citizen Groups' response, attaching its reply. On December 15, 2017, Citizen Groups filed an opposition to CWLP's motion.¹ Because the Board finds CWLP's reply helpful and to prevent material prejudice, the Board grants CWLP's motion for leave to file a reply. 35 Ill. Adm. Code 101.500(e).

CWLP's motion to dismiss or strike also requests that the Board correct the caption in this proceeding to identify the respondent as "City of Springfield, Office of Public Utilities d/b/a City Water, Light and Power." Mot. at 4-5. The Board changes the caption accordingly.

LEGAL BACKGROUND

The Board first describes citizen enforcement complaints under the Act and the standards the Board applies when considering motions to dismiss or strike. Next, the Board sets forth the provisions of the Act and Board regulations allegedly violated.

Citizen Enforcement Actions

Under Section 31(d) of the Act (415 ILCS 5/31(d) (2016)), any person may file with the Board a complaint, meeting the requirements of Section 31(c) of the Act (415 ILCS 5/31(c) (2016)), against any person allegedly violating the Act, any rule or regulation adopted under the Act, any permit or term or condition of a permit, or any Board order. 415 ILCS 5/31(d)(1) (2016). The Board must schedule a hearing on the complaint "unless the Board determines that such complaint is duplicative or frivolous." 415 ILCS 5/31(d)(1) (2016); *see also* 35 Ill. Adm. Code 103.212(a).

Section 31(c) of the Act and Section 103.204(c) of the Board's procedural rules impose requirements for the complaint's content. 415 ILCS 5/31(c)(1) (2016); 35 Ill. Adm. Code 103.204(c). Under Section 31(c)(1), the complaint must "specify the provision of the Act, rule, regulation, permit, or term or condition thereof" that is allegedly violated by the respondent and contain a "statement of the manner in and the extent to which such person is said to violate the

¹ The complaint is cited as "Comp. at ___"; CWLP's motion to dismiss and strike is cited as "Mot. at ___"; the Citizen Groups' response is cited as "Resp. at ___"; CWLP's reply is cited as "Reply at ___"; and Citizen Groups' opposition is cited as "Opp. at ___."

Act, rule, regulation, permit, or term or condition thereof.” 415 ILCS 5/31(c)(1) (2016). Section 103.204(c) of the Board’s rules elaborates that a complaint must contain:

- 1) A reference to the provision of the Act and regulations that the respondents are alleged to be violating;
- 2) The dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations. The complaint must advise respondents of the extent and nature of the alleged violations to reasonably allow preparation of a defense; and
- 3) A concise statement of the relief that the complainant seeks. 35 Ill. Adm. Code 103.204(c).

Standards for Deciding Motions to Dismiss or Strike

The Board commonly looks to Illinois civil practice law for guidance when considering motions to strike or dismiss pleadings. *See, e.g., Johns Manville v. IEPA*, PCB 14-3, slip op. at 9 (Nov. 7, 2013); *Sierra Club v. Midwest Generation*, PCB 13-15, slip op. at 17 (Oct. 3, 2013); *United City of Yorkville v. Hamman Farms*, PCB 08-96, slip op. at 14-15 (Oct. 16, 2008); *see also* 35 Ill. Adm. Code 101.100(b) (“the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance when the Board’s procedural rules are silent”). “Illinois is a fact-pleading state which requires the pleader to set out the ultimate facts which support his cause of action.” *Loschen v. Grist Mill Confections, Inc.*, PCB 97-174, slip op. at 4 (Jun. 5, 1997), citing *LaSalle National Trust, N.A. v. Village of Mettawa*, 249 Ill. App. 3d 550, 557 (2d Dist. 1993).

Even though “[c]harges in an administrative proceeding need not be drawn with the same refinements as pleadings in a court of law” (*Lloyd A. Fry Roofing Co. v. PCB*, 20 Ill. App. 3d 301, 305 (1st Dist. 1974)), the Act and the Board’s procedural rules “provide for specificity in pleadings” (*Rocke v. PCB*, 78 Ill. App. 3d 476, 481 (1st Dist. 1979)), and “the charges must be sufficiently clear and specific to allow preparation of a defense” (*Lloyd A. Fry Roofing*, 20 Ill. App. 3d at 305). Complaint’s allegations are “sufficiently specific if they reasonably inform the defendants by factually setting forth the elements necessary to state a cause of action.” *Schilling v. Hill*, PCB 10-100, slip op. at 7 (Mar. 15, 2012), quoting *People ex rel. William J. Scott v. College Hills Corp.*, 91 Ill. 2d 138, 145 (1982).

When deciding a motion to strike or dismiss, the Board takes all well-pled allegations as true and draws all reasonable inferences from them in favor of the non-movant. *See, e.g., Beers v. Calhoun*, PCB 04-204, slip op. at 2 (July 22, 2004); *see also In re Chicago Flood Litigation*, 176 Ill. 2d 179, 184, 680 N.E.2d 265, 268 (1997); *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 438, 546 N.E.2d 580, 584 (1989). Complainant need not set out its evidence, but only the ultimate facts to be proved. *See Schilling v. Hill*, PCB 10-100, slip op. at 7 (Mar. 15, 2012). “[I]t is well established that a cause of action should not be dismissed with prejudice unless it is clear that no set of facts could be proved which would entitle the plaintiff to relief.” *Smith v. Central Illinois Regional Airport*, 207 Ill. 2d 578, 584-85 (2003); *see also People v. Sheridan Sand & Gravel Co.*, PCB 06-177, slip op. at 4 (Sept. 7, 2006).

Provisions Allegedly Violated

The Citizen Groups' complaint alleges that CWLP violated Sections 12(a) and (d) of the Act. Sections 12(a) and (d) are prohibitions, stating that "[n]o person shall":

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

- (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard. 415 ILCS 5/12(a), (d) (2016).

The Citizen Groups' complaint also alleges that CWLP violated Sections 620.115, 620.301(a), and 620.405 of the Board's groundwater quality regulations. Section 620.115 provides that "[n]o person shall cause, threaten or allow a violation of the Act, the [Illinois Groundwater Protection Act] or regulations adopted by the Board thereunder, including but not limited to this Part." 35 Ill. Adm. Code 620.115.

Section 620.301(a) states:

No person shall cause, threaten or allow the release of any contaminant to a resource groundwater such that:

- 1) Treatment or additional treatment is necessary to continue an existing use or to assure a potential use of such groundwater; or
- 2) An existing or potential use of such groundwater is precluded. 35 Ill. Adm. Code 620.301(a).

Section 620.405 provides that "[n]o person shall cause, threaten or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart [D] to be exceeded." 35 Ill. Adm. Code 620.405. Subpart D of Part 620 contains the groundwater quality standards for potable resource groundwater (Class I) and general resource groundwater (Class II). *See* 35 Ill. Adm. Code 620.410, 620.420; *see also* 35 Ill. Adm. Code 620.210 (potable resource groundwater classification), 620.220 (general resource groundwater classification).

THE BOARD'S ANALYSIS

For the reasons detailed below, the Board denies CWLP's motion to dismiss the Citizen Groups' complaint, denies CWLP's motion to strike one of the violations alleged in the complaint, and accepts the complaint for hearing.

The Board Denies CWLP's Motion to Dismiss

The Complaint Satisfies Section 31(c) of the Act and Section 103.204(c) of the Board's Procedural Rules

CWLP asks the Board to dismiss the complaint for failing to meet the content requirements of Section 31 of the Act and Section 103.204 of the Board's procedural rules. Mot. at 8.

According to CWLP, the complaint fails to notify CWLP of the actions it took or failed to take—and during which timeframe—that resulted in CWLP violating the Act and Board regulations. *Id.* The Board disagrees. The complaint alleges 388 violations of Class I and 235 violations of Class II groundwater quality standards. Comp. at 10. The complaint alleges that CWLP discharged contaminants into the environment at the Dallman Station site. *Id.* at 2, 10. The complaint alleges that the discharges took place through CWLP's coal ash disposal ponds, landfill, unconsolidated coal ash fill, and other coal ash and coal combustion waste repositories at the Dallman Station site. *Id.* The complaint specifies the contaminants as arsenic, boron, chromium, iron, lead, manganese, sulfate, and total dissolved solids. *Id.* at 4. The complaint specifies exceedances for each contaminant on specific dates. *Id.*, Exhibits D and E. The complaint further alleges that the contaminants are found in CWLP's monitoring wells at concentrations that make underground water unusable and present a human health risk. *Id.* at 4. Taking all well-pled allegations as true and drawing all reasonable inferences from them in favor of the Citizen Groups, the Board finds that the complaint contains sufficient details about the discharges and advises CWLP of the nature and extent of the alleged violations to reasonably allow preparation of a defense. Therefore, the Board finds that the complaint satisfies the requirements of Section 31(c)(1) of the Act and Section 103.204(c)(2) of the Board's procedural rules for factual specificity.

CWLP also argues that the complaint failed to sufficiently allege violations of the Act and Board regulations. Mot at 8-9. The Board disagrees. The complaint alleges that CWLP violated Sections 12(a) and (d) of the Act and Sections 620.115, 620.301(a), and 620.405 of the Board's groundwater quality regulations. Comp. at 10-11. The Board finds that these specific references satisfy the requirements of Section 31(c)(1) of the Act and Section 103.204(c)(1) of the Board's procedural rules. The Board also considers the complaint's statement of relief to satisfy the requirements of Section 31(c)(1) of the Act and section 103.204(c)(3) of the Board rules.

The Board, thus, finds that the complaint's allegations are specific and provide sufficient facts that, if proven, would establish the violations pled. The Board finds that the complaint reasonably informs CWLP of the alleged violations. The Board therefore denies CWLP's motion to dismiss the complaint as insufficiently pled.

The Complaint Is Not Duplicative

A complaint is duplicative if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. In determining whether a matter before the Board is the same or substantially similar to one pending before another forum, the Board looks to whether (1) the parties to the two matters are the same; (2) the proceedings are based on the same legal theories; (3) the violations alleged in the two matters occurred over the same time period; and (4) the same relief is sought in the two proceedings. United City of

Yorkville v. Hamman Farms, PCB 08-96, slip op. at 5-6 (Apr. 2, 2009); *see also* Johns Manville v. IEPA, PCB 14-3, slip op. at 10 (Nov. 7, 2013).

CWLP's motion does not point to anything that is pending before the Board or another forum that is the same or substantially similar to the complaint. Instead, CWLP suggests many theories of how the duplicative nature of the complaint could be determined. *See* Mot. at 12-13. None of these theories, however, correspond to the requirements of the Act or the Board's rules. For example, CWLP requests the Board to "grant a hearing or oral argument on the issue of whether this complaint is barred based on the actions taken by the [Illinois Environmental Protection Agency (Agency)] to determine whether legitimate violations were found and whether disagreement as to the existence of violations or an appropriate remedy still exists." *Id.* at 12. CWLP does not, however, identify any specific action of the Agency in this regard. *Id.* CWLP argues that the Board's orders on this issue "were wrongfully decided and impermissibly expand the scope of citizens' enforcement process beyond the intent of the legislation." *Id.* The Board has held that Section 31 is not intended to allow citizen enforcement actions to proceed *only* where the Agency fails to act. *See* Sierra Club v. Midwest Generation, PCB 13-15, slip op. at 20 (Oct. 3, 2013). Neither does Section 31 bar citizen enforcement actions when the Agency *did* act; disagreement with the Agency as to any violations being equally irrelevant for citizens' enforcement actions. *See* People v. Freeman United Coal Co., PCB 10-61, slip op. at 9 (Apr. 18, 2013). The Board is not persuaded to re-examine these precedents and denies CWLP's request for oral argument or a separate hearing on the issue.

Because CWLP fails to identify any matter pending before the Board or another forum that is identical or substantially similar to the Citizen Groups' complaint, the Board denies CWLP's motion to dismiss the complaint as duplicative.

The Complaint Is Not Frivolous

A complaint is frivolous if it requests "relief that the Board does not have the authority to grant" or "fails to state a cause of action upon which the Board can grant relief." 35 Ill. Adm. Code 101.202. The Board has already determined that the complaint provides sufficient factual and legal allegations to state a cause of action and, thus, the complaint is not frivolous in this regard.

CWLP's motion does not point to any relief requested in the complaint that the Board lacks the authority to grant. Rather, CWLP asks the Board to dismiss the complaint as frivolous for "attempt[ing] to create an end run through the Board" around the federal Coal Combustion Residue (CCR) rules. Mot. at 13. CWLP also asks the Board to dismiss the complaint as premature and a frivolous abuse of the Board's limited resources. *Id.* The motion claims that it is frivolous for the Citizen Groups to ask the Board to make complex technical determinations required to sustain a violation "when the road-map provided by the CCR rules will conclusively and permanently address these issues in due time." *Id.* The motion claims that it is premature and frivolous to ask for the complaint "to be adjudicated by the Board until the relevant facts have been developed under the CCR rule." *Id.* at 14. CWLP does not, however, identify any provision of the Act, Board rules, or other laws that supports these claims. Nor does CWLP argue that the complaint asks the Board to enforce any federal regulations or make any determinations on matters preempted by federal law or otherwise outside of the Board's authority.

Because the Board is authorized to grant the requested relief, the complaint is not frivolous in this regard. The Board therefore denies CWLP's motion to dismiss the complaint on this ground.

The Complaint Is Not Barred as Untimely

CWLP also asks the Board to dismiss the complaint as untimely. Mot at 10-11. CWLP argues that because Section 31(d)(1) of the Act requires a citizen's enforcement complaint to meet the requirements of Section 31(c), a citizen's complaint must be filed within 180 days after the citizen complainant became aware of the violation, just as the Agency must issue a violation notice within 180 days after discovering a violation. *Id.* CWLP acknowledges that the Act and Board regulations "do not clearly specify a time period" within which a citizen "must file a complaint following becoming aware of the violation," but suggests that "this lack of a specification of a statute of limitation" cannot mean that citizen complaints "can be raised at any time." *Id.*

The Board rejects this argument. The Board has consistently held that the 180-day period of Section 31 is not a statute of limitations. *See, e.g., People v. John Crane, Inc.*, PCB 01-76, slip op. at 5 (May 17, 2001); *see also People v. Eagle-Picher-Boge, L.L.C.*, PCB 99-152, slip op. at 6 (July 22, 1999) ("Section 31 is not a statute of limitations, but an administrative tool that ensures potential violators have an opportunity to negotiate an alleged violation with the Agency prior to initiation of formal enforcement proceedings."). Moreover, Section 31(d)(1) states that "[a]ny person may file with the Board a complaint, meeting the requirements of subsection (c) of this Section" 415 ILCS 5/31(d)(1) (2016). This language makes plain that it is the *complaint itself* that must comply with Section 31(c), which specifies content requirements for complaints. Further, the 180-day provision relied upon by CWLP is in subsection (a) of Section 31 (415 ILCS 5/31(a) (2016)), not subsection (c), and applies to the Agency only. Thus, the Board denies CWLP's motion to dismiss the complaint as untimely.

The Board Denies CWLP's Motion to Strike

If the Board declines to dismiss the complaint, CWLP asks the Board to strike the alleged violation of 35 Ill. Adm. Code 620.301(a) for "failure to allege facts that, if true, would lead to a violation of that provision." Mot. at 10. CWLP argues that "no facts have been presented that allege the presence of elevated groundwater levels off-site of CWLP property or the actual or potential uses of the groundwater in the community that are precluded to result in a violation of this provision." *Id.*

The Board agrees with the Citizen Groups that violating Section 620.301(a) does not require "off-site" groundwater contamination or that the complaint present facts that actual or potential uses of groundwater are in fact precluded. *See* Resp. at 10. Section 620.301(a) prohibits causing, threatening, or allowing the release of any contaminant to a resource groundwater such that (1) "[t]reatment or additional treatment is necessary to continue an existing use or to assure a potential use of such groundwater" or (2) "[a]n existing or potential use of such groundwater is precluded." 35 Ill. Adm. Code 620.301(a); *see People v. ESG Watts, Inc.*, PCB 96-233, slip op. at 18-19 (February 5, 1998) (stating that "[h]aving found organic contaminants present in the groundwater around the landfill, and having found the landfill to be

the source of the contaminants, the Board concludes that ESG Watts has caused the discharge of contaminants into groundwater”). The complaint alleges the existence of specific contaminants, with the levels of their exceedances on specified dates. The complaint further alleges that the contaminant concentrations identified in CWLP’s groundwater wells make the groundwater “unusable,” and pose a “human health risk.” Comp. at 4-7, 10, Exhibits D and E. As found above, taking well-pled allegations of the complaint as true and drawing all reasonable inferences from them in favor of the Citizen Groups, the complaint states a cause of action for violating Section 620.301(a).

The Board notes that a technical omission such as complaint’s failure to identify pleading of violation of Class I and Class II standards as pleading in the alternative does not render complaint insufficiently pled as to those violations. “Despite the requirement of fact pleading, courts are to construe pleadings liberally to do substantial justice between the parties.” See Grist Mill Confections, PCB 97-174, slip op. at 4 (Jul. 17, 1998) (citing Classic Hotels, Ltd. v. Lewis, 259 Ill. App. 3d 55, 60 (1st Dist. 1994)). Pleadings are “not intended to create technical obstacles to reaching the merits of a case at trial; rather, their purpose is to facilitate the resolution of real and substantial controversies.” See United City of Yorkville’s v. Hamman Farms, PCB 08-96, slip op. at 15 (Oct. 16, 2008) (citing Village of Mettawa, 249 Ill. App. 3d at 557, citing College Hills, 91 Ill 2d at 145). The Board has both legal and technical expertise to address these allegations based on the evidence in the record as the case progresses. The Board, thus, denies the CWLP’s motion to strike the alleged violation of Section 620.301(a) from the complaint.

The Board Accepts the Citizen Groups’ Complaint for Hearing

Having found that the complaint is neither duplicative nor frivolous on the grounds claimed by CWLP, the Board further finds that the complaint is not otherwise duplicative or frivolous. The Board therefore accepts the complaint for hearing. See 415 ILCS 5/31(d)(1) (2016); 35 Ill. Adm. Code 103.212(a).

If a respondent wants to deny any allegations in the complaint, the respondent usually must file an answer to a complaint within 60 days after receiving the complaint. 35 Ill. Adm. Code 103.204(d). Because CWLP timely filed its motion to dismiss or strike (35 Ill. Adm. Code 101.506, 103.212(b)) on November 3, 2017, the 60-day period to file an answer was stayed on that date. 35 Ill. Adm. Code 103.204(e), 103.212(b). The stay ends today with the Board’s denial of the motion. 35 Ill. Adm. Code 103.204(e). Because the motion was filed on the 29th day after CWLP received the complaint, CWLP must file an answer by January 22, 2018 (the first business day following the 31st day after the date of this order), if CWLP wants to deny any allegations in the complaint. 35 Ill. Adm. Code 103.204(d).

If CWLP does not file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider CWLP 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) (2016). 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 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. These factors include the following: the duration and gravity of the violation; whether the respondent showed due diligence in attempting to comply; any economic benefits that the respondent accrued from delaying compliance based upon 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) (2016). Section 42(h) 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 or unreasonable financial hardship." *Id.* Such penalty, however, "may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent." *Id.*

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.

CONCLUSION

The Board denies CWLP's motion to dismiss the complaint or strike its alleged violation of Section 620.301(a) of the groundwater quality rules. The Board finds that the complaint is neither duplicative nor frivolous and accepts it for hearing. CWLP has until January 22, 2018, to file an answer to the complaint, if it so chooses.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 21, 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 style with a large, circular initial "D".

Don A. Brown, Clerk
Illinois Pollution Control Board