

ILLINOIS POLLUTION CONTROL BOARD
August 23, 2018

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 19-51
)	(Enforcement - Land)
SE TRANSPORT, INC., a dissolved Illinois)	
corporation,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.M. Santos):

On August 17, 2018, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against SE Transport, Inc. (SE Transport). The complaint concerns SE Transport’s waste transportation facility located at 1950 Westgate Drive in Columbia, Monroe County. For the reasons below, the Board accepts the complaint for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), 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 (2016); 35 Ill. Adm. Code 103. In this case, the People allege that SE Transport violated Sections 21(e), 21(f)(1), 21(f)(2), 21(g)(2), 21(j) of the Environmental Protection Act (Act) (415 ILCS 5/21(e), 21(f)(1), 21(f)(2), 21(g)(2), 21(j) (2016)); Sections 703.121(a), 703.121(b), 723.121(a), 725.115(a), 725.131, 725.135, 725.212(a), 725.242(a), 725.243, 725.271, 725.273(a), 725.274, 728.150(a) of the Board’s waste disposal regulations (35 Ill. Adm. Code 703.121(a), 703.121(b), 723.121(a), 725.115(a), 725.131, 725.135, 725.212(a), 725.242(a), 725.243, 725.271, 725.273(a), 725.274, 728.150(a)); and Standard Conditions 3, 8, and 13 of its Special Waste Hauling Permit No. 5285.

The People allege in Count I that SE Transport violated these provisions by failing to deliver shipments of hazardous waste from a generator to the facility designated on the shipment’s manifest or other authorized destination; storing shipments of special waste at its facility, which was not the designated recipient and not permitted for such storage; conducting special waste hauling in vehicles not enumerated in its permit and without requesting modification of the permit; and conducting special waste hauling in violation of the Act and Board regulations.

The People allege in Count II that SE Transport violated these provisions by conducting a hazardous waste storage operation and hazardous waste management unit at its facility without a Resource Conservation and Recovery Act (RCRA) permit.

The People allege in Count III that SE Transport violated these provisions by failing to conduct inspections of the facility where hazardous waste was stored; failing to maintain its facility so as to minimize the possibility of an unplanned release of the hazardous waste or hazardous waste constituents; failing to maintain aisle space in trailers where hazardous waste was stored; failing to transfer hazardous waste from containers that were in poor condition to containers that were in good condition; storing hazardous waste in a container that was not closed; failing to conduct weekly inspections of area where hazardous waste was stored to look for leaking or deteriorated containers; and storing hazardous waste in drums and boxes that did not have labels and/or accumulation start dates on the container.

The People allege in Count IV that SE Transport violated these provisions by failing to maintain a written closure plan for its facility; failing to maintain a detailed written estimate of the cost of closing its facility, and failing to maintain documentation of financial assurance for closure of its facility.

The People ask that the Board order SE Transport pay civil penalties of \$50,000 for each violation and \$10,000 for each day during which each violation continued of Sections 21(e) and 21(j) of the Ac) (415 ILCS 5/21(e), 21(j) (2016)); and Sections 703.121(a), 703.121(b), 723.121(a), 725.115(a), 725.131, 725.135, 725.212(a), 725.242(a), 725.243, 725.271, 725.273(a), 725.274, 728.150(a) of the Board's waste disposal regulations (35 Ill. Adm. Code 703.121(a), 703.121(b), 723.121(a), 725.115(a), 725.131, 725.135, 725.212(a), 725.242(a), 725.243, 725.271, 725.273(a), 725.274, 728.150(a)).

The People ask that the Board order SE Transport to pay civil penalties of \$25,000 for each day during which each violation continued of Sections 21(f)(1), 21(f)(2), and 21(g)(2) of the Ac) (415 ILCS 5/21(f)(1), 21(f)(2), 21(g)(2) (2016)); and Sections 703.121(a), 703.121(b), 723.121(a), 725.115(a), 725.131, 725.135, 725.212(a), 725.242(a), 725.243, 725.271, 725.273(a), 725.274, 728.150(a) of the Board's waste disposal regulations (35 Ill. Adm. Code 703.121(a), 703.121(b), 723.121(a), 725.115(a), 725.131, 725.135, 725.212(a), 725.242(a), 725.243, 725.271, 725.273(a), 725.274, 728.150(a)).

The People also ask that the board order SE Transport to cease and desist from any further violations of the Act and regulations and, and that the Board order SE Transport to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees.

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 SE Transport fails by that deadline 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 SE Transport to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d).

The Board directs the hearing officer to proceed expeditiously to hearing. Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be

held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include 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.

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.

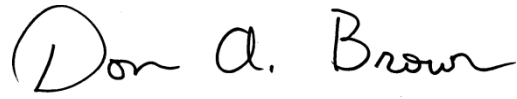
If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2016). Specifically, the Board considers the Section 33(c) factors in determining, first, what 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.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 23, 2018, 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