

ILLINOIS POLLUTION CONTROL BOARD  
December 4, 2014

PEOPLE OF THE STATE OF	)	
ILLINOIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 14-2
	)	(Enforcement – Land)
DEMOLITION EXCAVATING GROUP,	)	
INC., and Illinois corporation, RHONDA	)	
FISHER and EDWARD FISHER,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by D. Glosser):

On October 6, 2014, the Office of the Attorney General, on behalf of the People of Illinois (People), filed simultaneous motions to deem facts admitted by Demolition Excavating Group, Inc. (DEG) and Rhonda and Edward Fisher (the Fishers) (collectively respondents). During an October 14, 2014 telephonic status conference, the hearing officer required respondents to file their response to the motions by October 20, 2014. As of November 6, 2014, neither DEG nor the Fishers had filed a timely response by an attorney-at-law.

For the reasons discussed below, the Board grants the People’s motion to deem facts admitted. The Board first reviews the procedural history of the case and then summarizes the complaint. The Board will then address the motion to deem facts admitted.

**PROCEDURAL HISTORY**

On July 2, 2013, the People filed a two-count complaint against DEG and the Fishers. On July 11, 2013, the Board accepted the complaint for hearing. After the Board accepted the case for hearing, a status call with the hearing officer was scheduled, and on July 30, 2013, the People informed the hearing officer that respondents were in the process of hiring legal counsel and requested that the telephonic status conference be postponed until September 16, 2013. The hearing officer granted that request, but on September 16, 2013, respondents had still been unable to retain legal counsel. *See* Hearing Officer Order (July 23, 2013) and Hearing Officer Order (Sept. 16, 2013). On July 28, 2014, the hearing officer directed respondents to file an answer to the complaint by September 29, 2014. *See* Hearing Officer Order (July 28, 2014). No answer has been filed.

On October 6, 2014, the People filed a request to deem complaint allegations admitted. On October 14, 2014, the hearing officer directed respondents to respond to the People’s motion to deem complaint allegations admitted by October 20, 2014. *See* Hearing Officer Order (Oct.

14, 2014). Neither DEG nor the Fishers have retained attorneys nor timely responded to the People's motions.

On November 20, 2014, the Board directed the People to file proof of service of the complaint on respondents. On November 24, 2014, the People filed "copies of signed return receipts for certified mail sent to Demolition Excavating Group c/o Rhonda Fisher, and Edward Fisher on July 3, 2013."

### **COMPLAINT**

On July 2, 2013, the People filed a two-count complaint (Comp.) against respondents. *See* 415 ILCS 5/31 (2012); 35 Ill. Adm. Code 103. The complaint concerns respondents' depositing of demolition and construction debris in the 13000 block of East Manito Road, Pekin, Tazewell County (the Hilst Site) and at 13018 Manito Road, Tazewell County, Pekin owned by Pekin Sand & Gravel (the Pekin S & G Site).

In Count I, the People allege that respondents violated Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7)(2012)) by causing or allowing open dumping of wastes at the Hilst Site in a manner that resulted in deposition of general construction or demolition debris as defined in Section 3.160(a) of the Act. In Count II, the People allege that respondents committed a second violation of Section 21(p)(7) of the Act by causing or allowing open dumping of wastes at the Pekin S & G Site in a manner that resulted in deposition of general construction or demolition debris as defined in Section 3.160(a) of the Act.

### **PEOPLE'S MOTION TO DEEM FACTS ADMITTED**

The People note that the complaint was filed against respondents on July 2, 2013, and service was made on the Fishers on July 2, 2013. Mot. at 2. The People further note that Section 103.204(d) and (e) of the Board's regulations provide:

- d) Except as provided in subsection (e) of this Section, the respondent may file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.
  
- e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506, the 60-day period to file an answer described in subsection (d) of this Section will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion. 35 Ill. Adm. Code 103.204(d) and (e).

The People argue that on July 28, 2014, the Board hearing officer directed respondents to answer the People's complaint by September 29, 2014. Mot. at 2. Therefore, the People contend that respondents have failed to file an answer to the complaint or otherwise file a motion as required by Sections 103.204(d) and (e) of the Board's regulations, 35 Ill. Adm. Code 103.204(d) and (e). Consequently, the People request that the Board issue an order deeming all material allegations in the complaint pertaining to respondents be admitted by operation of law. *Id.*

### **DISCUSSION**

On October 6, 2014, the People filed simultaneous motions to deem facts admitted by respondents. Respondents were given until October 20, 2014 to respond to the People's motions. *See* Hearing Officer Order (Oct. 14, 2014). Respondents did not timely respond to the People's motions and have not yet responded to the motions. The Board rules state that "[i]f no response is filed, the party is deemed to have waived objection to the granting of the motion." 35 Ill. Adm. Code 101.500(d). Thus, any objection to granting the motion is waived.

As of the date of this order, respondents still have not responded to either the motion or the complaint. The Board rules state that "[a]ll material allegations of the complaint will be taken as admitted if no answer is filed." 35 Ill. Adm. Code 103.201(d). No answer was filed and therefore, the Board finds that respondents have admitted the allegations in the complaint. The People's motion is granted.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 1, 2014, by a vote of 4-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board