

On October 6, 2014, the People filed a motion to deem facts admitted against DEG and the Fishers. The hearing officer gave respondents until October 20, 2014, to file a response. *See* Hearing Officer Order 10/14/2014. Neither DEG nor the Fishers have retained attorneys nor timely responded to the People's motions.

On November 20, 2014, the Board ordered the People to file proof that the complaint was served on all 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."

On December 4, 2014, the Board granted the People's Motion to Deem Complaint Allegations Admitted.

On January 22, 2015, the People filed a motion for summary judgment against respondents. Respondents have not retained attorneys or timely responded to the People's motion for summary judgment.

COMPLAINT

On July 2, 2013, the People filed a two-count complaint (Comp.) against DEG and the Fishers. *See* 415 ILCS 5/31 (2012); 35 Ill. Adm. Code 103. The complaint concerns two sites at which respondents allegedly dumped demolition material. Count I of the complaint concerns the Hilst Site, which is owned by Joyce and Scott Hilst and located at the 13000 block of East Manito Road in Pekin, Tazewell County. Count II of the complaint concerns the Pekin S&G site, which is owned by Pekin Sand & Gravel and located at 13018 Manito Road in Pekin, Tazewell County.

The People allege that respondents violated Sections 21(a), 21(e), 21(p)(1), 21(p)(4), and 21(p)(7) of the Act (415 ILCS 5/21(a), (e), (p)(1), (p)(4), (p)(7) (2012)) by (1) causing or allowing the open dumping of wastes at the Hilst Site, (2) disposing of wastes at the Hilst Site, a site not meeting the requirements of the Act or regulations, and (3) causing or allowing the open dumping of wastes at the Hilst Site in a manner that resulted in litter, the deposition of waste in standing water, and the deposition of general construction or demolition debris. Count II alleges that respondents violated Sections 21(a), 21(e), and 21(p)(7) of the Act (415 ILCS 5/21(a), (e), (p)(7) (2012)) by (1) causing or allowing the open dumping of wastes at the Pekin S&G site, (2) disposing of wastes at the Pekin S&G site, a site not meeting the requirements of the Act or regulations, and (3) causing or allowing the open dumping of wastes at the Pekin S&G site in a manner that resulted in the deposition of general construction or demolition debris.

FACTS

Respondents Rhonda and Edward Fisher are share-holders in two closely held corporations. Comp. at 2. The first is DEG, which is properly registered and in good standing with the Secretary of State. *Id.* The second is DEM/EX Group Inc., which was a demolition and excavating contracting company. *Id.* DEM/EX Group Inc. is not in good standing with the

Secretary of State. *Id.* Both corporations share a principal place of business at 805 Adams, Manito, Mason County. *Id.*

Rhonda Fisher was the President of DEG, and Edward Fisher was an authorized agent or employee of DEG. Mot. at 3. DEG is the successor corporation to DEM/EX Group, Inc. *Id.* Edward Fisher is the President and Secretary of DEM/EX Group, Inc. *Id.*

On June 5, 2008, the Board issued an order against Rhonda Fisher, Edward Fisher, and DEM/EX Group, Inc. for open dumping violations related to demolition debris. *See IEPA v. Edward W. Fisher et al.*, AC 2008-026 (June 5, 2008). On May 16, 2013, the Board found the Fishers and DEM/EX Group in violation of Sections 9(a), 9(c), 21(a), 21(d)(1), 21(d)(2), 21(e), 21(p)(1), 21(p)(3), 21(p)(7)(i)-(ii), 55(a)(1), and 55(k)(1) of the Act (415 ILCS 5/9(a), 9(c), 21(a), 21(d)(1), 21(d)(2), 21(e), 21(p)(1), 21(p)(3), 21(p)(7)(i)-(ii), 55(a)(1), and 55(k)(1) (2012)). The Board also found that the respondents violated Section 812.101(a) of the Board's rules (35 Ill. Adm. Code 812.101(a)). *See People v. Edward W. Fisher et al.*, PCB 13-3 (May 16, 2013) (issuing civil penalty of \$16,000 against each respondent). Likewise, the Rock Island Circuit Court issued an order against DEM/EX Group, Inc. in July 2012 for Clean Air Act violations cited in Case No. 11-CH-413. Comp. at 2; Mot. at Exh. 5.

Hilst Site

Joyce Hilst and Scott Hilst were the owners of the Hilst Site, which has two lagoons on the site. Comp. at 3; Mot. at 3 At some point prior to May 10, 2012, Rhonda Fisher arranged for Scott Hilst to meet with Edward Fisher to discuss providing Scott Hilst with clean demolition materials from the Pekin West High School campus to be used as fill material at the Hilst Site. *Id.* Thereafter, Scott Hilst met with Edward Fisher and made arrangements to have excavated demolition material delivered to the Hilst Site as long as everything was cleared with the Illinois Environmental Protection Agency (IEPA) before dumping any excavated demolition material at the Hilst Site. *Id.*

Sometime before May 10, 2012, DEG, through its employee, Daniel Saal, falsely represented to Ms. Hilst that it had obtained permission from IEPA to dump clean demolition debris at the Hilst Site. However, the excavated demolition material contained metal, wood and other waste and thus was not clean demolition debris as defined by the Act. *Id.* at 3-4.

On May 10, 2012, IEPA inspected the Hilst Site and determined that demolition debris containing rock, dirt, brick, wood and metal had been openly dumped there. *Id.* at 4; Exh. 2. On that same day, Rhonda Fisher and Daniel Saal admitted to IEPA inspector that DEG had dumped demolition debris from Pekin West High School campus at the Hilst Site. *Id.*

On May 11, 2012, IEPA inspected the Hilst Site a second time, observing demolition debris consisting of brick, concrete, metal, wood, plastic and cardboard openly dumped along the south edge of the west lagoon on the property. *Id.*

On May 24, 2012, Edward Fisher informed IEPA that the Hilst Site was being cleaned up. Later that day, IEPA went to the Hilst Site, where Tyler Dawe, a DEG employee, was removing wood waste from the debris with a bucket. *Id.*

IEPA subsequently informed Edward Fisher that all of the waste had to be removed from the Hilst Site, not just the wood waste. Edward Fisher advised IEPA that DEG was not responsible for all of the waste, and DEG would not remove all of the waste. *Id.*

On June 1, 2012, IEPA met with Edward Fisher, Rhonda Fisher, and employees of DEG at the Pekin High School West campus excavation site. During the meeting, IEPA handed out copies of Section 3.160 of the Act, 415 ILCS 5/3.160 (2012), which includes the definitions of “general construction or demolition debris” and “clean construction or demolition debris”, and explained that the material that had been placed on the Hilst Site was a waste and would have to be removed and properly disposed. *Id.* at 4-5.

At Edward Fisher’s request, IEPA looked at the accumulations of waste at the Pekin High School West campus excavation site. After looking at the accumulations of waste, IEPA advised Edward Fisher that the accumulations of waste were not clean demolition debris and that all of the waste would have to be taken to a landfill. *Id.* at 5.

On July 3, 2012, IEPA inspected the Hilst Site. Approximately 12 dump-truck loads, or 200 cubic yards, of demolition debris, which had been generated at the Pekin High School West campus, had been dumped by respondents at the Hilst Site and in the lagoons at the site. The waste included two loads of asphalt and a load of wood waste. *Id.* On December 10, 2012, IEPA inspected the Hilst Site, and two loads of stockpiled waste remained on the property. *Id.* at 6.

The Hilst Site does not meet the requirements of the Act or Board regulations for a landfill. *Comp.* at 7.

Pekin S & G Site

On July 19, 2012, IEPA inspected the Pekin S&G Site in response to a complaint that DEG had been dumping wastes from the Pekin High School West Campus site. *Comp.* at 8. At that time, Derrek Henry, the owner of the site, confirmed that DEG had been delivering waste from the Pekin High School West campus site to the Pekin S&G Site. *Mot.* at 5. At the time of the July 19, 2012, inspection, there were 250 cubic yards of demolition debris containing wood, protruding metal bars and other waste present at the Pekin S&G Site. *Id.* Respondents removed the demolition debris from the Pekin S&G Site on July 23, 2012. *Id.*

At all times relevant to the allegations in the complaint, Rhonda Fisher and Edward Fisher actively and personally directed the actions that caused the violations set forth in the complaint. *Id.*

The Pekin S & G site does not meet the requirements of the Act and Board regulations for a landfill. *Comp.* at 9.

STATUTORY BACKGROUND

Section 21 of the Act, 415 ILCS 5/21(2012), provides, in pertinent part, as follows:

No person shall:

- (a) Cause or allow the open dumping of any waste.

* * *

- (e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

* * *

- (p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

- (1) litter;

* * *

- (4) deposition of waste in standing or flowing waters;

* * *

- (7) deposition of:

- (i) general construction or demolition debris as defined in Section 3.160(a) of this Act...

MOTION FOR SUMMARY JUDGMENT

The People argue that for the Board to find respondents violated the Act as alleged in the complaint, the Board must make specific findings regarding respondents' actions or inactions. The Board will summarize the People's arguments on each count in the following paragraphs.

Count I (Hilst Site)

To find a violation of Count I, the People maintain that the Board must determine that respondents violated Sections 21(a), 21(e), 21(p)(1), 21(p)(4), and 21(p)(7) of the Act (415 ILCS 5/21(a), (e), (p)(1), (p)(4), (p)(7) (2012)) by (1) causing or allowing the open dumping of wastes at the Hilst Site, (2) disposing of wastes at the Hilst Site, a site not meeting the requirements of the Act or regulations, and (3) causing or allowing the open dumping of wastes at the Hilst Site in a manner that resulted in litter, the deposition of waste in standing water, and the deposition of general construction or demolition debris. Mot. at 11. The People state that they must prove

that: 1) the demolition material was a waste, 2) the material was open dumped on the Site, and 3) the Site does not meet the requirements of the Act for a landfill. *Id.* at 8-11.

First, the People claim that the demolition material from the Pekin West High School campus is “waste” as that term is defined in Section 3.535 of the Act, 415 ILCS 5/3.535 (2012). *Id.* at 8. The excavated demolition material contained metal, wood, and other waste and therefore the People claim this was not clean demolition debris as defined by the Act. *Id.* at 4.

Next, the People also claim that, by their own admission, respondents took demolition debris from the Pekin West High School campus and dumped it on the Hilst Site with the intention of leaving it there permanently as fill material. *Id.* at 11. On May 10, 2012, IEPA inspected the Hilst Site and determined that the demolition debris containing rock, dirt, brick, wood and metal had been openly dumped there. *Id.* at 4. The People therefore assert that respondents engaged in the “open dumping” of waste on the Hilst Site and the Pekin S&G Site as that term is defined in Section 3.305 of the Act, 415 ILCS 5/3.305 (2012), and thereby violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2012). *Id.* at 11.

Finally, the People claim that the Hilst Site is not permitted by IEPA for the disposal of waste. *Id.* at 9. The People claim that respondents began open dumping on the Hilst Site at some point prior to May 10, 2012, and that waste material remained on the Hilst Site until at least December 10, 2012. *Id.* at 9. The People also note that after examining the accumulations of waste, IEPA advised Edward Fisher that the accumulations of waste were not clean demolition debris and that all of the waste would have to be taken to a landfill. *Id.* at 5. The People therefore argue that respondents’ open dumping of waste on the Hilst Site constituted the disposal of waste at a facility that does not meet the requirements of the Act in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2012).

Count II (Pekin S & G Site)

To find a violation of Count II, the People maintain that the Board must determine that respondents violated Sections 21(a), 21(e), and 21(p)(7) of the Act (415 ILCS 5/21(a), (e), (p)(7) (2012)) by 1) causing or allowing the open dumping of wastes at the Pekin S&G site, 2) disposing of wastes at the Pekin S&G site, a site not meeting the requirements of the Act or regulations, and 3) causing or allowing the open dumping of wastes at the Pekin S&G site in a manner that resulted in the deposition of general construction or demolition debris. *Mot.* at 11. The People state that they must prove that: 1) the demolition material was a waste, 2) the material was open dumped on the Site, and 3) the Site does not meet the requirements of the Act. *Id.* at 8-11.

First, the People claim that the demolition material from the Pekin West High School campus is “waste” as that term is defined in Section 3.535 of the Act, 415 ILCS 5/3.535 (2012). *Id.* at 8. The excavated demolition material contained metal, wood, and other waste and therefore the People claim this was not clean demolition debris as defined by the Act. *Id.* at 4. The People claim that at the time of the July 19, 2012 inspection, there were 250 cubic yards of demolition debris containing wood, protruding metal bars and other waste present at the Pekin S&G Site. *Id.* at 5.

Next, the People also claim that, by their own admission, respondents took demolition debris from the Pekin West High School campus and dumped it on the Pekin S&G Site with the intention of leaving it there permanently as fill material. *Id.* at 11. On July 19, 2012, IEPA inspected the Pekin S&G Site. At that time, Derrek Henry, the owner of the site, confirmed that DEG had been delivering waste from the Pekin High School West campus site to the Pekin S&G Site. *Id.* at 5. The People therefore assert that respondents engaged in the “open dumping” of waste on the Pekin S&G Site as that term is defined in Section 3.305 of the Act, 415 ILCS 5/3.305 (2012), and thereby violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2012). *Id.* at 11.

Finally, the People claim that the Pekin S&G Site is not permitted by IEPA for the disposal of waste. *Id.* at 9. The People claim that respondents began open dumping on the Pekin S&G Site at some point prior to July 19, 2012, and the waste material remained on the Pekin S&G Site until July 23, 2012. *Id.* at 9. The People also note that after looking at the accumulations of waste, IEPA advised Edward Fisher that the accumulations of waste were not clean demolition debris and that all of the waste would have to be taken to a landfill. *Id.* at 5. The People therefore argue that respondents’ open dumping of waste on both the Hilst and Pekin S&G sites constituted the disposal of waste at a facility that does not meet the requirements of the Act in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2012).

DISCUSSION ON MOTION FOR SUMMARY JUDGMENT

The Board will first set forth the standard of review for summary judgment and then the burden of proof in an enforcement action. The Board will then discuss its findings.

Standard of Review for Summary Judgment

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). In ruling on a motion for summary judgment, the Board “must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party.” *Id.* Summary judgment “is a drastic means of disposing of litigation,” and therefore it should be granted only when the movant’s right to relief “is clear and free from doubt.” Dowd & Dowd, Ltd., 181 Ill. 2d at 483, 693 N.E. 2d at 370, citing Purtill v. Hess, 111 Ill. 2d 299, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on the pleadings, but must “present a factual basis which would arguably entitle [it] to judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

Burden of Proof

In an enforcement proceeding before the Board, the burden of proof is by a preponderance of the evidence. Lefton Iron & Metal Company, Inc. v. City of East St. Louis, PCB 89-53 at 3, (Apr. 12, 1990); Bachert v. Village of Toledo Illinois, et al., PCB 85-80 at 3,

(Nov. 7, 1985); Industrial Salvage Inc. v. County of Marion, PCB 83-173 at 3-4, (Aug. 2, 1984), *citing* Arrington v. Water E. Heller International Corp., 30 Ill. App. 3d 631, 333 N.E.2d 50, 58, (1st Dist. 1975). A proposition is proved by a preponderance of the evidence when it is more probably true than not. Industrial Salvage at 4, *citing* Estate of Ragen, 79 Ill. App. 3d 8, 198 N.E.2d 198, 203, (1st Dist. 1979). A complainant in an enforcement proceeding has the burden of proving violations of the Act by a preponderance of the evidence. Lake County Forest Preserve District v. Neil Ostro, PCB 92-80, (Mar. 31, 1994). Once the complainant presents sufficient evidence to make a prima facie case, the burden of going forward shifts to the respondent to disprove the propositions (Illinois Environmental Protection Agency v. Bliss, PCB 83-17, (Aug. 2, 1984)). *See* Nelson v. Kane County Forest Preserve, et. al., PCB 94-244 (July 18, 1996); People v. Chalmers, PCB 96-111 (Jan. 6, 2000).

Facts Admitted

The Board's rules require respondents to file an answer to the complaint within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. 35 Ill. Adm. Code 103.204(d). 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. *Id.* Respondents did not file an answer to the complaint. On October 6, 2014, the People filed a motion to deem facts admitted against DEG and the Fishers. The hearing officer gave respondents until October 20, 2014 to file a response. *See* Hearing Officer Order (Oct. 14, 2014). Respondents did not respond to the People's motions. The Board's rules provide that: "If no response is filed, the party will be 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 was waived.

On December 4, 2014, the Board found that respondents' failure to provide a response resulted in the respondents having admitted the allegations in the complaint. People v. Demoliton Excavation Group, Inc. et al., PCB 14-2 (Dec. 4, 2014); *see also* 35 Ill. Adm. Code 103.204(d).

Likewise, respondents have not responded to the motion for summary judgment. Therefore, the Board finds that respondents have waived an objection to granting the motion. *See* 35 Ill. Adm. Code 101.500(d).

Because the facts have been deemed admitted and there is no response to the motion for summary judgment, the Board finds that summary judgment is appropriate as there are no issues of material fact. The Board will now discuss each count below.

Count I

On May 10, 2012, Rhonda Fisher and Daniel Saal, an employee of DEG, admitted to IEPA that DEG had dumped demolition debris from Pekin West High School campus at the Hilst Site. Mot. at 4., Comp., Count I ¶ 13. On May 11, 2012, IEPA inspected the Hilst Site, observing demolition debris consisting of brick, concrete, metal, wood, plastic and cardboard openly dumped along the south edge of the west lagoon on the property. *Id.* On May 24, 2012,

Edward Fisher informed IEPA that the Hilst Site was being cleaned up. *Id.* Later that day, IEPA went to the Hilst Site, where Tyler Dawe, a DEG employee, was removing wood waste from the debris with a bucket. *Id.* IEPA subsequently informed Edward Fisher that all of the waste had to be removed from the Hilst Site, not just the wood waste. *Id.* Edward Fisher advised IEPA that DEG was not responsible for all of the waste and DEG would not remove all of the waste. *Id.* At Edward Fisher's request, IEPA looked at the accumulations of waste at the Pekin High School West campus excavation site. *Id.* at 5. After looking at the accumulations of waste, IEPA advised Edward Fisher that the accumulations of waste were not clean demolition debris and that all of the waste would have to be taken to a landfill. *Id.* The record is replete with evidence that the Hilst Site does not meet the requirements of the Act.

These facts establish that respondents arranged the open dumping of demolition debris, a material that is a waste, at the Hilst Site. Therefore, the Board finds that the respondents openly dumped waste in Illinois for storage and disposal at a site that does not meet the requirements of the Act, in violation of Sections 21(a) and (e) of the Act. 415 ILCS 5/21(a) and (e) (2012). The open dumping of waste resulted in litter and deposition of waste in standing water in violation of Sections 21(p)(1) and (4). 415 ILCS 5/21(p)(1) and (4) (2012). Further, the open dumping of waste resulted in deposition of general construction or demolition debris in violation of Section 21(p)(7) of the Act. 415 ILCS 5/21(p)(7) (2012).

Count II

In support of its allegations the People point out that on July 19, 2012 IEPA inspected the P&G Site. At that time, Derrick Henry, the owner of the site, confirmed that DEG had been delivering waste from the Pekin High School West campus site to the Pekin S&G Site. Mot. at 5, Comp., Count II ¶ 11. Further, at the time of the July 19, 2012 inspection, there were 250 cubic yards of demolition debris containing wood, protruding metal bars and other waste present at the Pekin S&G Site. *Id.* Respondents then removed the demolition debris from the Pekin S&G Site on July 23, 2012. *Id.* The record is replete with evidence that the Pekin S&G Site does not meet the requirements of the Act.

These facts clearly establish that respondents arranged the open dumping of demolition debris, a material that is a waste, to the Pekin S&G Site. Therefore, the Board finds that the respondents openly dumped waste in Illinois for storage and disposal at a site that does not meet the requirements of the Act, in violation of Sections 21(a) and (e) of the Act. 415 ILCS 5/21(a) and (e) (2012). Further, the open dumping of waste resulted in deposition of general construction or demolition debris in violation of Section 21(p)(7) of the Act. 415 ILCS 5/21(p)(7) (2012)..

Conclusion on Motion for Summary Judgment

The Board finds that summary judgment is appropriate as all facts have been admitted against the respondents and only questions of law remain. In reviewing the record and the allegations against the respondents, the Board finds that the respondents violated Sections 21(a), (e), (p)(1), (4) and (7) of the Act (415 ILCS 5/21(a), (e), (p)(1), (4) and (7) (2012)) as alleged in the complaint. In summary, respondents openly dumped waste into Illinois for storage and

disposal at the two sites, which are not permitted landfills. The respondents did so in a manner that resulted in litter, deposition of waste in standing water, and deposition of general construction or demolition debris. Therefore, the Board grants the motion for summary judgment. The Board will now consider the appropriate remedy for these violations.

REMEDY

The Board has found that respondents violated Sections 21(a), 21(e), 21(p)(1), 21(p)(4), and 21(p)(7) of the Act (415 ILCS 5/21(a), (e), (p)(1), (p)(4), (p)(7) (2012)). The Board must now determine appropriate penalties in this case. In evaluating the record to determine the appropriate penalty, the Board considers the factors of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2012)).

Statutory Provisions Relating To Penalties

Section 33(c) of the Act provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- (ii) the social and economic value of the pollution source;
- (iii) the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges, or deposits resulting from such pollution source; and
- (v) any subsequent compliance. 415 ILCS 5/33(c) (2012).

Section 42(h) of the Act provides as follows:

In determining the appropriate penalty to be imposed . . . the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

- (1) the duration and gravity of the violation;

- (2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
- (3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
- (4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
- (5) the number, proximity in time, and gravity of previously adjudicated violations of the Act by the respondent;
- (6) whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency; and
- (7) whether the respondent has agreed to undertake a “supplemental environmental project,” which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.
- (8) whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In determining the appropriate civil penalty to be imposed under subsection (a) or paragraph (1), (2), (3), or (5) of subsection (b) of this Section, the Board shall ensure, in all cases, 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. However, such civil penalty may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent. 415 ILCS 5/42(h) (2012).

People's Argument

Section 33(c) Factors

Regarding the Section 33(c) factors, the People maintain that the respondents' actions threatened human health and the environment. Mot. at 12. The People assert that the demolition and proper disposal of general construction or demolition debris has social and economic value. *Id.* The People claim that the Hilst Site and the Pekin S&G Site are not suitable for the storage and disposal of general construction or demolition debris. *Id.* Furthermore, the People maintain that proper disposal at a permitted facility was both technically practicable and economically reasonable. *Id.* The People note that following IEPA's inspections of the Hilst Site on December 10, 2012, and the Pekin S&G Site on July 10, 2012, respondents took steps to remove general construction or demolition debris from the two properties. *Id.* at 13. Finally, the People assert that a civil penalty should be assessed against respondents because they have "repeatedly been found to have violated the Act, including improperly storing and disposing of general construction or demolition debris, as explained more fully below, and because of the potential harm of unpermitted waste disposal to human health and the environment." *Id.*

Section 42(h) Factors

Regarding Section 42(h)(1) of the Act (415 ILCS 5/42(h)(1) (2012)), the People reiterate that IEPA informed the respondents that the material they had dumped at the sites was general construction or demolition debris; that the open dumping of general construction or demolition debris at a site other than a permitted IEPA landfill is a violation of the Act; and they should remove all general construction or demolition debris from the Hilst Site immediately. Mot. at 16. The People maintain that respondents were not diligent in attempting to come into compliance. *Id.* The People assert that respondents accrued a nominal economic benefit by delaying proper disposal of the general construction or demolition debris they dumped at the Hilst Site and Pekin S&G Site. *Id.* The People explain that any civil penalty they have requested would include any economic benefit that respondents may have accrued as a result of the delay in compliance. *Id.*

The People note that respondents have previous adjudicated violations before the Board. *Id.* at 17, *see also Illinois Environmental Protection Agency v. Edward W. Fisher, et al.*, AC 08-26; *People of the State of Illinois v. Edward W. Fisher, et al.*, PCB 13-03. Additionally, on July 2, 2012, the Rock Island Circuit Court issued an order against DEM/EX Group, Inc., imposing a \$110,300 penalty for failure to comply with the Act's asbestos demolition notifications, emission control and removal requirements. *People of the State of Illinois v. Dem/Ex Group, Inc.*, 11-CH-413; Mot. at Exh. 5. Finally, the People note that respondents did not self-report the violations to IEPA. *Id.* at 17. There is no supplemental environmental project and no compliance commitment agreement in place. *Id.* at 18.

Discussion on Remedy

The Board will discuss each of the Section 33(c) and 42(h) factors below. The Board will then explain the reasoning for the civil penalty being assessed.

Section 33(c) Factors

The Character and Degree of Injury to, or Interference With the Protection of the Health, General Welfare and Physical Property of the People

The Board found that the respondents openly dumped waste into Illinois for storage and disposal at a site that does not meet the requirements of the Act. Such actions endanger the health, general welfare, and physical property of the people. Therefore, the Board finds that this factor weighs against respondents.

The Social and Economic Value of the Pollution Source

The Board agrees with the People that the demolition and proper disposal of general construction or demolition debris has social and economic value. Conversely improper disposal lacks social and economic value. Therefore, the Board finds that this factor weighs against respondents.

The Suitability or Unsuitability of the Pollution Source to the Area in Which it is Located, Including the Question of Priority of Location in the Area Involved

The People assert that the Hilst Property and the Pekin S&G property are not suitable for the storage or disposal of general construction or demolition. The Board agrees and finds that this factor must be weighed against respondents.

The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions, Discharges or Deposits Resulting from Such Pollution Source

The People argue that compliance with the Act is technically practical and economically reasonable. The Board agrees that proper disposal of materials is technically practicable and economically reasonable. Therefore, this factor must be weighed against respondents.

Any Subsequent Compliance

The People note that following IEPA's inspections of the Hilst Site on December 10, 2012, and the Pekin S&G Site on July 19, 2012, respondents took steps to remove general construction or demolition debris from the two properties. Mot. at 13. Respondents began open dumping on the Hilst Site at some point prior to May 10, 2012. Waste material remained on the Hilst Site until at least December 10, 2012. *Id.* at 9. Respondents began open dumping on the Pekin S&G Site at some point prior to July 19, 2012. Waste material remained on the Pekin S&G Site until July 23, 2012. *Id.* The Board finds that this factor must be weighed against respondents.

Finding on Section 33(c) factors

After reviewing the record and the Section 33(c) factors, the Board finds that factors in Sections 33(c) justify requiring respondents to pay a civil penalty.

Section 42(h) Factors**Duration and Gravity of the Violation**

The violations that took place at the Hilst Site began on or before May 10, 2012, and continued through at least December 10, 2012. The violations that took place at the Pekin S&G Site began on or before July 19, 2012, and continued through at least July 23, 2012. The potential harm from openly dumping waste into Illinois for storage and disposal at a site that does not meet the requirements of the Act is grave. Respondents' actions endangered citizens of Illinois and the environment and hindered IEPA's information gathering responsibilities. The Board finds that consideration of this factor aggravates the assessment of a penalty.

Due Diligence

The People argue that the respondents were not diligent. The record contains no evidence that the respondents made any attempt to properly comply with the requirements of the Act until IEPA requested they remove the waste from the sites. The violations at the Hilst Site continued for several months, even after IEPA informed respondents that the materials should be removed. The Board finds that consideration of this factor aggravates the assessment of a penalty.

Economic Benefits Accrued

The People established evidence that respondents accrued a nominal economic benefit by delaying proper disposal of the general construction or demolition debris they dumped at the Hilst Site and Pekin S&G Site. The Board finds that consideration of this factor aggravates the assessment of a penalty.

Penalty Which Will Serve To Deter Further Violations

The People argue that a total civil penalty of \$75,000 will help to deter future violations. The Board finds that that consideration of this factor neither mitigates nor aggravates assessment of a substantial penalty.

The Number, Proximity In Time, And Gravity Of Previously Adjudicated Violations Of This Act By The Violator

The People indicate that respondents have been found to have violated the Act on several recent occasions. *See Illinois Environmental Protection Agency v. Edward W. Fisher, et al.*, AC 08-26; *People of the State of Illinois v. Edward W. Fisher, et al.*, PCB 13-03; *People of the State*

of Illinois v. Dem/Ex Group, Inc., 11-CH-41. The Board finds that consideration of this factor aggravates the assessment of a penalty.

Self Disclosure

Respondents did not self disclose the violations. The violations were discovered by an IEPA inspection. Therefore, the Board finds that consideration of this factor aggravates the assessment of a penalty.

Supplemental Environmental Project

The record does not demonstrate that respondents offered to perform a supplemental environmental project. The Board finds that consideration of this factor aggravates the assessment of a penalty.

Compliance Commitment Agreement

A compliance commitment agreement has not been signed, so this factor neither aggravates nor mitigates the assessment of a penalty.

Appropriate Civil Penalty

In determining the appropriate civil penalty, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2012)). People v. Gilmer, PCB 99-27 (Aug. 24, 2000). The Board must take into account factors outlined in Section 33(c) of the Act in determining the unreasonableness of the alleged pollution. Wells Manufacturing Company v. Pollution Control Board, 73 Ill. 2d 226, 383 N.E.2d 148 (1978). The Board is expressly authorized by statute to consider the factors in Section 42(h) of the Act in determining an appropriate penalty. In addition, the Board must bear in mind that no formula exists, and all facts and circumstances must be reviewed. Gilmer, PCB 99-27, slip. op. at 8.

The Board has stated that the statutory maximum penalty “is a natural or logical benchmark from which to begin considering factors in aggravation and mitigation of the penalty amounts.” Gilmer, PCB 99-27, slip. op. at 8, citing IEPA v. Allen Barry, individually and d/b/a Allen Barry Livestock, PCB 88-71 (May 10, 1990), slip. op. at 72. The basis for calculating the maximum penalty is contained in Section 42(a) and (b) of the Act. *See* 415 ILCS 5/42(a) and (b) (2012). Section 42(a) provides for a civil penalty not to exceed \$50,000 for violating a provision of the Act and an additional civil penalty not to exceed \$10,000 for each day during which the violation continues. In this case the statutory maximum for a single violation for each regulation and statute violated by respondents is \$50,000. Under Count I, the statutory maximum for five violations of the Act (\$250,000), continuing for 214 days that the materials were stored (\$10,700,000) is approximately \$10,950,000. Under Count II, three violations of the Act (\$150,000), continuing for five days (\$150,000) would add an additional \$300,000. Thus, a total maximum statutory penalty of \$11,250,000 is possible. The People ask for a civil penalty of \$75,000.

The record contains evidence that respondents accrued a nominal economic benefit by delaying proper disposal of the general construction or demolition debris they dumped at the Hilst Site and Pekin S&G Site. The civil penalty requested by the People would include any economic benefit that respondents may have accrued as a result of the delay in compliance. The People believe that a \$75,000 civil penalty is sufficient to deter future violations and ensure future compliance.

Analysis of the Section 33(c) and 42(h) factors illustrates that there are few mitigating factors against a substantial penalty. Furthermore, the violations found by the Board against respondents are serious. Respondents openly dumped waste at two unpermitted sites. The amount of waste dumped was significant, including 12 dump truck loads, constituting over 200 cubic yards of waste at the Hilst Site and over 250 cubic yards at the Pekin S & G site. Given the seriousness of these violations a substantial penalty is warranted. The Board is also convinced that a significant fine is warranted, given the respondents repeated violations of the Act and Board regulations and a significant fine is necessary to deter future violations. The Board relies on the People's assertion that a \$75,000 civil penalty will deter future violations and aid in the enforcement of the Act. Therefore, the Board finds that a \$75,000 civil penalty is appropriate.

CONCLUSION

The Board finds that summary judgment is appropriate and grants the People's motion for summary judgment. Based on the facts admitted the Board finds that respondents violated Sections 21(a), 21(e), 21(p)(1), 21(p)(4), and 21(p)(7) of the Act (415 ILCS 5/21(a), (e), (p)(1), (p)(4), (p)(7) (2012)). Having found that respondents violated the Act, the Board finds that a civil penalty of \$75,000 is appropriate and directs respondents to pay that civil penalty.

ORDER

1. The Board finds that Demolition Excavating Group, Inc. (DEG) and Rhonda and Edward Fisher (the Fishers) violated Sections 21(a), 21(e), 21(p)(1), 21(p)(4), and 21(p)(7) of the Act (415 ILCS 5/21(a), (e), (p)(1), (p)(4), (p)(7) (2012)).
2. The Board hereby assesses a penalty of seventy five thousand dollars (\$75,000) against respondents. Respondents must pay this penalty no later than April 20, 2015, which is the first business day following the 30th day after the date of this order. Respondents must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and Respondents' federal employer identification numbers must be included on the certified check or money order.
3. Respondents must send the certified check or money order to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East

P.O. Box 19276
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2012)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2012)).
5. Respondents must cease and desist from the alleged violations.

IT IS SO ORDERED.

Board Member G.M. Keenan voted present.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2012); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 19, 2015, by a vote of 4-0.



John Therriault, Clerk
Illinois Pollution Control Board