

ILLINOIS POLLUTION CONTROL BOARD

August 22, 2019

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 17-45
)	(Enforcement - Land)
MAGNA TAX SERVICE CO., INC., an)	
Illinois corporation,)	
)	
Respondent.)	

ORDER OF THE BOARD (by A. Palivos):

On February 2, 2017, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against Maga Tax Service Co., Inc. (Magna). The complaint concerns Magna's property, the former site of the Young Radiator factory at 120 North 14th Street in Mattoon, Coles County (Site). On February 16, 2017, the Board accepted the complaint for hearing. On July 24, 2019, the People filed a motion for leave to file a ten-count first amended complaint (Mot.), attached to which was the first amended complaint (Am. Comp.). For the reasons below, the Board grants the People's motion for leave and accepts the first amended complaint for hearing.

In their motion for the leave, the People argue that the first amended complaint asserts causes of action stemming from the same occurrences and facts alleged about the Site in the original complaint. Mot. at 3. The People state that discovery indicates that Dennis Ballinger operated the Site in all respects "and that Magna Tax is merely an alter ego of Dennis Ballinger." *Id.* at 2. The People explain that "Counts I through V of the complaint have been amended, and Counts VI through X have been added" to join Dennis Ballinger as a party respondent. *Id.* at 3.

The People argue that granting leave to file serves the interests of judicial economy and efficiency because filing the first amended complaint will allow the parties to resolve alleged violations in a single action. Mot. at 3. The People assert that adding Dennis Ballinger as a respondent is necessary "to assure that adverse effects upon the environment are fully considered and borne by those who cause them. *Id.*, citing 415 ILCS 5/2(b) (2018). The People's motion concludes that "[n]o party will be prejudiced by allowing this amendment." Mot. at 3.

In the ten-count first amended complaint the People allege violation of waste disposal and water requirements by Magna Tax and Dennis Ballinger. Specifically, the People allege violations of Sections 12(a), 12(d), 21(a), 21(d)(1), 21(d)(2), and 21(e) of the Environmental Protection Act (415 ILCS 5/12(a), 12(d), 21(a), 21(d)(1), 21(d)(2), 21(e) (2018)) and Sections 722.111 and 812.101(a) of the Board's waste regulations (35 Ill. Adm. Code 722.111, 812.101(a)). The People seek an order requiring respondents to cease and desist from any further violations and pay the maximum statutory civil penalties.

The Board finds that the first amended complaint meets the content requirements of the Board's procedural rules. *See* 35 Ill. Adm. Code 103.204(c). A non-moving party has 14 days to respond to a motion. *See* 35 Ill. Adm. Code 101.500(d). The Board received no response to the People's motion for leave to file the first amended complaint. Any objection to granting the motion is deemed to have been waived. *Id.* This case has not yet been to hearing, and the Board agrees with the People that granting the motion for leave is consistent with administrative economy and efficiency. The Board grants the People's unopposed motion for leave and accepts the first amended complaint for hearing. In future filings, the caption in this case must reflect that Dennis Ballinger has been added as a respondent.

Any motion attacking the first amended complaint is due Monday, September 23, 2019, which is the first business day following the 30th day after the date of today's order. *See* 35 Ill. Adm. Code 101.300(a), 101.506.

Answers to the first amended complaint are due Monday, October 21, 2019, which is the 60th day after the date of today's order. *See* 35 Ill. Adm. Code 103.204(d). A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if a respondent 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 a respondent to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d). A timely motion attacking the first amended complaint will stay the moving party's 60-day deadline to file an answer until the Board disposes of the motion. *See* 35 Ill. Adm. Code 101.506, 103.204(e). The Board directs the hearing officer to proceed expeditiously to hearing.

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 22, 2019, 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, Clerk
Illinois Pollution Control Board