

ILLINOIS POLLUTION CONTROL BOARD
December 19, 2019

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 20-08
) (Enforcement - Land)
WILLIAM MUCCI and DEBRA MUCCI,)
d/b/a/ B&M PROPERTIES and JOHN KIRBY)
and POLLY KIRBY,)
)
Respondents.)

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

On August 14, 2019, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed an 11-count complaint against William Mucci and Debra Mucci d/b/a B&M Properties (Muccis) and John Kirby and Polly Kirby (Kirbys) (collectively, respondents). The complaint concerns property owned by Muccis and possessed under a purchase contract subject to conditions by Kirbys. The property is located adjacent to Illinois Route 71 north and south of N 2725 Road in Ottawa, LaSalle County. In a separate stipulation, the People and Muccis now seek to settle without a hearing. Kirbys are not a party to this stipulation. For the reasons below, the Board accepts the stipulation and proposed settlement between the People and Muccis.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2018)), 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 (2018); 35 Ill. Adm. Code 103.

In Counts 1-8, the People allege that all respondents violated Sections 21(a), 21(d)(1), 21(d)(2), 21(e), 21(p)(1), 21(p)(3), 21(p)(7), 55(a)(1), and 55(k)(1) of the Act (415 ILCS 5/21(a), 21(d)(1), 21(d)(2), 21(e), 21(p)(1), 21(p)(3), 21(p)(7), 55(a)(1), 55(k)(1) (2018)) and Section 812.101 of the Board's waste disposal regulations (35 Ill. Adm. Code 812.101) by causing or allowing the open dumping of waste resulting in litter, open burning, and deposition of general and demolition debris; causing or allowing the open dumping of waste tires; causing or allowing water to accumulate in waste tires; storing, disposing, and abandoning waste at a site not permitted for storage or disposal of waste; conducting waste storage, treatment, and disposal without a permit; and developing and operating a waste storage and waste disposal facility without a development permit.

In Counts 9-11, the People also allege that the Kirbys violated Section 9(a), 9(c), and 55(a)(2) of the Act (415 ILCS 5/9(a), 9(c), 55(a)(2) (2018)) by causing, threatening, or allowing air pollution; the open burning of refuse; and the burning of waste tires.

In each of the 11 counts, the People ask the Board to order respondents to cease and desist from future violations of the Act and regulations and pay civil penalties of \$50,000 for each violation and \$10,000 for each day during which each violation continued. The People also request that the Board order respondents to pay costs including expert witness, consultant, and attorney fees.

On October 28, 2019, the People and Muccis filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2018)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2018)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in the *Ottawa/Streator Times* on November 9, 2010. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2018); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of Muccis' operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2018)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Muccis do not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2018)), which may mitigate or aggravate the civil penalty amount. Under the proposed settlement, Muccis agree to pay a civil penalty of \$6,000 within 30 days after the date of this order. The People and Muccis have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

This opinion constitutes the Board's findings of fact and conclusions of law.¹

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement between the People and Muccis.
2. William Mucci and Debra Mucci must pay a civil penalty of \$6,000 by Tuesday, January 21, 2020, which is the first business day following the 30th day after the date of this order. Muccis must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Agency for deposit into

¹ The case against Kirbys continues. As the Board today accepts the stipulation and proposed settlement involving the People and Muccis, the caption of subsequent orders issued in this docket will not include Muccis.

the Environmental Protection Trust Fund. The case number and case name must appear on the face of the certified check or money order.

3. Muccis must submit payment of the civil penalty to:

Illinois Environmental Protection Agency
 Fiscal Services Division
 1021 North Grand Avenue East
 P.O. Box 19276
 Springfield, Illinois 62794-9276

Muccis must send a copy of the certified check or money order and any transmittal letter to:

Christopher J. Grant, Environmental Bureau
 Illinois Attorney General’s Office
 69 W. Washington, Suite 1800
 Chicago, Illinois 60602
 cgrant@atg.state.il.us

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2018)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2018)).
5. Muccis must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject of the complaint.

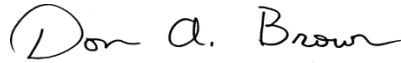
IT IS SO ORDERED.

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) (2018); *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. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board

Christopher J. Grant, Environmental Bureau Illinois Attorney General's Office 69 W. Washington, Suite 1800 Chicago, Illinois 60602 cgrant@atg.state.il.us	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601
George Hupp Burton, Fuller & Associates, PC 227 W. Madison Ottawa, Illinois 61350-2866 ghupp@bf-lawpc.com (Attorney for Muccis)	
Eric Miskell Miskell Law Center, LLC 218 W. Madison Ottawa, Illinois 61350 (Attorney for Kirbys)	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 19, 2019, by a vote of 4-0.



Don A. Brown, Clerk
 Illinois Pollution Control Board