

responsive pleading to the complaint or responded to the motion to deem facts admitted and for summary judgment.

COMPLAINT

The complaint alleges that Marino violated the following authorities:

Count I—Section 21(a) of the Act (415 ILCS 5/21(a) (2018)) by causing and allowing the open dumping of waste;

Count II—Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2018)) by causing or allowing the open dumping of waste resulting in litter;

Count III—Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2018)) by causing or allowing the open dumping of waste resulting in the deposition of general construction and demolition debris at the Site;

Count IV—Section 812.101 of the Board’s waste disposal regulations (45 Ill. Adm. Code 812.101) by developing and operating a waste storage and disposal facility without a developing permit. By violating Section 812.101 Marino also violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2018)) by conducting waste and storage disposal at the Site without a permit;

Count V—Section 21(e) of the Act (415 ILCS 5/21(e) (2018)) by storing, disposing, and abandoning waste at the Site;

Count VI—Section 808.121(a) of the Board’s waste disposal regulations (35 Ill. Adm. Code 808.121(a)) by failing to determine whether a waste is a special waste. By violating Section 808.121(a) Marino also violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2018)) by conducting waste and storage disposal at the Site without a permit;

Count VII—Section 722.111 of the Board’s hazardous waste regulations (35 Ill. Adm. Code 722.111) by failing to determine whether a waste is a hazardous waste. By violating Section 722.111 Marino also violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2018)) by conducting waste storage, treatment, or disposal in violation of Board regulations; and

Count VIII—Section 12(d) of the Act (415 ILCS 5/12(d) (2018)) by depositing contaminants on the land in such a place and manner as to create a water pollution hazard.

MOTION TO DEEM FACTS ADMITTED

The People’s motion requests that the Board deem the material allegations in its complaint to be admitted by Marino. Mot. at 3. Under the Board’s procedural rules, “the respondent may file an answer within 60 days after the receipt of the complaint if the respondent

wants to deny any allegations in the complaint. All material allegations in the complaint will be taken as admitted if no answer is filed.” 35 Ill. Adm. Code 103.204(d).

Marino failed to answer the complaint within 60 days. Marino was served with notice of the complaint on July 21, 2019. Mot. at 3.; *see* Exh. B (affidavit of service). Further, Marino was present at the September 12, 2019 telephonic status conference. *See* Exh. C (Hearing Officer Order). However, Marino failed to file an appearance, answer, or other responsive pleading within 60 days after service. Therefore, the Board grants the People’s motion and deems admitted the material allegations in the People’s complaint. *See* 35 Ill. Adm. Code 103.204(d).

FACTS

Marino is an Arizona limited liability company not listed as authorized to do business in the State of Illinois by the Illinois Secretary of State. Comp. at 2; *see* Exh. A (results of corporate record search). Marino is in the business of industrial demolition, salvage, and property development. Comp. at 2. Marino began demolition of the Site in May of 2016. *Id.* Demolition of the buildings resulted in generation of demolition waste including waste brick, scrap metal, broken concrete, roofing material, siding and other demolition debris. *Id.* at 2-3. This demolition debris was dumped on the ground at the Site. *Id.* at 3. Marino abandoned the Site in 2017 without removing the debris. Comp. at 2.

MOTION FOR SUMMARY JUDGMENT

The People seek summary judgment against Marino. The Board’s procedural rules require a party to respond to a motion for summary judgment within 14 days after the receipt of the motion. 35 Ill. Adm. Code 101.516(a). If no response is filed, “the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion.” 35. Ill. Adm. Code 101.500(d); *see* People v. Env’tl Health and Safety Svcs., Inc., PCB 05-51, slip op. at 13 (July 23, 2009). Marino has not responded to the People’s motion or filed a motion to extend the time to respond. The Board finds that by failing to respond to the People’s motion for summary judgment, Marino has waived any objection to the Board granting the motion for summary judgment. *See id.*

The People argue that the facts deemed admitted contain material facts necessary to establish liability for each of the violations alleged in the complaint, which is summarized above. Mot. at 10. The People assert that there are no genuine issues of fact, and that the people are entitled to judgment as a matter of law. *Id.*

Next the Board sets forth the relevant statutory and regulatory provisions and standard of review for the motion for summary judgment, and then decides the motion.

STATUTORY AND REGULATORY BACKGROUND

Land Pollution

The People allege that Marino violated land enforcement provisions of the Act and Board regulations. Specifically, the complaint states that Marino violated Section 21(a) of the Act (415 ILCS 5/21(a) (2018)), Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2018)), Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2018)), Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2018)), Section 21(e) of the Act (415 ILCS 5/21(e) (2018)), Section 812.101 of the Board’s waste disposal regulations (45 Ill. Adm. Code 812.101), Section 808.121(a) of the Board’s waste disposal regulations (35 Ill. Adm. Code 808.121(a)), and Section 722.111 of the Board’s hazardous waste regulations (35 Ill. Adm. Code 722.11). Comp. at 1–20.

Section 21(a) of the Act states no person shall “[c]ause or allow the open dumping of any waste.

Section 3.315 of the Act defines “person” as “an individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, political subdivision, state agency, or any other legal entity, or their legal representative, agent, or assigns.” 415 ILCS 5/3.315 (2018).

Section 3.535 of the Act defines “waste” as “any garbage... or any other discarded material, including any solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities...” 415 ILCS 5/3.535 (2018).

Section 21(p) of the Act states no person shall:

- (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;
 - (2) scavenging;
 - (3) open burning;
 - (4) deposition of waste in standing or flowing waters;
 - (5) proliferation of disease vectors;
 - (6) standing or flowing liquid discharge from the dump site;
 - (7) deposition of:
 - (i) general construction or demolition debris as defined in Section 3.160(a) of this Act; or
 - (ii) clean construction or demolition debris as defined in Section 3.160(b) of this Act.

Section 3.160 of the Act defines “general construction or demolition debris” as “non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: Bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electric wiring and components containing no hazardous substances; and piping or metals incidental to any of those materials...” 415 ILCS 5/3.160(a) (2018).

Section 21(d) of the Act states no person shall “[c]onduct any waste-storage, waste-treatment, or waste-disposal operation: (1) without a permit granted by the Agency... (2) in violation of any regulations or standards adopted by the Board under this act;

Section 812.101 of the Board’s waste disposal regulations provides, in part, as follows:

- (a) All persons, except those specifically exempted by Section 21(d) of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1021(d)) shall submit to the Agency an application for a permit to develop and operate a landfill. The applications must contain the information required by this Subpart and Section 39(a) of the Act, except as otherwise provided in 35 Ill. Adm. Code 817.

Section 810.103 of the Board’s waste disposal regulations provides the following definitions:

“Landfill” means a unit or part of a facility in or on which waste is placed and accumulated over time for disposal, and which is not a land application unit, a surface impoundment or an underground injection well. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815 landfills include waste piles, as defined in this Section.

“Operator” means the person responsible for the operation and maintenance of a solid waste disposal facility.

“Owner” means a person who has an interest, directly or indirectly, in land, including a leasehold interest, on which a person operates and maintains a solid waste disposal facility. The “owner” is the “operator” if there is not other person who is operating and maintaining a solid waste disposal facility.

“Waste pile” means an area on which non-characterized masses of solid non-flowing wastes are placed for disposal. For the purposes of this Part and 35 Ill. Adm. Code 811 through 815, a waste pile is a landfill, unless the operator can demonstrate that the wastes are not accumulated over time for disposal. At a minimum, this demonstration must include photographs, records, or other observable or discernable information, maintained

on a yearly basis, that show within the preceding year the waste has been removed for utilization or disposal elsewhere.

Section 808.121 of the Board's waste disposal regulations provides that "[e]ach person who generates waste shall determine whether the waste is a special waste.

Section 722.11 of the Board's regulations provides that a person generating solid waste, as defined in 35 Ill. Adm. Code 721/102, must determine if a waste is hazardous waste using specific methods:

Section 721.102 of the Board's regulations provides definitions for solid waste and discarded material. A "solid waste" is "any discarded material that is not excluded pursuant to 721.104 (a) or that is not excluded pursuant to 35 Ill. Adm. Code 720.130 and 720.131 or 35 Ill. Adm. Code 720.130 and 720.134. A "discarded material" is described, in part, as "any material that is... abandoned as described in subsection (b)." Further, a material is a solid waste if it is disposed of. 35. Ill. Adm. Code 721.102.

Water Pollution

Section 12(d) of the Act states no person shall "[d]eposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

Section 3.545 of the Act defines "water pollution" as "such alteration of the physical, thermal, chemical, biological, or radioactive properties of any water of the State, or such discharge of any contaminant into any waters of the state, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life. 415 ILCS 5/3.545 (2018).

Section 3.55 of the Act defines "waters" as "all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the State." 415 ILCS 5/3.555 (2018).

Section 3.165 of the Act defines "contaminant" as any solid, liquid, or gaseous matter, any odor, or any form of energy from whatever source. 415 ILCS 5/3.165 (2018).

DISCUSSION

In this section, the Board will discuss the standard of review and burden of proof, and then rule on the motion for summary judgment.

Standard of Review

Summary judgment is appropriate when the record, 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. IEPA and The Village of New Lenox v. PCB et.

al., 386 Ill. App. 3d 375, 39, 896 N.E.2d 479,493 (3rd Dist. 2008) (citing Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 693 N.E.2d 358 (1998)); see 35 Ill. Adm. Code 101.516(b). 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.” Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370. 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, 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. People v. General Waste Services, Inc., PCB 07-45, slip op. at 11 (Apr. 7, 2011) (citing People v. Community Landfill Co., PCB 97-193, 04-207 (consol.), slip op. at 13 (Aug. 20, 2009)); People v. Blue Ridge Construction Corp., PCB 02-115, slip op. at 12 (Oct. 7, 2004)). A proposition is proved by a preponderance of the evidence when it is more probably true than not. General Waste Services, PCB 07-45, slip op. at 11 (citing Industrial Salvage, Inc. v. County of Marion, PCB 83-173, slip op. at 4 (Aug. 2, 1984)).

Ruling on Motion for Summary Judgment

On summary judgment, the Board must construe the facts strictly against the movant and in favor of the opposing party. See *supra* at 7. The Board finds that the record, including the facts deemed admitted and construed in favor of Marino, is sufficient to find more probably true than not that Marino violated the Act and Board regulations as alleged in the People’s complaint.

Count I

The facts deemed admitted indicate Marino dumped and disposed of waste at the Site. Comp. at 2. Specifically, the record indicates the Site is not a facility permitted by the IEPA for disposal and Marino dumped demolition materials on the ground at the Site. *Id.* Thus, Marino caused or allowed the open dumping of waste in violation of Section 21(a) of the Act. 415 ILCS 5/21(a) (2018). The Board finds that the record including the facts deemed admitted construed in favor of Marino are sufficient to prove that it is more probably true than not that Marino violated Section 21(a) of the Act as alleged in Count I.

Count II

The facts deemed admitted indicate Marino’s open dumping at the Site resulted in litter. Marino caused and allowed demolition debris to be discarded and abandoned at the Site. The term “litter” is defined in the Litter Control Act as “any discarded, used or unconsumed substance or waste. Litter may include, but is not limited to... debris, rubbish... or anything else of an unsightly or unsanitary nature which has been discarded, abandoned, or otherwise disposed

of improperly...” 415 ILCS 105/3(a). This definition has been accepted by the Board as applicable under the Act. *See, e.g. Northern Illinois Service Company v. IEPA*, 381 Ill. App. 3d 171, 178 (2nd Dist. 2008).

Further, the materials discarded at the Site constitute “discarded, used, or unconsumed substance or waste,” and are thus “litter” under Section 21(p)(1) of the Act. Therefore, the Board finds that the record including the facts deemed admitted construed in favor of Marino are sufficient to prove that it is more probably true than not that Marino violated Section 21(p)(1) of the Act, as alleged in Count II.

Count III

The facts deemed admitted indicate that Marino openly dumped general construction or demolition debris at the Site. At the Site, Marino dumped material resulting from demolition of buildings consisting of “waste brick, scrap metal, broken concrete, roofing material, siding, and other demolition debris.” Mot. at 6. These materials meet the definition of “general construction or demolition debris” under the Act. 415 ILCS 5/3.160(a) (2018). Therefore, the Board finds that the record, including the facts deemed admitted construed in favor of Marino, is sufficient to prove that Marino caused or allowed the open dumping of general construction or demolition debris at the Site under Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2018)), as alleged in Count III.

Count IV

The facts deemed admitted indicate that Marino conducted a waste storage and disposal operation without first obtaining a permit to develop and operate a landfill. From May 2016 to March 2019, Marino stored and disposed of demolition debris and waste creosote-treated wood flooring blocks at the Site. Comp. at 10. This demolition debris was disposed in such a manner that the waste could enter the environment, be emitted into the air, or discharged into waters. *Id.* Furthermore, Marino did not apply for or obtain a landfill development or operating permits covering the Site at any time. Comp. at 10-11.

The debris Marino placed at the Site constitutes “waste” and was placed at the Site for disposal. *See* 415 ILCS 5/3.535 (2018). Because the waste was placed at the Site for disposal, the Site is a “waste pile” and therefore a “landfill” as defined in Section 810.103 of the Board’s waste disposal regulations. *See* 35 Ill. Adm. Code 810.103. Moreover, Marino was responsible for demolition of the buildings at the Site and for handling and storing the demolition waste. Thus, Marino is an “operator” as defined in the Board’s waste disposal regulations. *Id.*

Therefore, the Board finds that the record, including the facts deemed admitted construed in favor of Marino, is sufficient to prove that Marino developed and operated the Site as a waste storage and disposal facility without obtaining a permit in violation of both the Act and Board’s regulations, as alleged in Count IV.

Count V

The facts deemed admitted indicate that Marino stored and abandoned waste at the Site in violation of 415 ILCS 5/21(e). Marino began disposing of waste materials at the Site in May of 2016. Comp. at 2. The Site has never been permitted by IEPA for storage, treatment, or disposal of waste. *Id.* Marino stopped demolition and development at the Site in 2017 but took no action to remove waste and abandoned the Site. *Id.* at 3. Therefore, the Board finds that the record including the facts deemed admitted construed in favor of Marino are sufficient to prove that it is more probably true than not that Marino violated Section 21(e) the Act. 415 ILCS 5/21(e) (2018), as alleged in Count V.

Count VI and VII

Count VI and Count VII both address Marino's failure to evaluate waste creosote-treated wooden flooring blocks that were dumped on the ground at the Site. Section 808.121 of the Board's regulations require a waste generator to determine whether generated waste constitutes a hazardous or special waste. 35 Ill. Adm. Code 808.121(a). However, Marino did not test or evaluate the flooring blocks to determine whether waste was a special waste or hazardous waste. Comp. at 16.

Marino generated waste in the form of creosote-treated flooring blocks. Comp. at 16. Marino dumped these blocked on the ground at the Site without evaluating or testing the creosote-treated blocks to determine whether they were special waste or hazardous waste. Therefore, the Board finds that the record, including the facts deemed admitted construed in favor of Marino, is sufficient to prove that it is more probably true than not that Marino violated the Act and Board regulations, as alleged in Count VI. *See*, 35 Ill. Adm. Code 808.121(a); 415 ILCS 5/21(d)(2) (2018).

Section 722.111 of the Board's regulations requires "solid waste" generators to determine whether a waste is hazardous. 35 Ill. Adm. Code 722.111. Marino abandoned the creosote blocks, which are classified as "solid waste" under Section 721.102 of the Board's regulations. 35 Ill. Adm. Code 721.102. Marino failed to test or evaluate whether the blocks were a hazardous waste and thereby violated Section 722.111 of the Board's regulations. 35 Ill. Adm. Code 722.111. Therefore, the Board finds that the record, including the facts deemed admitted construed in favor of Marino, is sufficient to prove that it is more probably true than not that Marino violated the Act and Board regulations, as alleged in Count VII.

Count VIII

Marino dumped darkly stained creosote-treated wood flooring and mixed demolition debris onto the ground in proximity to grates leading to on-site storm sewers. Comp. at 20. Marino did not install any barriers to prevent migration of creosote or other contaminants in the mixed demolition debris. *Id.* Further, the United States Environmental Protection Agency has previously determined that creosote is a "probable human carcinogen" that can be toxic to aquatic organisms if released to surface water. *Id.* Section 12(d) of the Act provides that "no person shall deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard." 415 ILCS 5/12(d) (2018). Storm water located in storm sewers at the Site qualifies as "water" of the State of Illinois. Comp. at 21. Creosote leaching, or potentially

leaching, from the creosote-treated wooden blocks is also a “contaminant” as defined by the Act. *See* 415 ILCS 5/3.165 (2018). Therefore, the Board finds that the record, including the facts deemed admitted construed in favor of Marino, is sufficient to prove that it is more probably true than not that Marino violated the Act and Board regulations by dumping heavily stained creosote-treated wood flooring at the Site in proximity to storm sewers or groundwater, as alleged in Count VIII.

Conclusion

The Board finds that the People met their burden of proof and that the People are entitled to summary judgment as a matter of law. The Board grants the People’s motion for summary judgment, finding Marino violated Sections 21(a), 21(d)(2), 21(e), 21(p)(1), and 21(p)7) of the Act (415 ILCS 5/21(a), 21(d)(2), 21(e), 21(p)(1), 21(p)(7) (2018)) and Sections 808.121(a) and 812.101 of the Board’s waste disposal regulations (45 Ill. Adm. Code 808.121(a), 812.101), and Section 722.111 of the Board’s hazardous waste regulations (35 Ill. Adm. Code 722.111).

REMEDY AND PENALTIES

The People ask the Board to: order Marino to cease and desist from further violations of the Act, the Board’s rules, and Agency’s regulations; and order Marino to pay a civil penalty of \$25,000. Mot. at 10.

Having found that Marino violated the Act and Board regulations as alleged in the People’s complaint, the Board must now determine an appropriate remedy including any penalties. In evaluating the record to determine the appropriate penalty, the Board considers the factors of Section 33(c) and 42(h) of the Act. 415 ILCS 5/33(c), 42(h) (2018).

Section 33(c) of the Act states:

In making its orders and determinations, the Board shall take into consideration all facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involving 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 an 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) (2018).

The People briefly address each of these factors: 1) Marino's numerous land and water violations and their effect on property values near the Site show significant interference with the people's general health, welfare, and property; abandonment of the Site created a nuisance and appearance of blight, affecting property values near the site; 2) Property values were negatively economically impacted during the period that demolition waste remained at the Site, indicating that the pollution source lacked social and economic value; 3) The demolition waste piles abandoned at the Site were unsuitable for the area; 4) Orderly demolition, waste characterization and waste removal are both technically feasible and economically reasonable; and 5) Marino did not remove waste from the Site or bring the Site into Compliance. However, Respondent Bennett removed waste after legal action by the City of Rockford. Mot. at 10–11.

Marino did not reply to the People's motion. Therefore, the Board considers only the People's statements on these factors. The Board finds that the Section 33(c) factors favor entering a cease and desist order from future violations and imposing a civil penalty. Marino's improper disposal of waste was not in accordance with the Act as well as the Board's and Agency's regulations and serves no social and economic benefit. In reaching this conclusion, the Board places particular weight on the number of Marino's violation; its significant interference with the people's health, welfare, and property, and the lack of social and economic benefits from the pollution source.

Having concluded using the Section 33(c) factors that a penalty is appropriate, the Board next applies the factors of Section 42(h) to consider the \$25,000 civil penalty requested by the People. Section 42(h) of the Act states:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), (b)(5), (b)(6), or (b)(7) of this Section, 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 the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by the Act;
- (3) Any economic benefits accrued by the respondent because of the delay in compliance with the 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 this Act by respondent;
- (6) Whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency;
- (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; and
- (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 this complaint.

When 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) (2018).

Marino’s violations continued from the commencement of demolition in May of 2016 and continued until 2019 when Bennett removed all waste. Mot. at 11. Furthermore, Marino was not diligent in attempting to comply with the requirements of the Act and regulations. *Id.* Marino abandoned the Site in May of 2017 and made no effort to return to the Site to remove and properly dispose of waste. *Id.* at 11. Thus, the first two Section 42(h) factors weigh against Marino.

The record does not quantify the economic benefit under Section 42(h)(3) that Marino accrued by failing to properly dispose of waste resulting from demolition at the Site. *Id.* In the absence of any contrary evidence or argument, the Board must find that the People’s penalty request includes the amount of any such benefit. The Board does not weigh this factor as a mitigation or aggravation of a penalty amount.

The People argue that a civil penalty of \$25,000 will encourage voluntary compliance by Marino and others. Mot. at 12. The People also note that Bennett has settled the allegations against it for a civil penalty of \$15,000. *Id.* Considering that Marino abandoned the Site in 2017 and has yet to appear in this proceeding, the People believes that an appropriate civil penalty should be higher than the penalty assessed against Bennett. Further, the Board considers the fact that Marino failed to participate at all in this proceeding in considering whether or not a penalty will encourage voluntary compliance. The Board thus finds that this factor weighs against Marino.

The record does not indicate whether Marino previously violated the Act or regulations. *Id.* Marino did not self-disclose its non-compliance to the Agency and did not propose, or perform, a supplemental environmental project in settlement of this matter. *Id.* The Board finds that Section 42(h)(8) is not a factor in this analysis because the respondents did not enter into a Compliance Commitment Agreement with the Agency. *Id.* The Board does not weigh these four factors as mitigation or aggravation of a penalty amount.

Based on this record and the statutory factors, the Board finds that the People's requested civil penalty is appropriate to encourage future compliance by Dressler and others similarly situated. In its order below, the Board assesses a civil penalty of \$25,000.

CONCLUSION

The Board finds that there is no genuine issue of material fact and that the People are entitled to summary judgment as a matter of law. The Board accordingly grants the People's unopposed motion to deem facts admitted and for summary judgment against Marino. The Board finds Marino violated Sections 21(a), 21(d)(2), 21(e), 21(p)(1), and 21(p)(7) of the Act (415 ILCS 5/21(a), 21(d)(2), 21(e), 21(p)(1), 21(p)(7) (2018)) and Sections 808.121(a) and 812.101 of the Board's waste disposal regulations (45 Ill. Adm. Code 808.121(a), 812.101), and Section 722.111 of the Board's hazardous waste regulations (35 Ill. Adm. Code 722.111). Having considered the factors of Section 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2018)), the Board enters a cease and desist order, and assesses a \$25,000 civil penalty against Marino, as requested by the People.

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

ORDER

1. The Board grants the unopposed motion to deem facts admitted and for summary judgment filed by Office of the Attorney General, on behalf of the People, and finds that Marino violated Sections 21(a), 21(d)(2), 21(e), 21(p)(1), and 21(p)(7) of the Act (415 ILCS 5/21(a), 21(d)(2), 21(e), 21(p)(1), 21(p)(7) (2018)) and Sections 808.121(a) and 812.101 of the Board's waste disposal regulations (45 Ill. Adm. Code 808.121(a), 812.101), and Section 722.111 of the Board's hazardous waste regulations (35 Ill. Adm. Code 722.111).
2. Marino must pay a civil penalty of \$25,000 no later than May 18, 2020 which is the first business day after 30 days from the date of this order. Such payment must be made by certified check, money order, or electronic transfer or funds, payable to the Environmental Protection Trust Fund. The case number, case, name, and Marino's federal employer identification number must be included on the respective certified check, money order, or electronic transfer of funds.
3. Marino must send the certified check, money order, or confirmation of electronic funds transfer to:

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

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(h) (2018)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2018))
5. Marino must cease and desist from further violation of the 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
Office of the Attorney General Attn: Christopher J. Grant 69 West Washington Street, Suite 1800 Chicago, IL 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
Vella and Lund Attn: Andrew J. Vella 401 West State Street, Suite 300 Rockford, IL 61101 vella_andrew@yahoo.com	

Marino Development LLC Attn: Mr. William Marino 4117 N. Lowell Avenue Chicago, IL 60641-1936 billymarino@gmail.com	
--	--

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 16, 2020 by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board