

ILLINOIS POLLUTION CONTROL BOARD

September 17, 2020

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 17- 45
)	(Enforcement - Land)
MAGNA TAX SERVICE CO., INC., an)	
Illinois Corporation, and DENNIS)	
BALLINGER, an individual,)	
)	
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 Magna Tax Service Co., Inc. (Magna). The complaint concerns Magna's property, the former site of the Young Radiator factory (Site) at 120 North 14th Street in Mattoon, Coles County. The People filed a First Amended Complaint alleging that Magna Tax was merely the alter ego of Dennis Ballinger (Ballinger) and subsequently alleged five additional counts against Ballinger. Magna and Ballinger (Respondents) now seek to settle without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

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 this case, the People allege that Magna and Ballinger violated the following provisions:

Count I—Magna violated Section 21(a) of the Act (415 ILCS 5/21(a) (2018)) by allowing dark liquid to be consolidated at the Site. Furthermore, Magna also violated Section 21(e) of the Act (415 ILCS 5/21(e) (2018)) by causing or allowing the UST to discharge, deposit, spill, or leak waste material into the environment;

Count II—Magna violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2018)) by failing to determine whether the waste released from the UST was a hazardous waste or a special waste. Magna also violated Section 722.111 of the Board's regulations (35 Ill. Adm. Code 722.111) by failing to determine whether the waste released from the UST was a hazardous waste or a special waste;

Count III—Magna violated Section 812.101(a) of the Board's Hazardous Waste Regulations (35 Ill. Adm. Code 812.101(a)) by failing to apply for a waste disposal permit at the Site. By violating the Board's regulations, Magna also violated Section

21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2018)). Furthermore, Magna also violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2018)) by failing to maintain a waste disposal permit for the Site;

Count IV—Magna violated Section 12(a) of the Act (415 ILCS 5/12(a) (2018)) by causing, threatening, or allowing, the discharge of contaminants in close proximity to groundwater;

Count V—Magna violated Section 12(d) of the Act (415 ILCS 5/12(d) (2018)) by depositing contaminants on the Site in such place and manner so as to create a water pollution hazard;

Count VI—Ballinger violated Section 21(a) of the Act (415 ILCS 5/21(a) (2018)) by causing or allowing dark liquid to be consolidated at the Site. Ballinger also violated Section 21(e) of the Act (415 ILCS 5/21(e) (2018)) by causing or allowing the UST to discharge, deposit, spill or leak waste material into the environment;

Count VII—Ballinger violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2018)) by failing to determine whether the waste released from the UST was a hazardous waste or a special waste. Ballinger also violated Section 722.111 of the Board's regulations (35 Ill. Adm. Code 722.111) by failing to determine whether the waste released from the UST was a hazardous waste or a special waste;

Count VIII—Ballinger violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2018)) by failing to apply for a waste disposal permit for the Site. Ballinger also violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2018)) by failing to maintain a waste disposal for the Site;

Count IX—Ballinger violated Section 12(a) of the Act (415 ILCS 5/12(a) (2018)) by causing, threatening, or allowing a discharge of contaminants in close proximity to groundwater; and

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

On June 26, 2020, the People and Respondents 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 *Journal Gazette-Times Courier* on July 21, 2020. 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. *See* 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 Respondents' 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. Respondents 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, Respondents agrees to pay a civil penalty of \$3,000 within 30 days after the date of this order. The People and Respondents 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.

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. Respondents must pay a civil penalty of \$3,000 no later than October 19, 2020 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 Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name, case number, and Respondents' federal employer identification number or federal tax identification number must appear on the face of the certified check or money order.
3. Respondents 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

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

Rachel Medina
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706


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. Respondents 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
Office of the Attorney General Attn: Rachel R. Medina Attn: Christina L. Nannini 500 South Second Street Springfield, IL 62706 rmedina@ag.state.il.us cnannini@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
Brown, Hay & Stephens, LLP Attn: Claire A. Manning 205 S. Fifth Street, Suite 700 PO Box 2459 Springfield, IL 62705 cmanning@bhslaw.comv	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 17, 2020, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board