ILLINOIS POLLUTION CONTROL BOARD
October 15, 2020

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	)	PCB 21-26 (Enforcement)
v.	)	
YAK MAT, LLC, a Mississippi limited liability company, BIRCH CREEK TIMBER, LLC, an Illinois limited liability company, and LEON STUTZMAN, an individual,	)	
Respondents.	)	

ORDER OF THE BOARD (by J. Van Wie):

On September 29, 2020, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a seven-count complaint against Yak Mat, LLC (Yak Mat), Birch Creek Timber, LLC (Birch Creek), and Leon Stutzman (collectively, Respondents). Yak Mat supplies access mats used in the construction and other industries, including timber mats. Birch Creek is a hauling company. Leon Stutzman is the manager for Birch Creek and the owner of the sites at issue. The complaint concerns timber mats owned by Yak Mat, hauled by Birch Creek, and disposed of at a property located near the intersection of County Roads 2650N and 1725E, approximately one-mile east-northeast of Roodhouse, Greene County, Illinois (Disposal Site) and a property located at 1392 NE 800 Avenue, Roodhouse, Greene County, Illinois (Stutzman Site), both owned by Mr. Stutzman. For the reasons below, the Board accepts the complaint for hearing.

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 Respondents:

Count I—Violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2018), by causing or allowing the open dumping of waste at the Disposal Site and the Stutzman Site.

Count II—Violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2018), by causing or allowing the open dumping of waste at the Disposal Site in violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2018), in a manner that resulted in litter.

Count III—Violated Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2018), by causing or allowing the open dumping of waste at the Disposal Site in violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2018), in a manner that resulted in the deposition of general construction or demolition debris.

Count IV—Violated Section 9(c) of the Act, 415 ILCS 5/9(c) (2018), and Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2018), by causing or allowing the open burning of refuse at the Disposal Site in a manner that was not approved by Illinois EPA or the Board.

Count V—Violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2018), by conducting a waste-disposal operation at the Disposal Site without a permit granted by Illinois EPA.

Count VI—Violated Section 812.101(a) of the Board's regulations, 35 Ill. Adm. Code 812.101(a), and Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2018), by developing and operating a landfill at the Disposal Site without receiving a permit from the Illinois EPA.

Count VII—Violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2018), by disposing and/or abandoning wastes at the Disposal Site.

The People ask the Board to order Respondents to cease and desist from any further violations of the Act and Board regulations and pay civil penalties of $50,000 for each violation in Counts I through VII, and $10,000 for each day during which each violation continued, and that the Board award the People their costs and reasonable attorney fees.

The Board finds that the complaint meets the content requirements of the Board's procedural rules and accepts the complaint for hearing. *See* 35 Ill. Adm. Code 103.204(c), (f), 103.212(c). A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if Respondents fail within that timeframe 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 Respondents to have admitted the allegations. *See* 35 Ill. Adm. Code 103.204(d).

The Board directs the hearing officer to proceed expeditiously to hearing. Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties' preferences, and the proceeding's complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 103.108.

Among the hearing officer's responsibilities is the "duty . . . to ensure development of a clear, complete, and concise record for timely transmission to the Board." 35 Ill. Adm. Code 101.610. A complete record in an enforcement case thoroughly addresses, among other things, the appropriate remedy, if any, for the alleged violations, including any civil penalty.

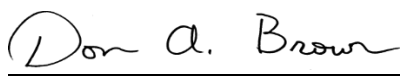
If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2018). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondent to do to correct an on-going violation, if any, and, second, whether to order the respondent to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondent has subsequently eliminated the violation.

If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondent, only then does the Board consider the Act's Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount. These factors include the following: the duration and gravity of the violation; whether the respondent showed due diligence in attempting to comply; any economic benefits that the respondent accrued from delaying compliance based upon the "lowest cost alternative for achieving compliance"; the need to deter further violations by the respondent and others similarly situated; and whether the respondent "voluntarily self-disclosed" the violation. 415 ILCS 5/42(h) (2018). Section 42(h) requires the Board to ensure 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." *Id.* Such penalty, however, "may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent." *Id.*

Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any (including whether to impose a civil penalty), and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any (including a specific total dollar amount and the portion of that amount attributable to the respondent's economic benefit, if any, from delayed compliance), and supporting its position with facts and arguments that address any or all of the Section 42(h) factors. The Board also directs the hearing officer to advise the parties to address these issues in any stipulation and proposed settlement that may be filed with the Board.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 15, 2020, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board