

ILLINOIS POLLUTION CONTROL BOARD
November 20, 1997

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 97-111
) (Enforcement - Water)
JOHN PRIOR AND INDUSTRIAL)
SALVAGE, INC.,)
)
Respondents.)

THOMAS DAVIS OF THE OFFICE OF THE ATTORNEY GENERAL; APPEARED ON BEHALF OF COMPLAINANT; and

WILLIAM J. BECKER OF HEYL, ROYSTER, VOELKER & ALLEN, APPEARED ON BEHALF OF RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

This matter is before the Board on the December 20, 1996, complaint¹ of the Attorney General, filed on behalf of the People of the State of Illinois (complainant) and at the request of the Illinois Environmental Protection Agency (Agency). The complaint alleges that John Prior and Industrial Salvage, Inc. (collectively referred to as respondents), as owners and operators of three landfills in Marion County, have violated Sections 12(a), 21(d)(1), (d)(2), and (o)(11) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/12(a), 21(d)(1), (d)(2), (o)(11) (1996)) and Sections 620.115, 620.301, 620.302(c), 620.405, 620.410, 807.313, and 807.315 of the Board's groundwater quality standards.² 35 Ill. Adm. Code 620.115, 620.301, 620.302(c), 620.405, 620.410, 807.313, 807.315. The three landfills that are the subject of this enforcement action are located on three adjacent properties near Centralia, and are known as the Centralia/Prior site, the Prior/Blackwell site, and the Industrial Salvage site. As a result of respondents' violations of the Act and Board regulations, complainant asks the Board to impose \$287,000 in civil penalties and \$2520 in attorney fees.

¹ The December 20, 1996, complaint shall be referred to as Comp. at __; the March 18, 1997, hearing shall be referred to as Tr. at __; complainant's June 13, 1997, brief shall be referred to as Comp. Br. at __; respondents' July 7, 1997, response shall be referred to as Resp. at __; complainant's July 9, 1997, reply brief shall be referred to as Reply at __; complainant's exhibit shall be referred to as Exh.

² In its complaint, complainant alleges a violation of Section 620.203(c) of the Board's regulations. The Board notes that Section 620.203(c) does not exist and therefore will not consider this allegation.

Pursuant to Section 33 of the Act (415 ILCS 5/33 (1994)), hearings were held on March 18, 1997, and May 22, 1997, before the Board's then Chief Hearing Officer Michael Wallace. At hearing, complainant and respondents asked the Board to take official notice of a previous Board case, People of the State of Illinois v. John Prior and Industrial Salvage, Inc. (July 7, 1995), PCB 93-248. Complainant's brief was filed on June 13, 1997. Respondents' response brief was filed on July 7, 1997. Complainant's reply brief was filed on July 9, 1997. Respondents did not file a response to complainant's request for attorney fees. For the reasons given below, the Board finds that respondents violated the Act and Board regulations as alleged in counts I and II of the complaint. The Board orders that respondents immediately comply with the Act and Board regulations and that respondents cease and desist from future violations. The Board imposes civil penalties in the amount of \$287,000 and attorney fees in the amount of \$2520.

STATUTORY AND REGULATORY FRAMEWORK

Section 12(a) of the Act provides the following:

No person shall:

- a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act. 415 ILCS 5/12(a) (1994).

Sections 21(d)(1), (d)(2), and (o)(11) provide the following:

No person shall:

- d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:
 1. without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder, provided, however, that except for municipal solid waste landfill units that receive waste on or after October 9, 1993, no permit shall be required for (i) any person conducting a waste-storage, waste-treatment, or waste-disposal operation for wastes generated by such person's own activities which are stored, treated or disposed within the site where such wastes are generated, or (ii) for a corporation organized under the General Not For Profit

Corporation Act of 1986, as now or hereafter amended or a predecessor Act, constructing a land form conformance with local zoning provisions, within a municipality having a population of more than 1,000,000 inhabitants, with clean construction or demolition debris generated within the municipality, provided that the corporation has contracts for economic development planning with the municipality; or

2. in violation of any regulations or standards adopted by the Board under this Act.

* * *

- o) Conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in a manner which results in any of the following conditions:
 11. failure to submit reports required by permits or Board regulations. 415 ILCS 5/21 (d)(1), (d)(2), (o)(11) (1994).

Section 620.115 of the Board's groundwater quality standards provides:

No person shall cause, threaten, or allow a violation of the Act, the IGPA [Illinois Groundwater Protection Act], or regulations adopted by the Board thereunder, including but not limited to this Part. 35 Ill. Adm. Code 620.115.

Section 620.301 of the Board's groundwater quality standards provides:

- a) No person shall cause threaten or allow the release of any contaminant to a resource groundwater such that:
 - 1) Treatment or additional treatment is necessary to continue an existing use or to assure a potential use of such groundwater; or
 - 2) An existing or potential use of such groundwater is precluded.
- b) Nothing in this Section shall prevent the establishment of a groundwater management zone pursuant to Section 620.250 or a cumulative impact area within a permitted site.
- c) Nothing in this Section shall limit underground injection pursuant to a permit issued by the Agency under the Act or issued by the Department of Mines and Minerals under "An Act in relation to oil, gas, coal, and

other surface and underground resources and to repeal an Act herein named.”

- d) Nothing in this Section shall limit the Board from promulgating nondegradation provisions applicable to particular types of facilities or activities which impact upon groundwater, including but not limited to landfills regulated pursuant to 35 Ill. Adm. Code.Subtitle G. 35 Ill. Adm. Code 620.301.

Section 620.302(c) of the Board’s groundwater quality standards provides:

- c) If a contaminant exceeds a standard set forth in Section 620.410 or Section 620.430, the appropriate remedy is corrective action and Sections 620.305 and 620.310 do not apply. 35 Ill. Adm. Code 620.302.(c).

Section 620.405 of the Board’s groundwater quality standards provides:

No person shall cause, threaten, or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart to be exceeded. 35 Ill. Adm. Code 620.405.

Section 620.410 of the Board’s groundwater quality standards provides:

- a) Inorganic Chemical Constituents

Except due to natural causes or as provided in Section 620.450, concentrations of the following chemical constituents must not be exceeded in Class I groundwater

<u>Constituent</u>	<u>Unit</u>	<u>Standard</u>
Arsenic	mg/L	0.05
	* * *	
Chloride	mg/L	200
Iron	mg/L	5
	* * *	
Manganese	mg/L	0.15
	* * *	
Nickel	mg/L	0.1

Sulfate mg/L 400

Section 807.313 of the Board's regulations provides:

No person shall cause or allow operation of a sanitary landfill so as to cause or threaten or allow the discharge of any contaminants into the environment or any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under the Act. 35 Ill. Adm. Code 807.313.

Section 807.315 of the Board's regulations provides:

No person shall cause or allow the development or operation of a sanitary landfill unless the applicant proves to the satisfaction of the Agency that no damage or hazard will result to the waters of the State because of the development and operation of the sanitary landfill. 35 Ill. Adm. Code 807.315.

BACKGROUND

Facilities and Permits

The Centralia/Prior site is designated by the Agency as number 1218020006 and the original developmental permit number 1975-37-DE was issued on May 22, 1975, to John Prior. People of the State of Illinois v. John Prior and Industrial Salvage, Inc. (July 7, 1995), PCB 93-248, slip op. at 3. Supplemental permit number 1986-222-SP obligated respondents to implement an approved groundwater monitoring program, which included quarterly monitoring and reporting. John Prior (July 7, 1995), PCB -93-248, slip op. at 3. The Prior/Blackwell site is designated by the Agency as number 1218020002 and the original operating permit number 1981-14-OP was issued on October 31, 1981, to John Prior and Johnson and Winifred Blackwell. John Prior (July 7, 1995), PCB -93-248, slip op. at 3. Supplemental permit number 1986-105-SP obligated respondents to implement an approved groundwater monitoring program, which included quarterly monitoring and reporting. John Prior (July 7, 1995), PCB -93-248, slip op. at 3. The Industrial Salvage site is designated by the Agency as number 1214220003 and the original developmental permit number 1984-3-DE was issued on February 9, 1984 to Industrial Salvage, Inc. and John Prior. John Prior (July 7, 1995), PCB -93-248, slip op. at 3. Supplemental permit number 1987-299-SP obligated respondents to implement an approved groundwater monitoring program, which included quarterly groundwater monitoring and reporting. John Prior (July 7, 1995), PCB -93-248, slip op. at 3.

The Board's Decision in PCB 93-248

In the enforcement action, People of the State of Illinois v. John Prior and Industrial Salvage, Inc. (July 7, 1995), PCB 93-248, the Board adjudicated violations of permit and regulatory requirements regarding, *inter alia*, closure and post-closure care of respondents' three landfills. Comp. Br. at 1. Respondents argued that because they were in bankruptcy, complainant was stayed from bringing an action against them. The Board disagreed and found that the bankruptcy proceeding had no effect on complainant's enforcement action. John Prior, PCB 93-248, slip op. at 19. The Board also determined that respondents were the owners and operators of the Industrial Salvage, Inc. site and John Prior to be the owner and operator of the two other landfill sites. Comp. Br. at 2. John Prior, PCB 93-248, slip op. at 18. Respondents subsequently appealed the Board's decision to the Illinois Appellate Court, Fifth District. John Prior and Industrial Salvage v. State of Illinois, Illinois Environmental Protection Agency, Illinois Pollution Control Board, and Marion County Concerned Citizens, No. 93-248 (5th Dist.). The appellate court has not yet issued a decision in this matter.

Groundwater Monitoring Data and Closure and Post Closure Care

The groundwater contamination violations alleged in count I of complainant's complaint are based upon data obtained from a groundwater investigation performed by the Agency. Comp. Br. at 2. Connie Letsky, an Agency geologist and field inspector, testified at hearing on behalf of complainant. Ms. Letsky maintained that in June 1994, the Agency became aware that respondents had failed to provide monitoring data and that respondents did not demonstrate compliance regarding closure and post-closure care of their three landfill sites. Tr. at 26, 34, 47. Ms. Letsky testified that the existing groundwater monitoring wells at each of the three landfills were sampled on June 28, 29, 30, and July 1, 1994. Tr. at 26, 32-33; Comp. Br. at 2. Ms. Letsky concluded that the analytical results indicated the presence of inorganic constituents in excess of the groundwater quality standards for Class I resource groundwater³ (see 35 Ill. Adm. Code 620.410 on page 4 of this opinion). Tr. at 47-51. Ms. Letsky determined that the lab reports show thirty-two separate exceedences of the Part 620 Class I Groundwater standards which are outlined below. Tr. at 45-51; Exh. 1.

<u>Monitoring Well</u>	<u>Constituent</u>	<u>Reported Value</u>
G101	Iron	24,300 ug/L
G101	Managanese	1,060 ug/L
G101	Sulfate	640 mg/L
G102	Chloride	856 mg/L
G102	Iron	12,200 ug/L
G102	Manganese	157 ug/L

³ Ms. Letsky testified that respondents have made no demonstration regarding the classification of the resource groundwater, so the site is classified, by default, as a Class I groundwater. Tr. at 48. Ms. Letsky testified that Class I groundwater standards are more protective and more stringent than Class II groundwater standards. Tr. at 48; see 35 Ill. Adm. Code 620.210, 220.

G102	Sulfate	1,230 mg/L
G103	Iron	6,910 ug/L
G103	Manganese	774 ug/L
G103	Sulfate	1,100 mg/L
G105	Chloride	317 mg/L
G105	Iron	15,600 ug/L
G105	Manganese	4,450 ug/L
G105	Sulfate	500 mg/L
G106	Chloride	248 mg/L
G106	Manganese	299 ug/L
G106	Sulfate	1,310 mg/L
G115	Manganese	4,300 ug/L
G116	Arsenic	68.7 ug/L
G116	Chloride	630 mg/L
G116	Iron	15,000 ug/L
G116	Manganese	3,500 ug/L
G116	Nickel	135 ug/L
G118	Manganese	780 ug/L
G118	Sulfate	1,480 mg/L
G14D	Chloride	486 mg/L
G14D	Iron	7,301 ug/L
G14D	Manganese	750 ug/L
G14S	Chloride	899 mg/L
G14S	Iron	60,300 ug/L
G14S	Manganese	1,700 ug/L
G14S	Sulfate	2,800 mg/L

The groundwater monitoring program violations alleged in count II of complainant's complaint pertain to the failure of respondents to comply with the permitted groundwater monitoring programs for each of the three landfills. Comp. Br. at 2. Ms. Letsky testified at hearing that respondents were required by permits to have a total of 15 groundwater monitoring wells for the three landfills, but they only located 12. Tr. at 30-32. According to Ms. Letsky, the three missing wells had never been installed and the permits requiring the missing wells had not been modified to delete required maintenance of such wells. Tr. 30-32. Ms. Letsky stated that these deficiencies as to the implementation of the groundwater monitoring programs constitute violations of the permits. Tr. at 45-47.

Moreover, Ms. Letsky stated that respondents failed to generate and report quarterly groundwater monitoring data since 1989, except for a period of time from August 1992, to August 1993, for the Industrial Salvage site. Tr. at 34. Specifically, complainant noted that respondents have failed to submit at least 28 quarterly reports for the Centralia/Prior and Prior/Blackwell sites and that respondents have also failed to submit at least 23 reports for the Industrial Salvage landfill site. Tr. 33-34; Comp. Br. at 10.

Finally, Ms. Letsky testified that respondents are responsible for undertaking an assessment of the groundwater problems in order to define a proposal for corrective action. Tr. at 56. In addition to failing to take immediate action regarding closure and other site activities on the surface, as the Board ordered in PCB 93-248, complainant asserts that respondents have failed to propose and implement any corrective action plan regarding groundwater problems as required by Board regulations. Comp. Br. at 7.

COMPLAINANT'S PROOF OF ALLEGED VIOLATIONS

Complainant alleges the following: John Prior, individually and and/or through Industrial Salvage, Inc., has owned and operated the three landfills known as the Centralia/Prior site, the Prior/Blackwell site, and the Industrial Salvage, Inc. site. Complainant alleges that respondents failed to monitor and report groundwater quality and failed to maintain and secure monitoring wells. Comp. Br. at 4; Tr. at 26-30. Moreover, complainant contends that respondents discharged contaminants into the groundwater thereby causing water pollution. Finally, complainant argues that respondents failed to implement a corrective action plan to rectify the contamination at the three landfills. A detailed summary of complainant's allegations and evidence against respondents are outlined below.

Sections 21(d)(1) and (o)(11) of the Act

Complainant contends that respondents were required by permits to have a total of 15 monitoring wells for the three landfills, but that the Agency inspectors were able to locate only 12. Comp. Br. at 4; Tr. at 30-32. Accordingly, complainant asserts that respondents have violated Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (1994)). Comp. Br. at 4. Further, by failing to submit the groundwater monitoring reports as required by permit, complainant maintains that respondents have violated Section 21(d)(1) and 21(o)(11) of the Act (415 ILCS 5/21(d)(1), (o)(11) (1996)). Comp. Br. at 4.

Sections 12(a) and (d)(2) of the Act and 35 Ill. Adm. Code 620.115, 620.405, 620.410, 807.313, and 807.315

Complainant argues that by causing, threatening, or allowing the release of contaminants to the groundwater so as to cause exceedences of the groundwater quality standards, respondents have violated the Act and Board regulations. In support of the complainant's allegations, Ms. Letsky outlined at hearing the regulatory requirements for site-safety plans and protocols for sampling expeditions applicable to the landfills. Comp. Br. at 5; Exh. 1. Ms. Letsky testified that respondents have violated Section 620.410 of the Board's groundwater quality standards in that the analytical results of the groundwater sampling inspection indicate the presence of 32 exceedences of inorganic constituents. Comp. Br., Exh.1; Tr. at 45-51. Ms. Letsky asserted that the chemical constituents which exceed the groundwater quality standards are caused by the release of inorganic contaminants from respondents' three landfills. Tr. at 55-58.

In causing, threatening, or allowing the release of contaminants to the groundwater so as to cause exceedences of the groundwater quality standards, complainant maintains that respondents have violated 35 Ill. Adm. Code 620.115, 620.405, and 620.410. Comp. Br. at 7. Also, complainant argues that by causing, threatening, or allowing the release of contaminants to a resource groundwater such that treatment is necessary to assure a potential use or that an existing or potential use is precluded, respondents have violated 35 Ill. Adm. Code 620.301(a). Comp. Br. at 7. Further, by causing, threatening, or allowing the discharge of contaminants into the groundwater so as to cause or tend to cause water pollution, complainant alleges that respondents have violated Section 12(a) of the Act (415 ILCS 5/12(a) (1994)), and 35 Ill. Adm. Code 807.313 and 807.315. Comp. Br. at 7. Finally, by violating the regulatory prohibitions against water pollution applicable to sanitary landfills, complainant asserts that respondents have also violated Section 12(d)(2) of the Act (415 ILCS 5/21(d)(2) (1994)). Comp. Br. at 7.

35 Ill. Adm. Code 620.302(c)

Complainant maintains that respondents have violated 35 Ill. Adm. Code 620.302(c), for failing to propose and implement a corrective action plan regarding groundwater problems at the landfills. Comp. Br. at 7; Tr. at 56.

Effect of PCB 93-248 on the Instant Complaint

Complainant argues that in PCB 93-248, the Board found that respondents were the owners and operators of the Industrial Salvage site and that John Prior was the owner and operator of the Prior/Blackwell and the Centralia/Prior sites. Comp. Br. at 3. As no evidence has been presented in the present proceeding showing that circumstances had been altered, complainant argues that respondents are liable for the groundwater contamination at the three landfills. Further, complainant maintains that while respondents rely on materials submitted to the Board in PCB 93-248, they have not made any particular reference to anything other than “testimony, brief arguments and exhibits.” Reply at 1; Resp. at 1. Complainant argues that respondents merely deny ownership of the sites and that the Agency precluded them from operating the sites. Reply at 2; Resp. at 1. Moreover, respondents have not denied they were aware of the groundwater contamination and do not address the allegations that they failed to comply with Board regulations regarding monitoring and reporting. Reply at 3.

Finally, complainant maintains that while respondents attempted to obtain discharges in their bankruptcy proceeding regarding compliance obligations imposed by the Board’s July 7, 1995, order in PCB 93-248, John Prior’s Chapter 11 reorganization plan was confirmed in June 1995 and Industrial Salvage Inc.’s plan was confirmed in August 1995. Further, on June 6, 1996, the Bankruptcy Court denied respondents’ requested relief and found that the respondents’ “obligation under the Board’s order for closure and post-closure care of the three landfills were not discharged as a claim in their Chapter 11 bankruptcy proceedings.” Reply at 4; see In re Industrial Salvage, Inc., 196 Bankr. 784, 702 (Bankr. S.D. Ill. 1996).

RESPONDENTS' DEFENSE

In a one-page response to complainant's brief, respondents allege the following:

John Prior and Industrial Salvage, Inc. have denied responsibility for any problems at the sites for the reason that John Prior and Industrial Salvage, Inc. were not owners during the time of any violations, and for the further reason that respondents were prohibited by conduct of the Illinois Environmental Protection Agency from conducting any sort of operations.

These issues were raised and briefed and are currently pending before the Illinois Appellate Court, Fifth District, Mt. Vernon, Illinois, 5-95-0607. The respondent adopts the testimony, brief, and exhibits submitted on behalf of John Prior and Industrial Salvage, Inc. in PCB , No. 93-248, and in the case pending before the Appellate Court, 5-95-0607.

Aside from the above response brief, respondents offered no testimony in defense of the alleged violations, including no testimony at either of the two hearings held in this matter.

BOARD FINDINGS

After a careful review of the record, the Board finds that respondents have violated the Act and the Board's groundwater quality standards. Specifically, the Board finds that by failing to have the required amount of wells as specified in their permits, failing to monitor its wells, and failing to comply with closure and post-closure procedures, respondents have violated Section 21(d)(1) of the Act. 415 ILCS 5/21(d)(1) (1994). By failing to submit groundwater monitoring reports, respondents also have violated Section 21(o)(11) of the Act. 415 ILCS 5/21(o)(11) (1994).

The Board finds that by causing, threatening, or allowing the release of contaminants to the groundwater so as to cause exceedences of the groundwater quality standards, respondents have violated 35 Ill. Adm. Code 620.115, 620.405, 620.410. Further, by causing, threatening, or allowing the release of contaminants to the groundwater such that treatment is necessary, respondents have violated 35 Ill. Adm. Code 620.301(a). Moreover, by causing, threatening, or allowing the discharge of contaminants into the groundwater so as to cause or tend to cause water pollution respondents have also violated Section 12(a) of the Act. 415 ILCS 5/12(a) (1994). Additionally, by violating the regulatory prohibitions against water pollution applicable to sanitary landfills, respondents have violated Section 12(d)(2) of the Act. 415 ILCS 5/12(d)(2) (1994). Finally, the Board finds that by failing to propose and implement any corrective action regarding closure and other activities on the site, respondents violated 35 Ill. Adm. Code 620.203(c) and 620.302(c).

The Board also concludes that respondents' reliance on PCB 93-248 is an inadequate defense to the allegations proved by complainant in this matter. In PCB 92-248, respondents argued that because they were in bankruptcy, complainant was stayed from bringing an action

against them. The Board disagreed and found that the bankruptcy proceeding had no effect on complainant's enforcement action. See John Prior, PCB 93-248, slip op. at 19. The Board found that respondents were the owners and operators of the landfill sites and therefore imposed liability and civil penalties against them for violations of the Act and Board regulations. See John Prior, PCB 93-248, slip op. at 18. Similarly, here we find that respondents are the owners and operators of the three landfill sites in question. Moreover, we note that the United States Bankruptcy Court denied respondents request to discharge their compliance obligations with respect to the Board's order in PCB 93-248. See In re Industrial Salvage, Inc., 196 Bankr. 784, 702 (Bankr. S.D. Ill. 1996). In addition, the Board finds that respondents have presented no testimony at hearing or otherwise to dispute the allegations brought against them by complainant. Therefore, the Board finds that respondents are in violation of the aforementioned sections of the Act and Board regulations.

PENALTIES

Having found respondents to be in violation of the Act and Board regulations, the Board must now determine the penalty to be assessed. Complainant argues that, upon consideration of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c), 42(h) (1996)) the Board should impose civil penalties against respondents. In determining the appropriate civil penalty, the Board considers the factors set forth in Section 33(c) and Section 42(h) of the Act. See People v. Berniece Kershaw and Darwin Dale Kershaw d/b/a Kershaw Mobile Home Park (April 20, 1994), PCB 92-164. The Board must bear in mind that no formula exists, and all facts and circumstances must be reviewed. Kershaw, PCB 92-164, slip op. at 14.

Section 33(c) Evaluation

Section 33(c) of the Act provides:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved, 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 the 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) (1996).

Complainant alleges that all five of the Section 33(c) (415 ICLS 5/33(c) (1996)) factors weigh against respondents. First, complainant contends that sampling results from the 11 wells show 32 exceedences of the Part 620 standards for six inorganic constituents. Comp. Br. at 8. Second, complainant argues that the extent of the some of water quality violations is substantial. Comp. Br. at 8. Third, complainant suggests that the failure to submit monitoring reports created an interference with the Agency's ability to assess the potential for environmental impacts. Comp. Br. at 8. Moreover, the Board had found in the previous case "that an environmental problem of this extent has no positive economic value (Section 33(c)(2) of the Act) and that a pollution source of this nature is unsuitable to any area of the State of Illinois (Section 33(c)(3) of the Act.)" John Prior, PCB 93-248, slip op. at 21. Fourth, complainant argues that it is technically practicable and economically reasonable to monitor and report groundwater quality, to install and maintain monitoring wells, and to assess and correct groundwater problems. Comp. Br. at 8. Fifth, complainant contends that it is undisputed that the three sites are not in compliance. Comp. Br. at 8. Respondents did not respond to complainant's allegations that civil penalties should be posed based upon an analysis of the factors set forth in Section 33(c) of the Act.

The evidence clearly shows that lack of closure and post-closure care at the three landfill sites is threatening, or possibly causing water pollution. Therefore, the Board finds that consideration of Section 33(c)(1) of the Act establishes the unreasonableness of the alleged violation and must be weighed against respondents. Further, the Board finds that consideration of the remaining factors in Section 33(c) of the Act also must be weighed against respondents. The Board again finds that an environmental problem of this extent has no positive social and economic value (Section 33(c)(2) of the Act) and that a pollution source of this nature is unsuitable to any area of the State (Section 33(c)(3) of the Act). The Board believes that there is no question that it is technically practicable to alleviate this environmental problem through proper closure and post-closure care and monitoring (Section 33(c)(4) of the Act). Finally, the evidence demonstrates that respondents, as owners/operators of the three landfill sites, are presently not in compliance with the Act and the Board's regulations (Section 33(c)(5) of the Act).

After a review of this record, the Board finds that the extreme nature of the environmental problems at the three landfill sites requires an immediate cease and desist order, which will direct the immediate closure of the Centralia/Prior, Prior/Blackwell, and Industrial Salvage, Inc. sites, and initiation of post-closure care and monitoring. The Board believes that such an order is necessary to alleviate a serious threat to the public health and the environment.

Section 42(h) Evaluation

Section 42(h) of the Act provides the following:

- h) In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of the 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 violator in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the violator because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator. 415 ILCS 5/42(h) (1996).

Complainant argues that there is an adequate factual basis for the Board to find that each of the five criteria set forth in Section 42(h) of the Act (415 ILCS 5/42(h) (1996)) aggravates the penalty to be imposed. Comp. Br. at 9. First, complainant contends that given the reporting violations commenced in 1989 and the groundwater quality violations and failure to address such violations commenced in 1994, the gravity of the environmental impact to a Class I resource groundwater is significant. Second, complainant maintains that the absence of due diligence on behalf of the respondents' is complete and unmitigated. Third, complainant suggests that the economic benefits accrued by respondents in delaying any efforts to monitor or correct the groundwater problems are substantial. Comp. Br. at 9. Analytical costs for the quarterly sampling of 15 monitoring wells would cost thousands of dollars a year. Comp. Br. at 9. Fourth, the amount of monetary penalty to deter further violations is a consideration that is obviously dependent upon other criteria. Comp. Br. at 9. Complainant argues that the Board ought to find that a significant penalty is warranted. Comp. Br. at 9. Fifth, complainant argues that the number, proximity in time, and gravity of the violations previously adjudicated in PCB 93-248 weigh heavily against respondents. Comp. Br. at 9. These findings should be presumed correct even if still subject to appeal. Comp. Br. at 9-10, citing ESG Watts v. Pollution Control Board, 282 Ill. App. 3d 43, 558 N.E. 2d 1015 (4th Dist. 1996). Respondents did not respond to complainant's contentions that the Board is authorized to impose civil penalties upon analyzing the factors set forth in Section 42(h) of the Act.

In calculating civil penalties, complainant contends that no quarterly reports were submitted for the Centralia/Prior and Prior/Blackwell landfills for 1990, 1991, 1992, 1993,

1994, 1995, and 1996. Comp. Br. at 10. During this time, complainant contends that quarterly reports were submitted for the Industrial Salvage site for only August 1992 through August 1993, *i.e.*, five quarterly reports. Consequently, respondents have failed to submit at least 28 reports for the Centralia/Prior landfill, 28 reports for the Prior/Blackwell landfill, and 23 reports for the Industrial Salvage landfill. Comp. Br. at 10. In ESG Watts, the appellate court upheld the Board's imposition of \$2,500 in penalties for the failure to submit each quarterly report regarding solid waste fees. ESG Watts 282 Ill. Ap.3d 43, 558 N.E.2d 1015. Complainant suggests that the "flat rate" approach to applying penalties may be appropriately employed in this case as long as the Board determines the gravity and seriousness of the reporting violations. Comp. Br. at 10. Therefore, complainant recommends that these 79 violations be assessed at \$3,000 penalty per occurrence, for a total penalty of \$237,000 for monitoring and reporting violations alleged in count II.

Complainant alleges that the release of inorganic contaminants to the Class I resource groundwater caused violations of the Part 620 water quality standards and have thereby caused or threatened water pollution, necessitated treatment to assure potential use of such groundwater, and/or precluded an existing or potential use of such groundwater (as alleged in count I of complainant's complaint). Comp. Br. at 11. The adverse trends identified by the Agency in 1994 also triggered permit obligations for respondents to propose and implement corrective action (as alleged in count II of complainant's complaint). Complainant contends that the failure of respondents' to assess the groundwater problems, will cause, allow, or threaten water pollution through the continuing release of contaminants to the groundwater. As a result, complainant recommends a total penalty of \$50,000 for these violations of Sections 12(a) and 21(d) of the Act (415 ILCS 5/12(a), 21(d) (1996)).

Finally, complainant argues that the violations as to groundwater monitoring report submittals constitute willful, knowing, or repeated violations pursuant to Section 42(f) of the Act (415 ILCS 5/42(f) (1996)), and thus the Board is authorized to award attorney fees and costs to complainant. Complainant maintains that the Board in the past has found that an hourly rate of \$120 is reasonable in prosecution brought by the Attorney General's Office. Comp. Br. at 11; Reply, Affidavit of Thomas Davis. Complainant contends that 21 hours were spent in prosecution of this case. Reply, Affidavit of Thomas Davis. As a result, complainant requests that the Board award it \$2520 in attorney fees and costs. Based upon its analysis of the Section 42(h) factors, complainant recommends that the Board impose a total penalty of \$289,520 against respondents.

Upon a review of the factors set forth in Section 42(h), the Board finds that given the reporting violations commenced in 1989 and the groundwater quality violations commenced in 1994, the severity of the environmental impact to the groundwater is significant (see Section 42(h)(1) of the Act). Further, the Board finds that respondents have exercised no due diligence in accordance with Section 42(h)(3) of the Act in attempting to comply with the requirements of the Act and the Board's regulations. Moreover, as set forth in Section 42(h)(3) of the Act, the Board finds that respondents have accrued economic benefits by delaying compliance because achieving compliance will be costly. The Board hopes that a monetary penalty will serve to deter further violations by respondents, as set forth in Section

42(h)(4) of the Act. Finally, the Board finds that its finding against respondents in PCB 93-248 weigh heavily against respondents (see Section 42(h)(5) of the Act).

Penalty Calculation

Section 42(a) of the Act provides that any person that violates the Act or any regulation adopted by the Board shall be liable to a civil penalty not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues. 415 ILCS 5/42(a) (1996). After reviewing the factors set forth in Section 33(c) and 42(h) of the Act, the Board finds that a civil penalty of \$50,000 for violations of the Act and the Board's regulations is warranted. The Board also finds that an additional civil penalty in the amount of \$3000 for each quarterly report in which respondents failed to provide is warranted. Therefore, as respondents failed to provide a total of 79 quarterly reports for the three sites, the Board imposes an additional civil penalty of \$237,000. The total civil penalty, therefore, is \$287,000.

ATTORNEY FEES

The Board also finds that attorney fees are warranted in accordance with Section 42(f) of the Act as respondents have committed a "repeated" violation of the Act. Upon reviewing the affidavit outlining the attorney fees incurred by complainant's attorney, the Board finds the attorney fees are reasonable. Therefore, the Board awards complainant \$2520 in attorney fees.

CONCLUSION

In conclusion, the Board finds that respondents have violated Sections 12(a), 21(d)(1), (d)(2), and (o)(11) of the Act (415 ILCS 5/12(a), 21(d)(1), (d)(2), (o)(11) (1994)) and Sections 620.115, 620.301, 620.302(c), 620.405, 620.410, 807.313, and 807.315 of the Board's groundwater quality standards (35 Ill. Adm. Code 620.115, 620.301, 620.302(c), 620.405, 620.410, 807.313, 807.315). The Board further imposes a civil penalty against respondents in the amount of \$287,000 and orders respondents to reimburse complainant \$2520, for attorney fees associated with prosecuting this enforcement action. Finally, the Board directs John Prior and Industrial Salvage, Inc. to cease and desist from further violations of the Act and Board regulations.

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

ORDER

1. The Board finds that John Prior and Industrial Salvage, Inc. (respondents) violated Sections 12(a), 21(d)(1), (d)(2), and (o)(11) of the Environmental Protection Act (415 ILCS 5/12(a), 21(d)(1), (d)(2), (o)(11) (1994)) and Sections 620.115, 620.301, 620.302(c), 620.405, 620.410, 807.313, and 807.315 of the Board's groundwater quality

standards (35 Ill. Adm. Code 620.115, 620.301, 620.302(c), 620.405, 620.410, 807.313, 807.315).

2. Respondents will cease and desist from violations of the Act and the Board's regulations.
3. Within 60 days of the date of this order, or on or before January 20, 1998, respondents shall pay a civil penalty in the amount of \$287,000 by certified check or money order made payable to the Environmental Protection Trust Fund. Respondents shall send the payment by First Class Mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62794-9276

Respondents shall write the case name and number and its social security or federal employer identification number on the certified check or money order.

4. Within 30 days of the date of this order, or on or before December 22, 1997, respondents shall reimburse complainant for attorney fees in the amount of \$2520 by certified check or money order made payable to the Office of the Attorney General of the State of Illinois. Respondents shall send the payment by First Class Mail to:

Office of the Attorney General of the State of Illinois
500 South Second Street
Springfield, Illinois 62706

Respondents shall write the case name and number and its social security or federal employer identification number on the certified check or money order.

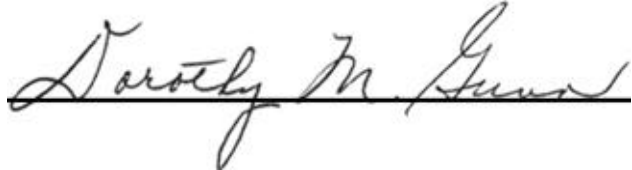
5. Penalties unpaid after the due date shall accrue interest pursuant to Section 42(g) of the Environmental Protection Act. 415 ILCS 5/42(g) (1996).
6. Payment of this penalty does not prevent future prosecution if the violations continue.

IT IS SO ORDERED.

Board Member K.M. Hennessey abstained.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 145 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 20th day of November 1997, by a vote of 6-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board