

ILLINOIS POLLUTION CONTROL BOARD
May 4, 2023

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 23-112
) (Enforcement – Land, Water)
INLAND-FRYCEK, INC., an Illinois)
corporation, and)
969 NORTHWEST HWY LLC, an Illinois)
limited liability company)
)
Respondents.)

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

On April 17, 2023, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against Inland-Frycek, Inc. (IFI) and 969 Northwest Hwy LLC (969 LLC) (together, respondents). The complaint concerns property owned by 969 LLC (Site) that is a former gasoline station located at 969 Northwest Highway in Park Ridge, Cook County. IFI is an environmental remediation consultant and practitioner that assisted in the remediation of residual petroleum contamination at the Site in 2019. For the reasons below, the Board accepts the complaint for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2020)), 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 (2020); 35 Ill. Adm. Code 103. In this case, the People allege that respondents each violated the Act and Board Waste Disposal Regulations as follows:

- Count I: Causing or allowing the open dumping of waste by causing or allowing the dumping and discarding of calcium peroxide at the Site, and failing to remove the waste until compelled to by the Village of Park Ridge’s ordinance enforcement, in violation of Section 21(a) of the Act (415 ILCS 5/21(a) (2020)).
- Count II: Disposing of and abandoning waste at a site not permitted for the disposal of waste in violation of Section 21(e) of the Act (415 ILCS 5/21(e) (2020)).
- Count III: Failing to evaluate or characterize the waste generated on or about July 17, 2019 to determine whether it was special waste in violation of Section 808.121(a) of the Board Waste Disposal Regulations (35 Ill. Adm. Code 808.121(a)) and Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2020)).

- Count IV: Creating a water pollution hazard by depositing up to 20,000 pounds of powdered calcium peroxide upon the land throughout the Site, failing to immediately remove the calcium peroxide from the ground at the Site, and maintaining a pile of calcium peroxide on the ground at the Site from at least July 17, 2019, to December 4, 2020, in violation of Section 12(d) of the Act (415 ILCS 5/12(d) (2020)).
- Count V: Causing and allowing litter by causing or allowing the dumping and discarding of calcium peroxide at the Site, and failing to remove the waste until compelled to by the Village of Park Ridge's ordinance enforcement, in violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2020)).

The People ask that the Board order respondents to cease and desist from future violations of the Act and regulations that were the subject of the complaint, and jointly and severally pay civil penalties of \$50,000 for each violation and \$10,000 for each day during which each violation continued. In addition, the People request that the Board order respondents to pay costs including attorney, expert witness, and consultant 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 allegation. *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) (2020). 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 respondents, 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) (2020). 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 May 4, 2023, by a vote of 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board