

ILLINOIS POLLUTION CONTROL BOARD
November 7, 2002

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 03-53
) (Enforcement - Water)
NORTHERN BUILDING CONCEPTS, INC.,)
an Illinois corporation, and LANDSCAPE)
CONCEPTS CONSTRUCTION, INC., an)
Illinois corporation,)
)
Respondents.)

ORDER OF THE BOARD (by C.A. Manning):

On October 24, 2002, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against Northern Building Concepts, Inc. and Landscape Concepts Construction, Inc. (respondents). *See* 415 ILCS 5/31(c)(1) (2000), *amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 103.204. The People allege that respondents violated Sections 12(a), (d), and (f) of the Environmental Protection Act (Act) (415 ILCS 5/12(a), (d), (f) 2000, *amended by* P.A. 92-0574, effective June 26, 2002) and 35 Ill. Adm. Code 302.203. The People further allege that respondents violated these provisions by causing or allowing the discharge of storm water containing silt or sediment; causing or allowing a water pollution hazard at a tributary to wetlands; and discharging storm water without an National Pollutant Discharge Elimination System permit. The complaint concerns respondents' development of a residential site known as Depot Landings in Antioch, Lake County.

The Board accepts the complaint for hearing. *See* 35 Ill. Adm. Code 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 the 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. 35 Ill. Adm. Code 103.204(d).

The Board directs the hearing officer to proceed expeditiously to hearing. 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) (2000). Specifically, the Board considers the Section 33(c) factors in

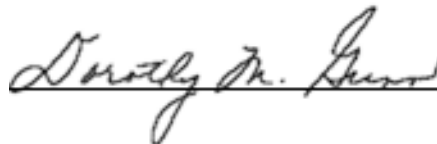
determining, first, what to order the respondent to do to correct an on-going violation, if any, and, second, whether to order the respondent to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character 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, such as the duration and gravity of the violation, whether the respondent showed due diligence in attempting to comply, any economic benefit that the respondent accrued from delaying compliance, and the need to deter further violations by the respondent and others similarly situated.

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 dollar amount, and supporting its position with facts and arguments that address any or all of the Section 42(h) factors.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 7, 2002, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board