



On April 24, 2024, the City filed a post-hearing brief (Resp. Br.) and on April 25, 2024, the People filed its post-hearing brief (Comp. Br.). No post-hearing public comments were filed.

### **DISCUSSION**

The Board's procedural rules prescribe the contents for stipulations and settlements. *See* 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the respondents' operations as well as the extent and causes of the alleged violations. Both the People and the City argue that the stipulated settlement is consistent with the law, including the Board's procedural rules. Comp. Br. at 16; Resp. Br. at 18.

The public commenters did not object to the settlement being accepted. Resp. Br. at 8. Instead, the commenters questioned how the violations may have occurred, and how both the WWTP and drinking water plant are operated. *See generally* Tr. at 69-91. Ms. Brianne Hicks presented concerns about Total Suspended Solids (TSS) and biological oxygen demand (BOD) (Tr. at 71), while Ms. Dawn Hicks asked questions and presented comments primarily related to the City's water treatment plant. Tr. at 77-79. Likewise, Mr. Jamie Hicks asked about additional work being done on the water treatment plant. Tr. at 86.

When it examines the record, the Board considers the factors of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c), 42(h) (2022)) to determine whether a stipulation and settlement is appropriate. People v. Alloy Engineering and Casting Co., PCB 01-155, slip op. at 4 (July 10, 2003). Below, the Board finds that the settlement meets the requirements of Section 103.302 of the Board's procedural rules. First, the Board discusses Section 33(c) factors. Next, the Board discusses Section 42(h) factors. Finally, the Board makes its determination, accepts the settlement, and issues its order.

#### **Section 33(c) Factors**

Section 33(c) of the Act (415 ILCS 5/33(c) (2022)) provides that the Board's final order must consider all facts and circumstances bearing on the reasonableness of emissions, discharges or deposits involved. The settlement discusses the nature, extent, and cause of the alleged violations. Settlement at 1-4. It also addresses the nature of the WWTP operations. *Id.* Further, the settlement addresses compliance. *Id.* at 4. Below, the Board discusses the Section 33(c) factors.

#### **Injury or Interference**

Section 33(c) of the Act requires the Board to consider the "character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people." 415 ILCS 5/33(c)(i) (2022). Ms. Brianne Hicks questioned whether there was an injury due to the Illinois Environmental Protection Agency (IEPA) being hindered in its information gathering. Tr. at 55. The stipulation indicates that IEPA's "information gathering responsibilities were hindered" and thus the City's violation threatened "human health and the environment". Settlement at 4. The City recognized that timely reporting was important. Tr. at 58.

### **Social and Economic Value of Pollution Source**

Section 33(c) of the Act also requires the Board to consider “the social and economic value of the pollution source.” 415 ILCS 5/33(c)(ii) (2022). The parties state that the WWTP provides “social and economic benefit.” Settlement at 4.

### **Suitability of Landfill for the Area**

Section 33(c) also requires the Board to consider the “suitability or unsuitability of the pollution source to the area...” 415 ILCS 5/33(c)(iii) (2022). The parties agree that the operation of the WWTP is suitable for the area in which it is located. Settlement at 4.

### **Practicability and Reasonableness of Reducing or Eliminating Discharges**

Section 33(c) of the Act also requires the Board to consider the “technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges, or deposits resulting from such pollution source.” 415 ILCS 5/33(c)(iv) (2022). The parties’ settlement states that maintaining contaminants within permit levels and timely reporting are practicable and reasonable. Settlement at 4.

### **Respondents’ Subsequent Compliance with the Act and Board Regulations**

Section 33(c) of the Act requires the Board to consider “any subsequent compliance” when making its determination concerning the reasonableness of emissions, discharges, or deposits. 415 ILCS 4/33(c)(v) (2022). The City subsequently complied with the Act and Board regulations. Settlement at 4.

### **Board Discussion**

Having considered the Section 33(c) factors, the Board is convinced that a civil penalty is warranted. Further the Board is convinced that the parties sufficiently weighed the factors in Section 33(c) of the Act in their settlement. As the Board concluded that these factors support a civil penalty in this case, the following section of this opinion considers Section 42(h) of the Act to determine the appropriate amount of a penalty.

#### **Section 42(h) Factors**

In determining the appropriate civil penalty to be imposed, the Board is authorized to consider any matter of record in mitigation or aggravation of penalty, including eight statutory factors. 415 ILCS 5/42(h) (2022). Below, the Board considers the Section 42(h) factors.

#### **Duration and Gravity of the Violation**

In determining the appropriate civil penalty to be imposed under Section 42(h), the Board is authorized to consider the “duration and gravity of the violation.” 415 ILCS

5/42(h)(1) (2022). The settlement notes that the permit violations occurred from June to September in 2021 and that the City failed to timely submit multiple reports from March 31, 2021, until February 23, 2022. Settlement at 6.

### **Respondents' Diligence in Compliance with the Act and Board Regulations**

In determining the appropriate civil penalty, Section 42(h) also authorizes the Board to consider “the presence or absence of due diligence on the part of the respondent in attempting to comply with the requirements of this Act...” 415 ILCS 5/42(h)(2) (2022). The City diligently returned to compliance with the Act and Board regulations. Settlement at 6.

### **Economic Benefits of Delayed Compliance**

Section 42(h) of the Act allows the Board to consider “any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance.” 415 ILCS 5/42(h)(3) (2022). The parties' settlement states that the proposed civil penalty “takes into account any economic benefit realized by the Respondents as a result of avoided or delayed compliance.” Settlement at 6.

### **Amount of Monetary Penalty Assessed**

Section 42(h) also allows the Board to consider “the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance...” 415 ICLS 5/42(h)(4) (2022). The People state that it determined that the penalty would serve to deter further violations and aid in the compliance with the Act and Board regulations. Settlement at 6.

### **Previously Adjudicated Violations of the Act**

Section 42(h) also allows the Board to consider the “number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent.” 415 ILCS 5/42(h)(5) (2022). The City does not have any previously adjudicated violations. Settlement at 6.

### **Other Statutory Factors**

The settlement states that “[s]elf-disclosure is not at issue in this matter.” Settlement at 6; *see* 415 ILCS 5/42(h)(6) (2081). It also states that the City did not pursue a Supplemental Environmental Project. Settlement at 6; *see* 415 ILCS 5/42(h)(7). Finally, a Compliance Commitment Agreement was not an issue in this matter. Settlement at 8; *see* 415 ILCS 5/42(h)(8).

### **Board Discussion**

As previously noted, the commenters did not object to the settlement, including the penalty. The commenters instead expressed concerns about the operations of both the WWTP,

the subject of this complaint and settlement, and the water treatment plant, which is not the subject of this complaint and settlement.

After reviewing the factors in Section 42(h) of the Act, the Board finds that the factors support the stipulated penalty negotiated by the parties.

### **CONCLUSION**

The primary goal of the Act is to enhance the environment. Chemetco v PCB, 140 Ill. App. 3d at 288. Additionally, the law also encourages settlements. *Id.* Considering both of these objectives together, settlement allows the People and Respondents to conserve resources that otherwise would be spent in litigation, effectuates the goals of the Act, and avoids the stigma of a violation. *See People v. Archer Daniels Midland*, 140 Ill. App. 3d at 825. While the Board appreciates the concerns raised by the commenters, the concerns did not specifically challenge the appropriateness of the stipulation. Therefore, the Board accepts the parties' stipulation and proposed settlement.

### **ORDER**

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. The City of LaSalle must pay a civil penalty of \$5,740 no later than July 8, 2024, which is the first business day following the 30th day after the date of this order. The City of LaSalle 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 and case number must appear on the certified check or money order.
3. The City of Lasalle must submit payment of the civil penalty to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276

The City of LaSalle must send a copy of the certified check, or money order, and any transmittal letter to:

Cara V. Sawyer  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, IL 60602


4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2022)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2022)).
5. The City of LaSalle must cease and desist from future violations of the Act and Board regulations that were the subject matter of this 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) (2022); *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.

<b>Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court</b>	
<b>Parties</b>	<b>Board</b>
Cara V. Sawyer Assistant Attorney General Environmental Bureau Illinois Attorney General's Office 69 W. Washington Street, Suite 1800 Chicago, IL 60602 Cara.sawyer@ilag.gov	Illinois Pollution Control Board Attn: Don A. Brown, Clerk 60 East Van Buren Street, Suite 630 Chicago, Illinois 60605 don.brown@illinois.gov
James A. McPhedran City Attorney Meyer & Flowers, LLC 1200 Maple Drive Peru, IL 61354 jim@meyers-flowers.com	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 6, 2024, 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