

ILLINOIS POLLUTION CONTROL BOARD
June 6, 2024

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 23-122
)	(Enforcement - Water)
LEE TRUCKING, INC., an Illinois)	
corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by M. Gibson):

On May 31, 2023, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint (Comp.) against Lee Trucking, Inc. (Lee Trucking). The complaint alleges violations of the Environmental Protection Act (Act) and Board regulations regarding stormwater runoff. The complaint concerns Lee Trucking’s fuel tanks located at 303 East Main Street in Thawville, Iroquois County.

On October 16, 2023, the People filed a motion to deem facts admitted and for summary judgement (Mot.). Lee Trucking did not respond to the motion.

For the reasons discussed below, the Board grants the motion to deem facts admitted and for summary judgment.

The Board will first explain the background of this case, then summarize the complaint. The Board will move to the motion to deem facts admitted and the uncontested facts. The Board next considers the People’s motion for summary judgment and discusses an appropriate remedy. The Board then reaches its conclusion and issues its order.

BACKGROUND

On June 15, 2023, the Board accepted the complaint for hearing, and on August 10, 2023, the People filed proof that the complaint was served on August 8, 2023. On September 11, 2023, the People informed the hearing officer that the People would be filing a motion to deem facts admitted and a motion for summary judgement. *See* Hearing Officer Order, Sept. 11, 2023.

On November 14, 2023, the People reported that the parties had reached tentative agreement and a proposed stipulation was being prepared. *See* Hearing Officer Order, Nov. 14, 2023. The People attempted to provide Lee Trucking with the proposed settlement, but were unable to do so. On March 28, 2024, the People reported they were unable to reach Lee Trucking and asked that the Board rule on the pending motion. *See* Hearing Officer Order, March 28, 2024.

As of the date of this opinion and order, Lee Trucking has not filed an answer to the complaint or responded to the motion to deem facts admitted and for summary judgment.

COMPLAINT

Count I of the complaint alleges that Lee Trucking violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and Section 309.102(a) of the Board's National Pollutant Discharge Elimination System (NPDES) Permit Regulations, 35 Ill. Adm. Code 309.102(a). Comp. at 7. The allegations in the complaint are that Lee Trucking operated a facility engaged in industrial activity without obtaining coverage under the General NPDES Stormwater Permit and discharged stormwater associated with industrial activity from the facility into waters of the State without obtaining coverage under the General NPDES Stormwater Permit. *Id.* at 5-6. These activities caused, threatened, or allowed the discharge of stormwater associated with industrial activity into waters of the State without a NPDES permit. *Id.*

Count II of the complaint alleges that Lee Trucking violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2022), by causing, threatening, or allowing the discharge of stormwater associated with industrial activities from the facility. Comp. at 9. The complaint further alleges Lee Trucking caused, threatened, or allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution. *Id.*

MOTION TO DEEM FACTS ADMITTED

The People's motion requests the Board deem the material allegations in their complaint to be admitted by Lee Trucking. Mot. at 2. Under the Board's procedural rules, "the respondent must file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer." 35 Ill. Adm. Code 103.204(d).

Lee Trucking failed to answer the complaint within 60 days after service, *i.e.*, by October 10, 2023. Therefore, by rule, Lee Trucking admits all material allegations of the complaint. *See* 35 Ill. Adm. Code 103.204(d). Additionally, Lee Trucking failed to respond to the People's motion and so waives objection to the Board granting it. *See* 35 Ill. Adm. Code 101.500(d). The Board grants the People's motion and deems admitted the material allegations in the People's complaint.

FACTS

Lee Trucking is a hauler of farm machinery, mowers, nonhazardous materials, mulch, corncobs, lumber, grain feed hay, building materials, sheet metal, and dry freight. Comp at 2. The facility has FS fuel tanks and is therefore required to maintain coverage under the NPDES permit. *Id.* Lee Trucking obtained general stormwater permit coverage on May 23, 1994, but the permit expired on March 31, 2022. Lee Trucking was required to send a notice of intent to be covered by the General NPDES stormwater permit issued on April 5, 2017. *Id.* On October 16, 2018, the Illinois Environmental Protection Agency (IEPA) notified Lee Trucking that it

needed to submit an application to renew its permit.

On September 13, 2019, during an inspection by IEPA, the fuel tanks were observed and IEPA informed Lee Trucking it needed to apply for a permit. Comp. at 3. On September 17, 2019, IEPA sent a reminder letter and on February 24, 2020, a violation notice was sent by IEPA to Lee Trucking. *Id.* On October 28, 2022, IEPA deemed Lee Trucking's permit application administratively complete. *Id.*

Lee Trucking's facility is considered to be engaged in industrial activity, and as such stormwater discharge must be permitted. Comp. at 6. Lee Trucking operated a facility without a permit and discharged stormwaters into waters of the State without a permit. *Id.* The discharge of stormwater into downgradient receiving waters is water pollution. Comp. at 8.

MOTION FOR SUMMARY JUDGMENT

The People seek summary judgment against Lee Trucking. A party has 14 days from receipt of the motion for summary judgment to respond. 35 Ill. Adm. Code 101.516(a). If no response is filed, "the party waives objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion." 35 Ill. Adm. Code 101.500(d); *see People v. Env't'l Health and Safety Svcs., Inc.*, PCB 05-51, slip op. at 13 (July 23, 2009). Lee Trucking did not respond to the People's motion or file a motion to extend the time to respond. The Board finds that by failing to respond to the People's motion for summary judgment, Lee Trucking waived any objection to the Board granting the motion for summary judgment.

Statutory and Regulatory Provisions

Section 12(a) of the Act provides that no person shall:

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) (2022).

Section 12(f) of the Act provides that no person shall:

Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program. 415 ILCS 5/12(f) (2022).

Section 309.102(a) of the Board's rules, provides:

Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful. 35 Ill. Adm. Code 309.102(a).

Standards for Summary Judgement

Summary judgment is appropriate when the pleadings, depositions, admissions, affidavits and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 35 Ill. Adm. Code 101.516(b); Adames v. Sheahan, 233 Ill. 2d 276, 295, 909 N.E.2d 742, 753 (2009); Dowd & Dowd, Ltd. V. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). When determining whether a genuine issue of material fact exists, the record "must be construed strictly against the movant and liberally in favor of the opponent." Adames, 233 Ill. 2d at 295-96, 909 N.E.2d at 754; Purtill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). "It is well established that in deciding a motion for summary judgment the court may draw inferences from undisputed fact." Makowski v. City of Naperville, 249 Ill. App. 3d 110, 119, 617 N.E. 2d 1251 (1993); Loyola Academy v. S & S Roof Maintenance, Inc., 146 Ill. 2d 263, 272, 586 N.E.2d 1211 (2d Dist. 1992). "However, where reasonable persons could draw divergent inferences from undisputed facts, the trier of fact should decide the issues and the summary judgment motion should be denied." Makowski, 249 Ill. App. 3d at 119; Pyne v. Witmer, 129 Ill. 2d 351, 358, 543 N.E.2d 1304.

Ruling on Motion for Summary Judgement

The facts deemed admitted are that Lee Trucking is the owner of a facility that is considered to be engaged in industrial activity. Because of the nature of Lee Trucking's facility and the presence of the FS tanks, Lee Trucking is required to maintain coverage under a General NPDES Stormwater permit. The admitted facts make clear that for a period of time, Lee Trucking was not covered by a General NPDES Stormwater permit.

On summary judgment, to determine whether a genuine issue of material fact exists, the Board must construe the record strictly against the People as movant and liberally in favor of Lee Trucking as non-movant. Doing so, the Board finds no genuine issue of material fact. The facts deemed admitted establish that Lee Trucking violated Section 12(f) of the Act and Section 309.102(a) of the Board's Regulations by operating a facility engaged in industrial activity without obtaining coverage under the General NPDES Stormwater Permit and discharging stormwater associated with industrial activity from the facility into waters of the State without obtaining coverage under the General NPDES Stormwater Permit. 415 ILCS 5/12(f) (2022)); 35 Ill. Adm. Code 309.102(a). Further, Lee Trucking violated Section 12(a) of the Act by causing, threatening, or allowing the discharge of stormwater associated with industrial activities from the facility and causing, threatening, or allowing the discharge of contaminants into the environment so as to cause or tend to cause water pollution. 415 ILCS 5/12(a) (2022). Therefore, the Board finds that the admitted facts support a finding that Lee Trucking violated Section 12(a) and (f) of

the Act and Section 309.102(a) of the Board's rules. 415 ILCS 5/12(a) and (f) (2022)); 35 Ill. Adm. Code 309.102(a).

REMEDY

The People seek a penalty of at least \$15,000. Mot. at 5.

Having found Lee Trucking violated Section 12(a) and (f) of the Act and Section 309.102(a) of the Board's rules, 415 ILCS 5/12(a) and (f) (2022)); 35 Ill. Adm. Code 309.102(a), the Board must now determine an appropriate remedy including any penalties. In evaluating the record to determine whether to impose a civil penalty on Lee Trucking, the Board considers the factors of Section 33(c) of the Act, 415 ILCS 5/33(c) (2022). If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on Lee Trucking, then the Board considers the factors of 42(h) of the Act, 415 ILCS 42(h) (2022), to determine the appropriate amount of civil penalty.

Section 33(c) of the Act states:

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 including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. 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;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance. 415 ILCS 5/33(c) (2022).

The People provided brief statements regarding each of the Section 33(c) factors. Mot. at 5. The People state that human health and the environment were threatened by the unpermitted discharge of stormwater from Lee Trucking's facility, but concede there is social and economic value to the facility. *Id.* The People also believe the operation of the facility is suitable for its location as long as it operates in compliance with the Act and Board regulations. The People argue that compliance with the Act and Board regulations was technically feasible and economically reasonable, and the People note Lee Trucking is now in compliance with the Act and Board regulations.

The Board finds that Lee Trucking's unpermitted stormwater runoff from its facility harmed human health and the environment. Therefore, the Board finds that Section 33(c)(1) weighs against Lee Trucking. Likewise, Section 33(c)(4) weighs against Lee Trucking because application for a General NPDES Stormwater permit is technically feasible and economically reasonable.

Sections 33(c)(2), (3), and (5) weigh in favor of Lee Trucking. The Board finds that the facility has social and economic value and is suitably located, when in compliance. The facility is now in compliance.

Lee Trucking threatened human health and the environment by not filing an application for a General NPDES Stormwater Permit as required by the Act and Board regulations. Lee Trucking's failure is despite the fact that compliance is practicable and economically feasible. The location of the facility and its subsequent compliance are factors that support Lee Trucking as well; however, the Board finds that the Section 33(c) factors favor requiring Lee Trucking to pay a civil penalty.

Having concluded that a penalty is appropriate under the Section 33(c) factors, the Board next applies the factors of Section 42(h) to consider the \$15,000 civil penalty requested by the People against Lee Trucking. Section 42(h) of the Act states:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), (b)(5), (b)(6), or (b)(7) of this 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 respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. 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;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;

7. whether the respondent has agreed to undertake a “supplemental environmental project,” which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In determining the appropriate civil penalty to be imposed under subsection (a) or paragraph (1), (2), (3), (5), (6), or (7) of subsection (b) of this Section, the Board shall ensure, in all cases, 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. However, such civil penalty may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent. 415 ILCS 5/42(h) (2022).

The People indicate that on October 16, 2018, IEPA informed Lee Trucking of its failure to renew the required permit and Lee Trucking did not submit its notice of intent to renew until October 28, 2022. Mot. at 9. The People argue that Lee Trucking did not show due diligence in resolving the violations. *Id.* The People claim that the requested penalty of \$15,000 includes any economic benefit Lee Trucking may have accrued as a result of noncompliance, and the penalty deters further violations of the Act and Board regulations. *Id.* at 8. The People are not aware of any previously adjudicated violations, self-disclosure is not at issue, and Lee Trucking did not perform a supplemental environmental project. *Id.* Lee Trucking and the People did not enter into a compliance commitment agreement.

Lee Trucking’s violations of the Act and Board regulations lasted for four years. The duration of the violation is extensive. Lee Trucking showed a lack of diligence in complying with the requirements of the Act and Board regulations. The Board finds that Section 42(h)(1) and (2) weigh against Lee Trucking.

The Board finds that the requested civil penalty of \$15,000 includes any economic benefit that Lee Trucking may have accrued as a result of its noncompliance. The Board also finds that the suggested \$15,000 penalty will deter further violations by Lee Trucking and ensure voluntary compliance with the Act and Board regulations. Therefore, the Board finds that Section 42(h)(3) and (4) weigh against Lee Trucking and support the People’s requested penalty.

Lee Trucking has no previously adjudicated violations. Neither self-disclosure, nor a compliance commitment agreement was at issue in this matter. Lee Trucking did not propose, or perform, a supplemental environmental project. Therefore, the Board does not weigh Section 42(h)(5) through (8) as mitigating or aggravating of a penalty amount.

Based on this record and the statutory factors, the Board finds that the People's requested civil penalty is appropriate given the length of the violations and the resulting threat to human health and the environment. The requested penalty amount will serve to encourage future compliance by Lee Trucking and others similarly situated, and recoup any economic benefit Lee Trucking may have accrued from its noncompliance. In its order below, the Board assesses a civil penalty of \$15,000.

CONCLUSION

The Board grants the People's unopposed motion to deem facts admitted. Given the facts admitted, the Board finds that there is no genuine issue of material fact and that the People are entitled to judgment as a matter of law. The Board accordingly grants the People's motion for summary judgment against Lee Trucking. The Board finds that Lee Trucking violated Section 12(a) and (f) of the Act and Section 309.102(a) of the Board's rules, 415 ILCS 5/12(a) and (f) (2022)); 35 Ill. Adm. Code 309.102(a), as alleged in the People's complaint. Having considered the factors of Sections 33(c) and 42(h) of the Act, 415 ILCS 5/33(c) and 42(h) (2022), the Board enters an order requiring Lee Trucking to pay a \$15,000 civil penalty, as requested by the People.

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

ORDER

1. The Board grants the unopposed motion to deem facts admitted and for summary judgment filed by the Office of the Attorney General, on behalf of the People, and finds that Lee Trucking violated Section 12(a) and (f) of the Act and Section 309.102(a) of the Board's rules. 415 ILCS 5/12(a) and (f) (2022)); 35 Ill. Adm. Code 309.102(a).
2. The Lee Tucking must pay a civil penalty of \$15,000 no later than July 8, 2024, which is the first business day following the 30th day after the date of this order. Lee Trucking 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. Lee Trucking must submit payment of the civil penalty to:

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

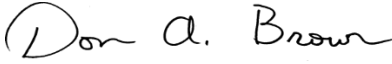
5. Lee Trucking must cease and desist from future violations of the Act and Board regulations that were the subject matter of this complaint.

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.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board
Kevin D. Barnai Assistant Attorney General Environmental Bureau Illinois Attorney General’s Office 500 South 2nd Street Springfield, Illinois 62706 Kevin.Barnai@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
Lee Trucking, Inc. Attn: Mary I. Lee 303 East Main Street	

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.



 Don A. Brown, Clerk
 Illinois Pollution Control Board