

ILLINOIS POLLUTION CONTROL BOARD
December 20, 1995

PEOPLE OF THE STATE)
OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 95-47
) (Enforcement - Land)
)
W.O.W. TRUCK LINES, INC.,)
)
Respondent.)

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

This matter is before the Board on a November 3, 1995 motion for summary judgment, with supporting affidavit, filed by complainant People of the State of Illinois (People) against W.O.W. Truck Lines, Inc. (W.O.W.). The People seek summary judgment on a complaint filed against W.O.W. on February 7, 1995. W.O.W. has not filed a response to the motion for summary judgment.

ALLEGED VIOLATIONS

The complaint in this matter alleges that W.O.W. violated Section 21(g) of the Environmental Protection Act (Act) and 35 Ill. Adm. Code 809.201 by accepting and transporting hazardous waste without a permit. Section 21(g) of the Act provides in relevant part:

No person shall:

- g. conduct any hazardous waste transportation operation:
 - 1. Without a permit issued by the Agency or in violation of any conditions imposed by such permit. . .
 - 2. In violation of any regulations or standards adopted by the Board under this Act.

(Section 21(g) of the Act.)

35 Ill. Adm. Code 809.201 provides in relevant part:

No person shall haul or otherwise transport any special waste generated within Illinois . . . without a current, valid waste hauling permit issued by the Agency in accordance with the requirements of this Subpart. . . .

(35 Ill. Adm. Code 809.201.)

MOTION FOR SUMMARY JUDGMENT

In support of the motion for summary judgment, the People assert that W.O.W. has failed to respond to the complaint, which was filed with the Board on February 7, 1995. Furthermore, the People assert that, on October 2, 1995, the People filed a request to admit facts in accordance with the requirements of 35 Ill. Adm. Code 103.162(a). W.O.W. has also failed to respond to this discovery motion. The People assert that, pursuant to 35 Ill. Adm. Code 103.162(c), the facts in the request are deemed admitted due to W.O.W.'s failure to respond to the request to admit.

The People assert that the following facts are deemed admitted due to W.O.W.'s failure to respond to the request to admit:

W.O.W. is an Oklahoma corporation not registered to do business in the State of Illinois. The Illinois Environmental Protection Agency (Agency) issued W.O.W. Special Waste Hauling Permit No. 2302 on September 11, 1990. That permit expired on September 30, 1991, and W.O.W. did not apply to renew the permit. Subsequently, W.O.W. transported D018 hazardous wastes, a special waste, from the Village of Sauget Wastewater Treatment Plant to a U.S. Pollution Control Company facility in Waynoka, Oklahoma on five occasions as follows: 1) on September 24, 1992, 24 cubic yards; 2) on March 31, 1993, two shipments, each consisting of 20-26 cubic yards; 3) on April 6, 1993, twenty-seven cubic yards; 4) on April 19, 1993, two shipments, each consisting of 24 cubic yards; 5) on April 21, 1993, two shipments, each consisting of 24 cubic yards; 6) on April 23, 1993, two shipments, each consisting of 24 cubic yards.

Based on the admission of these allegations due to W.O.W.'s failure to respond to the request to admit, and as attested to in the affidavit supporting the motion to for summary judgment, the People assert that they are entitled to summary judgment.

Summary judgment is appropriate where there are no genuine issues of material fact to be considered by the trier of fact and the movant is entitled to judgment as a matter of law. (Waste Management of Illinois, Inc. v. IEPA (July 21, 1994) PCB 94-153; ESG Watts v. IEPA (August 13, 1992), PCB 92-54; Sherex Chemical v. IEPA (July 30, 1992), PCB 91-202; Williams Adhesives, Inc. v. IEPA (August 22, 1991), PCB 91-112.)

35 Ill. Adm. Code 103.162(c) provides in relevant part:

Admission in the Absence of Denial. Each of the matters of fact . . . is admitted unless, within 20

days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reason why he cannot truthfully admit or deny those matters or written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part.

W.O.W has not filed a response or objection to the People's October 2, 1995 request to admit, or filed any other responsive pleading in this matter. We therefore find that the facts set forth in the request to admit are deemed admitted. Furthermore, we find that, based upon these admissions, no genuine issue of material fact remains in this matter, and that summary judgment is therefore appropriate.

We find that the uncontested facts are sufficient to demonstrate that W.O.W has violated Section 21(g) Act and 35 Ill. Adm. Code 809.201 by accepting and transporting hazardous waste without a permit. These facts demonstrate that W.O.W. has violated these provisions by transporting ten shipments of hazardous waste on six different dates without a valid permit from the Agency.

REMEDY

Having found that W.O.W. violated the Act and Board regulations, we must determine what constitutes a proper remedy. This determination is governed by Section 33(b) of the Act. Under Section 33(b) the Board has authority to issue final orders, including orders directing a party to cease and desist from violations, and orders imposing civil penalties in accordance with Section 42. Under Section 33(c), when issuing its orders and determinations, the Board is to consider:

all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved, including but not limited to the following:

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 . . . ;
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).)

In the complaint, the People seek an order finding W.O.W. in violation of the Act and Board regulations, directing W.O.W. to cease and desist from further violations, assessing a civil penalty of up to \$50,000 per violation and \$10,000 for each day the violations continued pursuant to Section 42 of the Act, and, pursuant to Section 42(f) of the Act, an award of attorneys fees and costs. Additionally, in the motion for summary judgment the People seek the imposition of a civil penalty of \$10,000, and, pursuant to Section 42(f) of the Act, an award of attorneys fees and costs.

Under the circumstances of this case, where W.O.W. has not responded to any of the allegations made against it, we find that an order imposing a penalty, and directing W.O.W. to cease and desist from further violations of the Act, is an appropriate remedy.

PENALTY

Section 42 of the Act gives the Board authority to impose civil penalties upon those found in violation of the Act or Board regulations, or permits or Board orders issued pursuant thereto. Section 42(a) of the Act provides:

Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, . . . shall be liable to a civil penalty of 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. . . .

Additionally, Section 42(b)(3) provides:

Any person that violates Section 21(f), (21(g), 21(h) or 21(i) of this Act, or any RCRA permit or term or condition thereof, or any filing requirement, regulation or order relating to the State RCRA program,

shall be liable to a civil penalty of not to exceed \$25,000 per day of violation.

In determining the appropriate penalty to be imposed for a violation, Section 42(h) of the Act authorizes the Board to consider factors in aggravation or mitigation thereof, including but not limited to:

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 . . . ;
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.

Section 42(f) of the Act also authorizes the Board to award costs and reasonable attorney's fees to the State's Attorney or Attorney General in a case where he has prevailed against a person who has committed a wilful, knowing or repeated violation of the Act. Any funds collected under this provision in which the Attorney General has prevailed must be deposited in the Hazardous Waste Fund created pursuant to Section 22.2 of the Act.

The uncontested facts demonstrate that W.O.W. made a total of ten shipments of hazardous waste on seven different dates in violation of Section 21(g) of the Act and 35 Ill. Adm. Code 809.201. In their motion for summary judgment, the People request a penalty of \$10,000. W.O.W. has not responded to the People's assertions concerning the appropriate determination of a penalty amount. We note that W.O.W. failed to respond at all in this action to explain its actions or present any defense.

Under these circumstances, where the People have demonstrated that W.O.W. has committed repeated violations of the Act, and where W.O.W. has failed to respond to the allegations against it, the Board finds that the \$10,000 penalty requested by the People is warranted. Additionally, we find that, pursuant to Section 42(f) of the Act, these repeated violations warrant the award of costs and reasonable attorney's fees to the People.

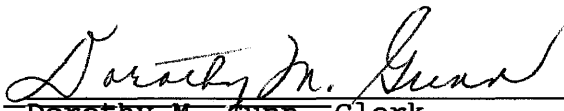
Based upon the preceding findings of fact and conclusions of law, the attached order finds W.O.W. in violation of Section 21(g) of the Act and 35 Ill. Adm. Code 809.201, and grants summary judgment for the People. It further directs the People to submit an affidavit attesting to the fees and costs expended on this action, and provides W.O.W. an opportunity to respond thereto. Upon receipt of the requested information and response, or expiration of the time allowed therefor, the Board will issue an order assessing the ten thousand dollar (\$10,000) penalty, making the appropriate award of costs, and ordering W.O.W. to cease and desist from further violations of the Act.

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

ORDER

- 1) The Board hereby grants summary judgment in favor of the People of the State of Illinois (People) and against respondent W.O.W. Truck Lines, Inc. (W.O.W.).
- 2) The People are hereby directed to file a statement of hearing costs and attorneys fees, supported by affidavit, with the Board and with service upon respondent, on or before January 4, 1996.
- 3) W.O.W. is hereby given leave to file a response to the filings ordered in paragraph 2 on or before January 18, 1996.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the 20th day of December, 1995, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board