

ILLINOIS POLLUTION CONTROL BOARD
October 16, 2003

PEOPLE OF THE STATE OF ILLINOIS)	
<i>ex rel.</i> GARY W. PACK, MCHENRY)	
COUNTY STATE'S ATTORNEY,)	
)	
Complainant,)	
)	
v.)	PCB 01-43
)	(RCRA Enforcement)
)	
MICHAEL STRINGINI,)	
)	
Respondent.)	

INTERIM OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

This matter is before the Board on a May 28, 2003 motion for summary judgment filed by the People of the State of Illinois, though Gary Pack, McHenry County State's Attorney (People). In the motion, the People allege there is no genuine issue of material fact, and ask the Board to find Michael Stringini (Stringini) in violation of the Environmental Protection Act (Act) and Board rules, award the People's attorney, expert witness and consultant fees, and assess a civil penalty not less than \$200,000. Stringini filed a response, including a counter motion for summary judgment, on July 31, 2003.

The case concerns a facility leased by Stringini from approximately 1980 to 1984 to allegedly reclaim metals from foundry sand. On August 30, 2000, the People filed an 11-count complaint alleging that Stringini violated specific provisions of the Act (415 ILCS 5/1 *et seq.* (2002)) and the Board's hazardous waste disposal rules. The complaint alleges that the violations occurred at the leased facility located on McCue Road, south of Illinois Highway 176 in Union, McHenry County.

For the reasons that follow, the Board grants the People's motion for summary judgment as to counts I, II, III, IV, VI, VIII, X and XI of the complaint. The Board grants Stringini's motion for summary judgment regarding count IX. The Board grants the People's motion for summary judgment as to count V in part, but finds that a genuine issue of fact exists as to the allegation that Stringini violated 35 Ill. Adm. Code 725.173 contained in count V. The Board finds that a genuine issue of material fact exists on count VII.

COMPLAINT

The People's 11-count complaint¹ against Stringini alleges he violated the following provisions of the Act and the Board's regulations:

¹ The complaint will be cited as "Comp. at ____."

- Count I: Section 21(f) of the Act and 35 Ill. Adm. Code 703.121 and 703.150 by storing and/or disposing of foundry sand containing lead and hazardous waste without a Resource Conservation and Recovery Act (RCRA) permit;
- Count II: 35 Ill. Adm. Code 725.271, 725.273(a) and 728.150(a) by failing to properly store hazardous waste;
- Count III: 35 Ill. Adm. Code 725.114 by failing to institute proper site entry controls;
- Count IV: 35 Ill. Adm. Code 725.115(a), (b) and 725.274 by failing to conduct property inspections and maintain proper inspection records;
- Count V: 35 Ill. Adm. Code 725.113(b), 725.173 and 725.175 by failing to keep and maintain proper records at the facility;
- Count VI: 35 Ill. Adm. Code 725.131 and 725.351 by failing to take hazardous waste release containment measures;
- Count VII: 35 Ill. Adm. Code 725.135, 725.137, 725.151(a) and 725.155 by failing to make proper emergency and contingency plan arrangements;
- Count VIII: 35 Ill. Adm. Code 725.190 and 725.194(a) by failing to properly implement a groundwater monitoring program;
- Count IX: Section 21(d) of the Act and 35 Ill. Adm. Code 807.201 and 807.202 by conducting a solid waste management site without a permit;
- Count X: Section 21(e) of the Act by disposing, treating, storing and abandoning waste without meeting the requirements of the Act; and
- Count XI: Section 21(a) of the Act by open dumping. Comp. at 3-32.

The People allege that Norman Zimmerman (Zimmerman) owned and operated the site, and that Stringini leased the site to reclaim metals from foundry sand. Comp. at 1-2. Sloan Valve Company (Sloan) generated some of the foundry sand stored at the site. Comp. at 2. The People allege Stringini abandoned the site in the mid-1980's, leaving 170 drums of foundry sand, 2,600 cubic yards of foundry sand in piles, and 120 cubic yards of sand in surface impoundments stored at the site. Comp. at 2.

The People believe that Sloan and Zimmerman performed a closure of site under 35 Ill. Adm. Code Part 725, Subpart G. Comp. at 2. On June 9, 1998, the Illinois Environmental Protection Agency (Agency) approved a certification of closure at the site submitted by Sloan. Comp. at 2. The approval was given after Sloan achieved the 35 Ill. Adm. Code Part 742 Tiered

Approach to Correction Action Objectives. Comp. at 2. Stringini did not file an answer to the complaint.

PRELIMINARY MATTERS

On July 17, 2003, Stringini filed a motion for extension of time to file a response to the motion for summary judgment. In the motion Stringini states he would like to have a hearing to respond to the charges put before the Board. On July 22, 2003, Stringini filed an additional motion for extension of time to respond to the motion for summary judgment. Board Hearing Officer Brad Halloran granted the motion for extension of time in a hearing officer order issued on July 23, 2003. Stringini filed his response on July 31, 2003.

STANDARD

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. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998); *see also* 35 Ill. Adm. Code 101.516(b). When ruling on a motion for summary judgment, the Board “must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party.” Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370.

Summary judgment “is a drastic means of disposing of litigation,” and therefore the Board should grant it only when the movant’s right to the relief “is clear and free from doubt.” Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370, citing Putrill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). “Even so, while the nonmoving party in a summary judgment motion is not required to prove [its] case, [it] must nonetheless present a factual basis, which would arguably entitle [it] to a judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

MOTION FOR SUMMARY JUDGMENT

The People argue that summary judgment is warranted because there is no genuine issue of fact, and that the allegations in the complaint are either admitted by Stringini or proven by undisputed documentation and affidavits. Mot. at 17-18. The People attached documents to the motion for summary judgment as follows:

Exhibit A	The People’s request to admit
Exhibit B	Stringini’s Response to the request to admit
Exhibit C	The People’s first set of interrogatories
Exhibit D	Stringini’s answer to the first set of interrogatories
Exhibit E	The People’s request for production
Exhibit F	Stringini’s response to the request for production
Exhibit G	The deposition transcript of Michael Settimio Stringini dated March 23, 2003

Exhibit H	A site evaluation of the Zimmerman property dated February 10, 1998
Exhibit I	A Remedial Investigation Report date July, 1996
Exhibit J	A Waste Volume Investigation Report and Revised Closure Plan dated January, 1997
Exhibit K	The affidavit of Tina Kovasznay
Exhibit L	The affidavit of Richard Zimmerman
Exhibit M	The affidavit of Michael Slattery

In general, the People contend it is clear that Stringini stored and/or disposed of foundry sand on the subject premises, that foundry sand was found to be hazardous pursuant to the Act, that storage and disposal of the foundry sand was not permitted, and that the foundry sand was addressed through closure activities performed at the site and completed in 1998. Mot. at 18.

The People argue that Stringini's assertions that he was locked out of the premises and that he was a "reclaimer" are matters of law and not fact, but that the law supports neither contention. Mot. at 18. The People claim that Stringini collected fees from the Sloan Valve Company to dispose of foundry sand that he knew to be a special waste, did not pay rent, and failed to pay for hauling charges. Mot. at 18. The People contend that Stringini was in violation of the Act and associated regulations well before he was told he was no longer welcome on the property. Mot. at 18-19. The People argue that Stringini's claim of being locked out is a red herring with no basis in fact or law. Mot. at 19.

The People maintain that Stringini is not exempt from the requirements of the Act by virtue of being a "reclaimer" and that neither the Act nor the regulations provide an exemption for "reclaimers." Mot. at 19. The People argue that in order to fall outside the regulatory framework under 35 Ill. Adm. Code 721.101(c)(8), Stringini would have to show that 75% by weight or volume of the foundry sand was recycled or transferred to a different site for recycling. *Id.* The People assert that Stringini admits that the metal extracted was about 2% by volume of the foundry sand, and that the foundry sand was, therefore, a solid waste. *Id.* The People assert that the foundry sand is also a solid waste because it was disposed of at the site and never removed by Stringini after operations ceased. *Id.*

The People argue that the factual allegations contained in the complaint have been admitted by Stringini or are undisputed by virtue of documentation and affidavits attached to the motion for summary judgment, and that the People should be granted summary judgment on counts I through XI of the complaint. Mot. at 20.

Stringini did not respond to each count individually, and his response will be summarized first. After summarizing Stringini's response, the Board will address each of the eleven counts in turn, with the parties' arguments, the applicable law, and the Board's analysis following each count.

Stringini's Response

As stated, Stringini responded to the motion for summary judgment in general terms not specific to individual counts of the complaint. Stringini objects to the motion on the grounds that the activity he was engaged in, metal and mineral recovery did not fall under RCRA jurisdiction. Resp. at 1. He states that he has been involved in the scrap metal business since 1969, but only recently became interested in sand. *Id.* He asserts that when the Zimmerman property was being remediated, he offered to recycle the material and all they had to do was ship it. *Id.*

Stringini asserts that he had contacts with firm who would recycle the sand into Portland cement using a manufacture process that involves high heating where the metal in the sand become metasilicates that do not oxidize and are not hazardous. Resp. at 1. He indicates that Portland cement manufacturers routinely buy high silica sand for their kilns. *Id.* Stringini asserts that the sand in question was not a hazardous waste under RCRA and the activity he engaged in was not regulated by RCRA as it was not waste related nor a landfill. *Id.* Stringini maintains that he was engaged in mineral recovery. *Id.*

In response to the People's allegation that Stringini abandoned the foundry sand on Zimmerman's property, Stringini replied that Zimmerman locked him out of the property, and said the material was not waste, but was metal concentrate from his "processes." Mot. at 6-7, Exh. A, 7 and 8. Stringini also responded that he would have sold the materials in the barrels for a profit, if he had not been locked out. Mot. at 7, Exh B,8. Stringini contends that he did not abandon the site, but was, himself, abandoned, misled and deceived. Resp. at 1. Stringini also moves the Board for summary judgment. *Id.*

Count I: Conducting a Hazardous Waste Storage and Disposal Operation Without a Permit

The People allege that Stringini violated Section 21(f) of the Act, and 35 Ill. Adm. Code 703.121 and 703.150 by storing and/or disposing of foundry sand containing lead and hazardous waste without a RCRA permit. Comp. at 9. The People argue that Stringini admits that he abandoned the foundry sand material on Zimmerman's property. Mot. at 6.

Applicable Law

Section 21(f) of the Act provides, in part, that no person may conduct any hazardous waste storage, hazardous waste-treatment or hazardous waste-disposal operation without a RCRA permit for the site issued by the Agency or in violation of any condition imposed by such a permit. 415 ILCS 5/21(f) (2002). In addition, no person may conduct any hazardous waste storage, treatment or disposal operations without a RCRA permit for the hazardous waste management (HWM) facility or in violation of any condition imposed by a RCRA permit. 35 Ill. Adm. Code 703.121. Owners and operators of HWM units must also have permits during the active life of the unit, as well as during any closure period. *Id.* Further, the owner or operator must submit the permit application to the Agency in a timely manner. *See* 35 Ill. Adm. Code 703.150.

Argument

In support of their claim that Stringini admits to abandoning the material on the property, the People cite to Exhibits A and B, asserting that Stringini admits that from 1980-1984, he orally agreed with Zimmerman to store and extract metal from foundry sand on Zimmerman's property. Mot. at 4, Exh. B, 4. The People also contend that Stringini admits arranging for foundry sand from Sloan to be hauled by Zimmerman to the Zimmerman property (Mot. at 4, Exh. B, 5) and that he presented no evidence to the engineering report that showed that samples taken at the site indicated the sand contained levels of lead that exceeded regulatory limits. Mot. at 4, Exh. K.

The People argue that Stringini did not remove any sand after ceasing activities at the property. Mot. at 7. To support the claim the People note that in the response to the request to admit, Stringini admitted he did not remove any sand from the property. Mot. at 7, Exh. B, 9. Additionally in his deposition, Stringini explained he did not remove the sand because he did not have enough sand to sell. Mot. at 7, Exh. G, 19-20.

The People also note that Stringini admits that he never had a RCRA permit for the Zimmerman property. Mot. at 5. Specifically, Stringini stated in his response to the request to admit, that he was a “reclaimer,” and RCRA did not apply to his operations. Mot. at 5, Exh. B, 11. Stringini also admits he never had a permit from Agency for Zimmerman property, and he never had a solid waste permit for the property. Mot. at 5, Exh.B, 15-16.

The People argue that Stringini’s claim that he was locked out of the property is not a defense to violating the Act. Mot. at 18. The People assert that Stringini failed to pay rent and failed to pay Zimmerman for hauling charges. Mot. at 18, Exh. G, 31. In his deposition testimony, Stringini admitted he was in arrears to Zimmerman for either hauling fees or rental payments beginning in 1981. Stringini was violating the Act even before he was told he was not welcome at the Zimmerman property in 1984. Mot. at 18-19.

Analysis

To grant summary judgment on count I, the Board must determine whether, the pleadings, depositions, admissions, affidavits, and other items in the record, show that there is no genuine issue of material fact and that the People are entitled to judgment as a matter of law. The People have provided evidence showing that Stringini began operating on Zimmerman’s property in 1980 and stopped in 1984. During that time, Stringini accepted foundry sand and never removed the sand from the property. Samples taken at the site indicated the sand contained levels of lead that exceeded regulatory limits. Also during that time, Stringini operated without a RCRA permit.

The Board finds that Stringini is subject to the requirements of RCRA. There is no dispute that Stringini accepted foundry sand at the site and never removed the sand from the property, nor is there any dispute that a portion of the sand contained levels of lead that classified the waste as hazardous. The foundry sand is most accurately described as a material being accumulated speculatively as referenced in 35 Ill. Adm. Code 721.102(c)(4). All such materials,

aside from commercial chemical products listed in Section 721.133, are considered solid wastes. Since exhibits H and I contain clear sample results that indicate the foundry sand is above the applicable limits for lead, the foundry sand is a hazardous waste that is subject to RCRA requirements. Although the record indicates that Stringini did process some foundry sand, he did not completely process the sand, and admits that none of the foundry sand was removed during the time (over three years) he engaged in the accumulation of foundry sand at the site. Stringini did not recycle or transfer to another site for recycling 75% of the material on the site. Thus, the material does not meet the exemption for material accumulated prior to being recycled found at 35 Ill. Adm. Code 721.102(e).

Stringini argues that he is a “reclaimer” and not subject to the RCRA regulations. Pursuant to 35 Ill. Adm. Code 721.102(c), a ‘reclaimed’ material is a solid waste (and subject to the requirements of RCRA) if it is noted with a “yes” in column 3 of the table in 35 Ill. Adm. Code 721.Appendix Z. *See* 35 Ill. Adm. Code 721.102(c)(3). Utilizing the table, foundry sand would be classified as a “spent item,” designated as a solid waste with the appropriate “yes.” *See* 35 Ill. Adm. Code 721.AppendixZ. Thus, even if considered a ‘reclaimed material’, the sand would be classified as a hazardous waste, and subject to the RCRA requirements.

Further, The Board finds that Stringini’s arguments in this context are misplaced.

All of the evidence provided by the People shows that there is no genuine issue of material fact that Stringini stored and/or disposed of foundry sand containing lead and hazardous waste without a RCRA permit. The Board finds Stringini in violation of Section 21(f) of the Act, and 35 Ill. Adm. Code 703.121 and 703.150.

Count II: Failure to Properly Store Hazardous Waste

The People allege that Stringini violated 35 Ill. Adm. Code 725.271, 625.273(a) and 728.150(a) by failing to maintain the drums of hazardous waste in good condition and by failing to keep the drums closed resulting in improper storage. Comp. at 11. According to the People, Stringini admits that hazardous waste was stored on the site. Ex. C., Ex. H., and Ex. I. The People contend that Stringini admits the drums in which the waste was stored were used scrap metal drums and did not contain lids. Ex. G. The People further argue that Stringini admits the drums were open during the time he operated on the property. Ex. G.

Applicable Laws

Board regulations require that if containers holding hazardous waste are not in good condition the owner shall transfer the waste to a container in good condition. 35 Ill. Adm. Code 725.271. The Board regulations also require that a container holding hazardous waste must always be closed during storage. 35 Ill. Adm. Code 725.273(a) and (b). Finally, regulations provide that storage of hazardous waste is prohibited unless a generator stores waste in tanks or containers solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery. 35 Ill. Adm. Code 728.150(a).

Analysis

In the analysis on count I, the Board found that there is no genuine issue of material fact that Stringini stored and/or disposed of foundry sand containing lead and hazardous waste. The People have provided evidence that the drums used to store the hazardous waste did not have lids and that the waste was stored in open drums. The containers used to store the waste were, therefore, not in good condition or of a type solely for the purpose of accumulation of hazardous waste. No genuine issue of material fact exists on these points. The Board finds Stringini in violation of 35 Ill. Adm. Code 725.271, 725.273(a) and (b), and 728.150(a).

Count III: Failure to Institute Proper Site Entry Controls

The People allege that Stringini has caused or allowed a violation of 35 Ill. Adm. Code 725.114 by failing to control entry to the site, by failing to post the proper sign and by failing to prevent the unknowing entry and minimize the possibility of unauthorized entry of persons or livestock onto the active portion of the facility. Comp. at 13-14. In its motion, the People contend that Stringini admitted the allegations of count III.

Applicable Laws

Board regulations require that the owner or operator must prevent the unknowing entry and minimize the possibility for the unauthorized entry onto the active portion of his facility unless physical contact with the waste, structures or equipment will not injure unauthorized person or if disturbance of the waste will not cause a violation of the regulations. 35 Ill. Adm. Code 725.114. Specifically, it is required that either a 24-hour surveillance system be in place to monitor and control entry into the active portion of the facility, or that access be controlled via an artificial or natural barrier that completely surrounds the active portion of the facility and that a means to control entry at all times be in place. 35 Ill. Adm. Code 725.114. Further, a sign with the legend “Danger-Unauthorized Personnel Keep Out” must be posted at each entrance to the active portion of the facility. 35 Ill. Adm. Code 725.114(c).

Analysis

In the attached deposition Stringini admitted that he didn’t arrange for fences, and that no fences existed around the farm. Mot. at 11, Ex. G. Stringini also admitted that no signs stating “danger” with regards to the waste were present. *Id.* In addition, Stringini admitted that he did not maintain site entry control on the Zimmerman Property as required in 35 Ill. Adm. Code 725.114. Ex. A. Stringini contends that because he was a reclaimer, the regulation didn’t apply to him.

The Board finds that Stringini failed to control the access to the site, and did not post a sign with the legend “Danger – Unauthorized Personnel Keep Out” at the entrance to the active portion of the facility. The evidence provided by the People shows that there is no genuine issue of material fact that Stringini failed to control entry to the site, by failing to post the proper sign and by failing to prevent the unknowing entry and minimize the possibility of unauthorized entry of persons or livestock onto the active portion of the facility. As noted previously, the Board

doesn't find merit in Stringini's "reclaimer" argument. The Board finds Stringini in violation of 35 Ill. Adm. Code 725.114.

**Count IV: Failure to Conduct Property Inspections
and Maintain Proper Inspection Records**

The People allege that Stringini failed to comply with general inspection requirements, to maintain an inspection log or summary, and to inspect the container storage area in violation of 35 Ill. Adm. Code 725.115 and 725.274. Comp. at 16.

Applicable Law

Section 725.115 of the Board's regulations provides that the owner or operator must inspect the facility for malfunctions and deterioration, operator errors and discharges that may lead to release of hazardous waste or a threat to human health. 35 Ill. Adm. Code 725.115(a). A written schedule must be developed and followed for inspecting all equipment important to preventing, detecting or responding to environmental or human health hazards. 35 Ill. Adm. Code 725.115(b)(1). This schedule must be kept at the facility and identify the types of problems that are to be looked for during the inspection. 35 Ill. Adm. Code 725.115.

The owner or operator must inspect areas where containers are stored at least weekly, looking for leaks and for deterioration caused by corrosion and other factors. 35 Ill. Adm. Code 725.274.

Analysis

In a response to the People's request to admit facts, Stringini admits that he did not keep records of inspections for the Zimmerman property as described in 35 Ill. Adm. Code 725.115. Ex. B. Stringini argues that as a reclaimer, the statute did not apply to his operations. *Id.*

As noted earlier, the Board has found that Stringini does not qualify as a reclaimer to avoid meeting the requirements of this regulation. The Board finds that Stringini failed to comply with general inspection requirements, to maintain an inspection log or summary, and to inspect the container storage area. The record shows that no genuine issue of material fact exists on these issues. Accordingly, the Board finds Stringini in violation of 35 Ill. Adm. Code 725.115(a) and (b) and 725.274.

**Count V: Failure to Keep and Maintain
Proper Records at the Facility**

The People allege that between January 12, 1988 and November 3, 1994, Stringini failed to have a waste analysis plan available at the site, failed to make waste analysis and dates of waste storage available in the operating record and failed to submit annual reports in violation of 35 Ill. Adm. Code 725.173 and 725.175. Comp. at 21. The People also allege that from January 12, 1988 to November 1, 1993, Stringini failed to develop and follow a written waste analysis plan in violation of 35 Ill. Adm. Code 725.113(b). *Id.*

Applicable Law

Section 725.173 provides, in part, that the owner or operator must keep a written operating record at the facility. 35 Ill. Adm. Code 725.173(a). The owner or operator must record the required information as it becomes available and maintain the information in the operating record until closure of the facility. 35 Ill. Adm. Code 725.173(b). An annual report must be prepared and submitted to the Agency by March 1 of each year. 35 Ill. Adm. Code 725.175. A written waste analysis plan must be developed and followed. 35 Ill. Adm. Code 113(b). The plan must be kept at the facility and describe the procedures to be followed to meet the requirements of Section 725.113(a). 35 Ill. Adm. Code 725.113(b).

Analysis

Stringini admits that he did not keep a written operating record and a waste analysis plan as describe in 35 Ill. Adm. Code 725.113 and 725.173 at the facility. Ex. B., Resp. #17. As before, Stringini claims his status as a reclaimer exempts him from this requirement. As noted earlier, the Board has found that Stringini does not qualify as a reclaimer.

The Board finds that no genuine issue of material fact exists that Stringini did not keep a written operating record or a written waste analysis plan at the facility. However, the People have not presented any evidence that an annual report was not prepared, and a genuine issue of material fact does exist on this issue. Accordingly, the Board finds Stringini in violation of 35 Ill. Adm. Code 725.113(b) and 725.173. The People's allegations concerning 35 Ill. Adm. Code 725.173 are still at issue and must be addressed at hearing.

Count VI: Failure to Take Hazardous Waste Release Containment Measures

The People allege that from January 12, 1988 until at least November 3, 1994, Stringini failed to contain releases of foundry sand in violation of 35 Ill. Adm. Code 725.131. Comp. at 22. The People further allege that Stringini failed to protect foundry sand from dispersal by the wind. *Id.*

Applicable Law

Section 725.131 of the Board's waste disposal regulations provide that facilities must be maintained and operated to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or its constituents to air, soil or surface water which could threaten human health or the environment. 35 Ill. Adm. Code 725.131. The owner or operator of a pile containing hazardous waste that could be dispersed by the wind must cover or otherwise manage the pile so that wind dispersal is controlled. 35 Ill. Adm. Code 725.351.

Analysis

Stringini admits that he did not cover the piles of foundry sand to control wind dispersal and undertake other activities as described in 35 Ill. Adm. Code 725.131 and 725.351. Ex. B., Resp. #18. Again, the Board is not convinced by Stringini's "reclaimer" argument and finds that no genuine issue of material fact exists regarding count VI. The Board finds that Stringini failed to contain releases of foundry sand and failed to protect the foundry sand from dispersal by the wind. Accordingly, Stringini violated 35 Ill. Adm. Code 725.131 and 725.351.

Count VII: Failure to Make Proper Emergency and Contingency Plan Arrangements

The People allege that from at least January 12, 1988, until at least November 3, 1994, Stringini failed to make proper emergency arrangements by failing to provide adequate aisle space, failed to inform local authorities of the presence of hazardous waste, failed to have a contingency plan, and failed to identify a person as emergency coordinator.

Applicable Law

The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment to any area of facility operation in an emergency. Comp. at 24. Further, the owner or operator must attempt to make appropriate arrangements with police and fire departments and other emergency response teams and local hospitals, as well as prepare a contingency plan for the facility that is designed to minimize hazards to human health or the environment from fires, explosions or any unplanned sudden or non-sudden release of hazardous waste or constituents. Comp. at 24-25. At all times, at least one employee must be on the premises or on call with the responsibility for coordinating all emergency response measures. Comp. at 25.

Analysis

The People contend that Stringini admits the allegations in count VII in Exhibit A, Response #24. Mot. at 15. However, in considering the response in question, the Board does not find that Stringini admitted to the request as asserted by the People. Request to admit #24 asks Stringini to admit that:

During and after the time that Stringini store materials or engaged in metal extracting on the Zimmerman property, Stringini did not maintain aisle space on the Zimmerman Property as described 35 Ill. Adm. Code 725.135, did not attempt to make arrangements regarding emergency responses as described in 35 Ill. Adm. Code 725.137, did not have a contingency plan as described in 35 Ill. Adm. Code 725.151, and did not have at least one employee on call for an emergency as described in 35 Ill. Adm. Code 725.155. Ex. A, Req. #24.

In response, Stringini asserts, "False, Repeat above, I had no authority to enter the site. I was advised by my lawyers Claussen Miller that I had to stay out." Ex. B, Resp. #24. Although

Stringini appears to provide an explanation as to why he didn't perform the actions outlined in the request, he never admits not performing them, and actually denies the request to admit. Accordingly, the Board finds that a genuine issue of material fact exists, and denies the motions for summary judgment on this count VII.

Count VIII: Failure to Properly Implement a Groundwater Monitoring Program

The People allege that Stringini failed to install, operate and maintain a groundwater monitoring system, and failed to report groundwater monitoring. Comp. at 27.

Applicable Law

The owner or operator of a surface impoundment, landfill or land treatment facility used to manage hazardous waste must implement a groundwater monitoring program capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility, as well as a ground water monitoring system. 35 Ill. Adm. Code 725.190. The groundwater-monitoring program must be carried out during the active life and the post-closure care period of the facility. 35 Ill. Adm. Code 725.190(b).

If the groundwater is not monitored to satisfy the requirements of Section 725.193(d)(4), the owner or operator must still keep records of analysis and surface elevations, and report certain monitoring information to the Agency. 35 Ill. Adm. Code 725.194(a).

Analysis

Stringini admits in a response to a request to admit that he did not keep records of groundwater analysis or report groundwater monitoring information to the Agency. Ex. B, resp. #24. However, Stringini relies on his status as a reclaimer, reasserts that all of his output was product and that the requirements did not apply to him. *Id.* Stringini also admits that he did not implement a groundwater monitoring program as described in 35 Ill. Adm. Code 725.190. Ex. B, Resp. #19.

Again, the Board is not convinced by Stringini's "reclaimer" argument and finds that no genuine issue of material fact exists regarding count VIII. The Board finds that Stringini failed to install, operate and maintain a groundwater monitoring system, and failed to report groundwater monitoring information to the Agency. The Board finds Stringini in violation of 35 Ill. Adm. Code 725.190 and 724.194(a).

Count IX: Conducting a Solid Waste Management Site Without a Permit

The People allege that from April 30, 1991 until November 3, 1994, Stringini caused or allowed the development and operation of a new solid waste management site without a permit. Comp. at 30. As before, Stringini contends he was a reclaimer and did not require a solid waste permit for his operations because all his output was product. Ex. B, Resp. #16.

Applicable Law

No person may conduct any waste storage, treatment or disposal without a permit granted by the Agency or in violation of any conditions imposed by the permit. 415 ILCS 21(d) (2002). No person may cause or allow the development or modification of a new solid waste management site without a development permit issued by the Agency. 35 Ill. Adm. Code 807.201. Further, no person may cause or allow the operation of a solid waste management site for which a developmental permit is required without first obtaining an operating permit from the Agency. 35 Ill. Adm. Code 807.202(a).

Analysis

Stringini admits that he did not have a solid waste management site permit for the Zimmerman property, but claims his status a reclaimer absolved him from obtaining a solid waste permit for his operations and that all of his output was product. Ex. B, Resp. #16.

Section 21(d) of the Act does not apply to hazardous waste. *See* 415 ILCS 5/21(d)(1) (2002). The Board has found that the foundry sand in question constitutes a hazardous waste. As such, Section 21(d) of the Act is not applicable. The Board finds that no genuine issue of material fact exists concerning this question, and that Stringini is entitled to summary judgment as a matter of law. Thus, the Board denies the People's motion for summary judgment, and grants Stringini's motion for summary judgment on this count. Accordingly, the Board finds that Stringini is not in violation of the Act and associated regulations as alleged in this count.

Count X: Storage and Abandonment of Waste

The People allege that from January 12, 1988 until November 3, 1994, Stringini disposed, treated, stored and abandoned waste without meeting the requirements of the Act and associated regulations. Comp. at 31.

Applicable Law

No person may dispose, treat store or abandon any waste, or transport any waste into this state for those purposes except at a site or facility that meets the requirements of the Act and of regulations and standards thereunder. 415 ILCS 5/21(e) (2002).

Analysis

The Board has found that Stringini's facility did not meet the requirements of the Act and associated regulations as alleged in counts I through VI and VIII of the complaint. The record is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law on this issue. Accordingly, the Board grants the People's motion for summary judgment on this count, and finds Stringini in violation of Section 21(e) of the Act. 415 ILCS 5/21(e) (2002).

Count XI: Open Dumping

The People allege that from at least January 12, 1988 until November 3, 1994, Stringini cause or allowed the open dumping of waste.

Applicable Law

Section 21(a) of the Act provides in part that no person shall cause or allow the open dumping of any waste. 415 ILCS 5/21(a) (2002). “Open dumping” is defined as the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill. 415 ILCS 5/3.24 (2002). “Sanitary landfill” is defined, in part, as a facility permitted by the Agency for the disposal of waste. 415 ILCS 5/3.41 (2002). “Refuse” is defined as waste, and “waste” is defined, in part, as any garbage or other discarded material. 415 ILCS 5/3.31 and 3.53 (2002).

Analysis

The Board has found that Stringini stored and/or disposed of foundry sand at the facility, without obtaining permits from the Agency. *See above*. All of the evidence provided by the People shows that there is no genuine issue of material fact that Stringini engaged in open dumping as defined in Section 21(a) of the Act. 415 ILCS 5/21(a) (2002). The Board finds Stringini in violation of Section 21(a) of the Act.

SUMMARY OF VIOLATIONS

After consideration of the record as noted above, the Board grants the People’s motion for summary judgment as to counts I, II, III, IV, V, VI, VIII, X and XI. The Board finds that a genuine issue of material fact exists regarding count VII, that Stringini is not in violation as alleged in count IX, and that a genuine issue of fact exists as to the allegation that Stringini violated 35 Ill. Adm. Code 725.173 as alleged in count V.

REMEDY

The only remedy sought by the People is the imposition of a civil penalty. The People noted that the potential maximum civil penalty is \$166,525,000 for count I, and \$66,660,000 for each other count. Mot. at 22. The People recommend the imposition of a penalty no less than one third of the estimated cost of closure - \$200,000. *Id.*

Statutory Background

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:

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- (ii) the social and economic value of the pollution source;
- (iii) 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;
- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- (v) any subsequent compliance.” 415 ILCS 5/33(c) (2002).

According to Section 42(h) of the Act, in determining the appropriate civil penalty, the Board considers any matters of record in mitigation or aggravation of penalty, including “the following factors:

- (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 requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
- (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.” 415 ILCS 5/42(h) (2002).

Discussion

In determining what remedy is appropriate, the Board considers all facts and circumstances of record that bear upon the reasonableness of Stringini’s violations of the Act. 415 ILCS 5/33(c) (2002).

Section 33(c)

Section 33(c) lists five factors the Board considers in making orders and determinations. First, the facts and circumstances of this case show that the violations in question interfered with the protection of the health, general welfare and physical property in an area around the site. The foundry sand contained lead making it a hazardous waste, and was not properly stored or

disposed. In addition, Stringini did not take proper precautions to limit access to the site or make the necessary reports to the Agency. *See* 415 ILCS 5/33(c)(i) (2002). Second, there is no evidence in the record showing that Stringini's operation, as conducted, had a social or economic value. *See* 415 ILCS 5/33(c)(ii) (2002). Third, the foundry sand was suitable to the area. The People did not provide any evidence indicating that the location was not suitable. *See* 415 ILCS 5/33(c)(iii) (2002). *See* 415 ILCS 5/33(c)(iv) (2002). Finally, Stringini has not complied with the Act subsequent to receiving notice of the violations. Instead, he has sat idly by while other parties bore the burden of remediating the site. *See* 415 ILCS 5/33(c)(v) (2002).

After considering the Section 33(c) factors, the Board finds that a civil penalty is proper in this instance. To determine the proper penalty, the Board considers factors listed in Section 42(h) of the Act.

Section 42(h)

In determining the appropriate civil penalty, the Board considers any matters of record in mitigation or aggravation of penalty. 415 ILCS 42(h) (2002). The Board's determination is aided by the five factors listed in Section 42(h) of the Act. In its motion, the People address each of the 42(h) factors. The People assert that the duration and gravity of the violations is obvious, and that while Stringini is arguably the most culpable of the three parties involved, he has had no consequence imposed on him since the enforcement action was commenced. Mot. at 22. The People note that the other two parties (Sloan and Zimmerman) took full responsibility for the closure of the site at a cost in excess of \$600,000.00. *Id.*

The People argue that Stringini has waived any financial hardship or poverty pleas and site to Stringini's deposition for support. Mot. at 22. The People assert that Stringini has shown no due diligence to seek permits, comply with the requirements while operating at the site or participate in the closure of the property. *Id.* The People contend Stringini received an economic benefit because he was paid by Sloan for the material he stored and disposed on the Zimmerman property, did not pay his rent on the property, did not incur any cost to operate in compliance with the Act, and did not incur any expense for closure. *Id.*

The People argue that the record makes clear that no amount of money would deter Stringini from engaging in similar activity in the future and it is unlikely that there are others similarly disposed to openly ignore the Act in the same manner. Mot. at 22. Finally, the People are not aware of any other enforcement actions against Stringini. *Id.*

Stringini does not address the 42(h) factors in his response.

The Board finds that it cannot adequately consider the 42(h) factors because the record is incomplete. For example, no evidence is before the Board concerning the fourth factor. The People argue that no amount of money would deter Stringini from engaging in similar activity in the future. The fact is that no information concerning Stringini's financial condition is before the Board. Although the People assert that Stringini has waived any financial hardship or poverty pleas, Stringini's deposition testimony is not so clear. In responding to whether or not he was abandoning his a plea of poverty, Stringini replied that "Yeah. It hasn't gotten me anywhere at

all,” and “Let’s do that. Because how do I prove I’m broke?” Ex. G at 5-6. The Board does not consider this a formal waiver. Instead, it appears as if Stringini is stating that he is insolvent, but doesn’t know how to prove his insolvency.

The fourth district appellate court stated in ESG Watts Inc. v. PCB, 282 Ill. App. 3d 43, 52, 668 N.E.2d 1015, 1021 (4th Dist. 1996), that “the deterrent effect of penalties on the violator and potential violators is a legitimate goal for the Board to consider when imposing penalties.” The Board does not have sufficient information to fairly consider the penalty amount that will deter Stringini and other similarly situation respondents, and cannot adequately weigh this factor. *See* 415 ILCS 5/42(h)(iv) (2002). In addition, the evidence before the Board on economic benefit is also incomplete.

Accordingly, the Board will order this matter to hearing so that the parties can adequately address the penalty phase of the proceeding.

CONCLUSION

The Board grants the People’s motion for summary judgment as to counts I, II, III, IV, V, VI, VIII, X and XI. The Board finds that Stringini is not in violation as alleged in count IX, and grants his motion for summary judgment on that count. A genuine issue of fact exists as to the allegation that Stringini violated 35 Ill. Adm. Code 725.173 as alleged in count V, and the allegations of count VII. The parties are directed to proceed to hearing to on the alleged violations contained in count VII, and of 35 Ill. Adm. Code 725.173 in count V.

The Board finds insufficient evidence exists in the record to make a reasoned determination on civil penalties and costs as requested in the People’s motion. The parties are directed to present the Board with sufficient evidence to adequately determine a civil penalty in this matter at hearing.

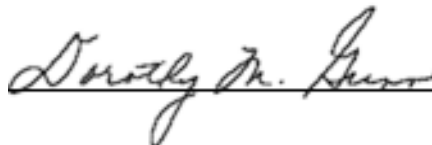
This interim opinion and order constitutes the Board’s findings of fact and conclusions of law.

ORDER

1. The Board finds that Michael Stringini (Stringini) has violated 415 ILCS 21(a),(e) and (f) (2002); and 35 Ill. Adm. Code 703.121, 703.150, 724.194(a), 725.113(b), 725.114, 725.115(a) and (b), 725.131, 725.173, 725.190, 725.271, 725.273(a) and (b), 725.274, 725.351, and 728.150(a);
2. Stringini must cease and desist from any further violations of the Act, and associated regulations.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on October 16, 2003, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board