

ILLINOIS POLLUTION CONTROL BOARD
May 3, 2012

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 12-123
) (Enforcement - Land)
ROXANA LANDFILL, INC., an Illinois)
corporation, MIDWEST SANITARY)
SERVICE, INC., an Illinois corporation, WRB)
REFINING LP, a Delaware limited)
partnership, and CONOCOPHILLIPS)
COMPANY, a Delaware corporation,)
)
Respondents.)

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

On April 23, 2012, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a 10-count complaint against Roxana Landfill, Inc. (Roxana), Midwest Sanitary Service, Inc. (Midwest), WRB Refining, LP (WRB), and ConocoPhillips Company (Conoco). The complaint concerns the transportation of alleged hazardous waste from the ConocoPhillips-Wood River Refinery (COP Refinery), which is located at 900 South Central Avenue in Roxana, Madison County, to the Roxana Landfill, which is located at 4601 Cahokia Road in Roxana, Madison County.

Accompanying the complaint were two separate stipulations and proposals for settlement, along with a single request for relief from the hearing requirement concerning both stipulations. In one stipulation, the People and Midwest seek to settle without a hearing. In the other stipulation, the People, WRB, and Conoco seek to settle without a hearing. Roxana is not a party to either stipulation. For the reasons below, the Board accepts the complaint for hearing as to Roxana and gives Roxana 60 days to file an answer to the complaint. The Board also directs the Clerk to provide public notice of the stipulations, proposed settlements, and request for hearing relief as to Midwest, WRB, and Conoco.

In this order, the Board summarizes the People's allegations before discussing acceptance of the complaint and Roxana's opportunity to file an answer. The Board then addresses notice of the stipulations, which is followed by a summary of the order.

ALLEGATIONS OF THE COMPLAINT

Respondents and Associated Counts

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), the Attorney General and the State's Attorneys may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2010); 35 Ill. Adm. Code 103. In this case, the complaint alleges that hazardous petroleum separation sludge was transported by Midwest from the COP Refinery to Roxana Landfill, a non-hazardous waste facility, after which the COP Refinery dispatched a hazardous waste contractor to recover the waste delivered to Roxana Landfill.

The People allege that Roxana operates the Roxana Landfill, a municipal waste and non-hazardous special waste landfill operating pursuant to Illinois Environmental Protection Agency operating permit number 1990-322-LF (Log. No. 2007-327), Modification No. 80 (Permit). According to the complaint, Roxana Landfill does not have a permit to accept hazardous waste. Counts I through V of the complaint concern Roxana. The People allege that Midwest is a transporter of non-hazardous, special, and hazardous waste. Counts VI and VII of the complaint concern Midwest. The People allege that the COP Refinery is owned by WRB and operated by Conoco. Counts VIII through X of the complaint concern WRB and Conoco.

Counts I - V Against Roxana

Count I of the complaint alleges that Roxana violated Condition II(2)(g) of the Permit and Section 21(d)(1) of the Act (415 ILCS 5/21(d)(1) (2010)) by accepting hazardous waste for disposal without the necessary permit. Count II alleges that Roxana violated Section 703.121(a) of the Board's waste disposal regulations (35 Ill. Adm. Code 703.121(a)) and Section 21(f) of the Act (415 ILCS 5/21(f) (2010)) by accepting hazardous waste for disposal without a Resource Conservation and Recovery Act (RCRA) permit for hazardous waste management and Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2010)) by conducting a waste-disposal operation in violation of Board regulations.

In count III of the complaint, the People allege that Roxana violated Section 809.302(a) of the Board's waste disposal regulations (35 Ill. Adm. Code 809.302(a)) by accepting hazardous special waste for disposal without the appropriate manifest and Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2010)) by conducting a waste-disposal operation in violation of Board regulations. Count IV alleges that Roxana violated Section 811.323(c) of the Board's waste disposal regulations (35 Ill. Adm. Code 811.323(c)) and Condition 11(9) of the Permit by not examining at least three random loads on a random day each week. Finally, in count V, the People allege that Roxana violated Section 21(o)(7) of the Act (415 ILCS 5/21(o)(7) (2010)) by conducting a sanitary landfill operation that resulted in accepting hazardous waste without having a permit to accept hazardous waste.

For each of these five counts, the People ask that the Board order Roxana to cease and desist from any further violations and pay a civil penalty of not more than the statutory maximum.

Counts VI and VII Against Midwest

In count VI of the complaint, the People allege that Midwest violated Section 809.302(b) of the Board's waste disposal regulations (35 Ill. Adm. Code 809.302(b)) and Section 21(e) of the Act (415 ILCS 5/21(e) (2010)) by delivering hazardous waste for disposal, treatment, or storage at Roxana Landfill and Section 21(g) of the Act (415 ILCS 5/21(g) (2010)) by conducting a hazardous waste-transportation operation in violation of Board regulations. Count VII alleges that Midwest violated Section 723.120(a) of the Board's waste disposal regulations (35 Ill. Adm. Code 723.120(a)) by accepting oil-water separator sludge from WRB without a manifest for such hazardous waste and Section 21(g) of the Act (415 ILCS 5/21(g) (2010)) by conducting a hazardous waste-transportation operation in violation of Board regulations.

For both of these counts, the complaint asks that the Board order Midwest to cease and desist from any further violations and pay a civil penalty of not more than the statutory maximum.

Counts VIII Through X Against WRB and Conoco

Count VIII of the complaint alleges that WRB and Conoco violated Section 21(e) of the Act (415 ILCS 5/21(e) (2010)) by disposing of hazardous oil-water separator sludge at Roxana Landfill. Count IX alleges that WRB and Conoco violated Section 728.138(a) of the Board's waste disposal regulations (35 Ill. Adm. Code 728.138(a)) by disposing of hazardous waste oil-water separator sludge on land at Roxana Landfill. Lastly, in count X, the People allege that WRB and Conoco violated Section 808.121(c) of the Board's waste disposal regulations (35 Ill. Adm. Code 808.121(c)) by causing, threatening, or allowing the disposal of special waste at Roxana Landfill.

For each of these three counts, the complaint asks that the Board order WRB and Conoco to cease and desist from any further violations and pay a civil penalty of not more than the statutory maximum.

ACCEPTANCE OF THE COMPLAINT

The Board finds that the complaint meets the content requirements of 35 Ill. Adm. Code 103.204(c). The Board accepts the complaint and does so for hearing as to Roxana, which is not a party to either stipulation filed simultaneously with the complaint. As to Roxana, however, the Board finds that the complaint lacks the requisite notice concerning a respondent's failure to timely file an answer to a complaint. *See* 35 Ill. Adm. Code 103.204(f).

A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if a respondent fails within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider the respondent to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d). In light of the failure of the complaint to contain this required notice, the Board provides Roxana until July 2, 2012, (*i.e.*, the 60th day after the

date of this order) to file an answer. The Board also directs that the People file proof that the complaint was served upon Roxana. *See* 35 Ill. Adm. Code 101.304(c), 103.204(a).

The Board directs the hearing officer to proceed expeditiously to hearing with the People and Roxana as to counts I through V of the complaint. Among the hearing officer's responsibilities is the "duty . . . to ensure development of a clear, complete, and concise record for timely transmission to the Board." 35 Ill. Adm. Code 101.610. A complete record in an enforcement case thoroughly addresses, among other things, the appropriate remedy, if any, for the alleged violations, including any civil penalty.

If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2010). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondent to do to correct an on-going violation, if any, and, second, whether to order the respondent to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondent has subsequently eliminated the violation.

If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondent, only then does the Board consider the Act's Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount, such as the duration and gravity of the violation, whether the respondent showed due diligence in attempting to comply, any economic benefit that the respondent accrued from delaying compliance, and the need to deter further violations by the respondent and others similarly situated.

With Public Act 93-575, effective January 1, 2004, the General Assembly changed the Act's civil penalty provisions, amending Section 42(h) and adding a new subsection (i) to Section 42. Section 42(h)(3) now states that any economic benefit to respondent from delayed compliance is to be determined by the "lowest cost alternative for achieving compliance." The amended Section 42(h) also requires the Board to ensure 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."

Under these amendments, the Board may also order a penalty lower than a respondent's economic benefit from delayed compliance if the respondent agrees to perform a "supplemental environmental project" (SEP). A SEP is defined in Section 42(h)(7) as an "environmentally beneficial project" that a respondent "agrees to undertake in settlement of an enforcement action . . . but which the respondent is not otherwise legally required to perform." SEPs are also added as a new Section 42(h) factor (Section 42(h)(7)), as is whether a respondent has "voluntary self-disclosed . . . the non-compliance to the [Illinois Environmental Protection] Agency" (Section 42(h)(6)). A new Section 42(i) lists nine criteria for establishing voluntary self-disclosure of

non-compliance. A respondent establishing these criteria is entitled to a “reduction in the portion of the penalty that is not based on the economic benefit of non-compliance.”

Accordingly, the Board further directs the hearing officer to advise the People and Roxana that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any (including whether to impose a civil penalty), and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any (including a specific total dollar amount and the portion of that amount attributable to the respondent’s economic benefit, if any, from delayed compliance), and supporting its position with facts and arguments that address any or all of the Section 42(h) factors. The Board also directs the hearing officer to advise the People and Roxana to address these issues in any stipulation and proposed settlement that may be filed with the Board.

NOTICE OF THE STIPULATIONS

On April 23, 2012, simultaneously with the People’s complaint, two separate stipulations and proposed settlements were filed, accompanied by a single request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2010)) as to both stipulations. This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2010)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a). Only the People and Midwest are parties to one of the stipulations. Only the People, WRB, and Conoco are parties to the other stipulation. Accordingly, Roxana is not a party to either stipulation.

Under the proposed stipulation between the People and Midwest, the violations alleged in counts VI and VII of the complaint are not affirmatively admitted to by Midwest, but Midwest does agree to pay a civil penalty of \$8,000. In addition, Midwest agrees to undertake a SEP consisting of providing the State of Illinois with specified hauling and disposal services having a settlement value of \$8,000.

Under the proposed stipulation between the People and both WRB and Conoco, the violations alleged in counts VIII through X of the complaint are not affirmatively admitted to by WRB or Conoco, but WRB and Conoco do agree to jointly pay a civil penalty of \$14,750.

Unless the Board determines that a hearing is needed, the Board must cause notice of these stipulations and proposed settlements, and the request for relief from the hearing requirement. Any person may file a written demand for hearing within 21 days after receiving the notice. If anyone timely files a written demand for hearing, the Board will, as appropriate, deny the parties’ request for relief and hold a hearing. *See* 415 ILCS 5/31(c)(2) (2010); 35 Ill. Adm. Code 103.300(b), (c). The Board directs the Clerk to provide the required notice.

SUMMARY OF THE ORDER

1. The Board accepts the complaint and does so for purposes of hearing as to Roxana. The hearing officer is directed to proceed expeditiously to hearing with the People and Roxana as to counts I through V of the complaint.
2. Roxana has until July 2, 2012, to file an answer to the complaint.
3. The People must file proof that the complaint was served upon Roxana.
4. The Clerk is directed to provide the required notice of the following:
 - a. The stipulation and proposal for settlement involving the People and Midwest, as well as the request for hearing relief; and
 - b. The stipulation and proposal for settlement involving the People, WRB, and Conoco, as well as the request for hearing relief.

IT IS SO ORDERED.

Chairman T.A. Holbrook abstained.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 3, 2012, by a vote of 4-0



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board