



the Act, Section 201.142 of the Board's air pollution regulations or Condition 1.4(a) of respondent's construction permit. *See* 415 ILCS 5/9(b) (2010); 35 Ill. Adm. Code 201.142.

The People ask the Board to issue an order requiring respondent to cease and desist from further violations of the Act, the Board's air pollution regulations, and respondent's construction permit; permanently cease operation of boiler #4 after expiration of the temporary construction permit or, in the alternative, obtain a construction permit for boiler #4 for the period after expiration of the temporary construction permit; timely obtain construction permits prior to construction of new emission sources at the West Campus Facility; pay the air pollution construction permit fee; comply with New Source Review (NSR) requirements; comply with the terms and conditions of its expired CAAPP permit until a renewal CAAPP permit is issued; timely apply for all required future renewal CAAPP permits; and assessing a civil penalty of \$50,000 for each violation with an additional penalty of \$10,000 for each day of violation. The People also request that the Board tax to respondent all costs including attorney, expert witness and consultant fees expended by the State in pursuit of this action.

The Board finds that the complaint meets the content requirements of the Board's procedural rules and accepts the complaint for hearing. *See* 35 Ill. Adm. Code 103.204(c), (f), 103.212(c). A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if respondent fails by that deadline 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 respondent to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d).

The Board directs the hearing officer to proceed expeditiously to hearing. 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. 415 ILCS 5/33(c) (2010).

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. 415 ILCS 5/42(h) (2010).

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." 415 ILCS 5/42(h)(3) (2010). 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 of unreasonable financial hardship." 415 ILCS 5/42(h) (2010).

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." 415 ILCS 5/42(h)(7) (2010). SEPs are also added as a new Section 42(h) factor, as is whether a respondent has "voluntary self-disclosed . . . the non-compliance to the [Illinois Environmental Protection] Agency." 415 ILCS 5/42(i) (2010). 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." *Id.*

Accordingly, the Board further directs the hearing officer to advise the parties 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 parties to address these issues in any stipulation and proposed settlement that may be filed with the Board.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 10, 2013 by a vote of 5-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board