ILLINOIS POLLUTION CONTROL BOARD
July 25, 2013

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 12-21
	)	(Enforcement - Land)
INTRA-PLANT MAINTENANCE CORPORATION, an Illinois corporation, IRONHUSTLER EXCAVATING, INC., an Illinois corporation, and RON BRIGHT, d/b/a QUARTER CONSTRUCTION,	)	
	)	
Respondents.	)	

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On July 26, 2011, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint (Comp.) against Altivity Packaging, LLC (Altivity), Intra-Plant Maintenance Corporation (Intra-Plant), Ironhustler Excavating, Inc. (Ironhustler) and Ron Bright (Bright) (collectively, respondents) alleging violations of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq*. (2010)) and Pollution Control Board (Board) waste regulations. The complaint alleges the disposal of excavated soil material by contractor Intra-Plant and subcontractor Ironhustler from Altivity's wastewater treatment plant located at 1525 South Second Street, Pekin, Tazewell County (Pekin Site). The soil material was allegedly accepted and disposed of by Bright at Clouse Quarry, a sand and gravel pit located at 10513 Levy Road, Hopedale, Tazewell County.

The People allege the following violations against respondents: (1) causing or allowing the open dumping of waste in violation of Section 21(a) of the Act (415 ILCS 5/21(a) (2010)); and (2) disposing of waste at a site that does not meet the requirements of the Act in violation of Section 21(e) of the Act (415 ILCS 5/21(e) (2010)).

On August 10, 2012, the People filed a motion for summary judgment (Mot.) against each respondent. None of the respondents filed a response to the motion for summary judgment. However, on April 10, 2013, the People and Altivity filed a stipulation and proposed settlement concerning count I of the complaint, the only count directed toward Altivity. On June 6, 2013, the Board accepted the proposed settlement between the People and Altivity.[1] Accordingly, the motion for summary judgment as to Altivity is moot, and is not discussed in this order. Alleged facts as to Altivity's actions are discussed only as needed to understand the allegations against the three remaining respondents.

[1]Under the stipulation, Altivity neither admitted nor denied the alleged violations and agreed to pay a civil penalty of $25,000. People v. Altivity Packaging, LLC, et al., PCB 12-21 (June 6, 2013). The caption in this order reflects the case's settlement as to Altivity.

This opinion and order grants the People's motion for summary judgment concerning waste disposal violations, and imposes the requested $10,000 penalty against each respondent. This opinion first recites the procedural history and facts as presented and then discusses the standard of review that applies to motions for summary judgment. Next, the Board summarizes the arguments of the parties and discusses those arguments and the Board's decision.

PROCEDURAL HISTORY

On August 4, 2011, the Board accepted the People's four-count complaint for hearing. Ironhustler and Bright jointly answered the complaint on October 26, 2011 (Ans.). Intra-Plant, likewise, answered the complaint on December 30, 2011.[2]

On August 10, 2012, the People filed a motion for summary judgment, with affidavits and admissions in support, against all four respondents. By hearing officer order, the initial deadline for respondents to file a response to the People's motion was January 31, 2013. Hearing Officer Order (Jan. 8, 2013). On January 29, 2013, the People agreed to extend the deadline for respondents' responses to February 28, 2013. Hearing Officer Order (Jan. 29, 2013). On February 26, 2013, upon the People's agreement, the hearing officer extended the deadline to March 28, 2013. Hearing Officer Order (March 11, 2013). On March 27, 2013, Ironhustler and Bright again filed a motion for extension of time. The Hearing Officer denied the motion for extension of time and the respondents were directed to file a response as soon as possible. Hearing Officer Order (March 28, 2013). During a telephone status conference on July 8, 2013, respondents expressed an interest in filing a response to the People's motion along with a motion for leave to file *instanter*. Hearing Officer Order (July 8, 2013). The Hearing Officer, however, did not grant leave to file a response to the People's motion. *Id*. To date, the Board has received no response to the People's motion from Intra-Plant, Ironhustler, or Bright.

COMPLAINT

The People's complaint alleges that construction of Altivity's wastewater treatment plant at the Pekin Site generated miscellaneous material consisting of silt, sand, and gravel with cinders and brick fragments that could not be used for the plant's foundation. Comp. at 2. The People allege that Altivity contracted with Intra-Plant to construct a wastewater treatment plant, and that Intra-Plant subcontracted the excavation and disposal of the material from the Pekin Site to Ironhustler. *Id*.

The complaint states that on January 24, 2008, the Illinois Environmental Protection Agency (Agency) inspected Clouse Quarry. *Id*. at 3. The Agency determined that on or before January 24, 2008, the material from the Pekin Site had been transported to and disposed of at Clouse Quarry, which is operated by Bright. *Id*. at 2. The Agency's August 24, 2010 re-inspection of Clouse Quarry revealed that "the source site miscellaneous material had been committed to grade but was still easily identifiable against the contrasting yellowish-orange materials native to [Clouse Quarry]." *Id*. at 5.

[2]The respondents were instructed to file their answers by October 27, 2011, but the deadline was later extended until November 17, 2011.

Count I of the complaint (now-settled) charged Altivity, the treatment plant owner, with violations of Sections 21(a) and 21(e) of the Act. *Id*. at 6. Counts II, III, and IV of the People's complaint are against Bright, Intra-Plant, and Ironhustler, respectively. Each count alleges violations of Sections 21(a) and 21(e) of the Act. Count II alleges Bright, the operator of Clouse Quarry, caused or allowed the open dumping of waste at Clouse Quarry by accepting material for disposal at Clouse Quarry. *Id*. at 7. Count III alleges that Intra-Plant, the treatment plant construction contractor, caused or allowed the open dumping of waste at Clouse Quarry by hiring Ironhustler to dispose of the material at Clouse Quarry. *Id*. at 8-9. Count IV alleges Ironhustler, as Intra-Plant's subcontractor, caused or allowed the open dumping of waste by transporting the material to Clouse Quarry. *Id*. at 10-11.

As to each of the three remaining respondents, the People's requested remedy is a finding of violation, removal and proper disposal of the material from Clouse Quarry, a cease and desist order, and imposition of a civil penalty.

FACTS

Altivity was a Delaware limited liability company that operated a wastewater treatment plant located at the Pekin Site.[3] Mot. at 3. Altivity contracted with Intra-Plant for the construction of the wastewater treatment plant at the Pekin Site. *Id*. Intra-Plant retained the services of Testing Service Corporation (TSC) to examine the soil conditions at the Pekin Site. *Id.* TSC concluded that the material was not suitable for the foundation of the water treatment plant and recommended that the material be excavated, removed from the construction site, and not be reused. *Id.* at 9. Thereafter, Intra-Plant subcontracted the excavation and disposal of the material generated by the construction at the Pekin Site to Ironhustler. Mot. Exhibit A. The Subcontract Agreement between Intra-Plant and Ironhustler stated that "[a]ll suitable material shall be hauled off site and disposed of legally" by Ironhustler. *Id*. Ironhustler transported the material from the Pekin Site to Clouse Quarry. *Id.* Bright, the operator of Clouse Quarry, accepted the material and allowed Ironhustler to haul it into the sand and gravel pit. *Id*.

On January 24, 2008, January 30, 2008, and August 25, 2010, an inspector from the Agency (Agency Inspector) visited Clouse Quarry. Mot. Attach. 1 at 1. On January 24, 2008, the Agency Inspector observed several trucks unloading material that "did not meet the definition of clean construction or demolition debris," into the sand and gravel pit. *Id* at 2. Bright explained to the Agency Inspector that those trucks were unloading material that had been excavated and removed by Ironhustler for a project at Altivity's Pekin facility. *Id*.

On January 30, 2008, the Agency Inspector returned to Clouse Quarry and collected three soil samples from the material he had previously observed during his initial visit on January 24, 2008. Mot. Attach. 1 at 3. The Agency Inspector noted that "fill operations have caused or allowed the deposition of contaminated soil at the disposal site." *Id* at 8.

---

[3] The Illinois Secretary of State lists Altivity Packaging, LLC as a Delaware company with "withdrawn" status. *See* 35 Ill. Adm. Code 101.630 ("Official notice may be taken of all facts of which judicial notice may be taken . . .")

On August 24, 2010, the Agency Inspector re-inspected Clouse Quarry to determine whether the material had been integrated into Clouse Quarry in such a manner that it could not be removed. Mot. Attach. 1 at 4. The re-inspection revealed that "the responsible parties have failed to comply with the suggested resolutions cited in the March 5, 2008 Violation Notices L-2008-01046, L-2008-01047, L-2008-01048, L-2008-01049, L-2008-01050, and L-2008-0105 as the 'miscellaneous fill material' was again observed." *Id* at 10. Furthermore, digital photographs taken during the August 24, 2010 inspection indicated that the stockpiles of material had been committed to grade, but "[did] not appear loose and not overly compacted which would allow the material to be excavated and properly disposed of at a permitted landfill." *Id.*

STATUTORY PROVISIONS

Section 3.305 of the Act provides as follows:

> "Open dumping" means 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 5/3.305 (2010).

Section 3.385 of the Act provides as follows:

> "Refuse" means waste. 415 ILCS 5/3.385 (2010).

Section 3.535 of the Act provides as follows:

> "Waste" means any garbage . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations . . . 415 ILCS 5/3.535 (2010).

Section 3.540 of the Act provides as follows:

> "Waste disposal site" is a site on which solid waste is disposed. 415 ILCS 5/3.540 (2010).

Section 3.445 of the Act provides, in pertinent part, as follows:

> "Sanitary landfill" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act . . .. 415 ILCS 5/3.445 (2010).

Section 21 of the Act provides, in pertinent part, as follows:

> No person shall:
>
> (a) Cause or allow the open dumping of any waste.
>
> * * *
>
> (e) Dispose, treat, store or abandon any waste, or transport any waste into the State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder. 415 ILCS 5/21(a) and (e) (2010).

THE PEOPLE'S MOTION FOR SUMMARY JUDGMENT

On August 10, 2012, the People filed a motion for summary judgment, accompanied by affidavits in support, against the respondents contending that all material facts alleged in the People's July 26, 2011 complaint have been deemed admitted by operation of law and there is no material fact in dispute. The People assert that the material deposited in Clouse Quarry was and is a "waste" as defined by Section 3.535 of the Act. 415 ILCS 5/3.535 (2010).

In support of its motion and the waste determination, the People filed the affidavit of an Agency inspector, Agency inspection reports, and laboratory test results of samples of the material collected by the Agency at the Clouse Quarry. Mot. at 2. As a part of the January 30, 2008 inspection, the Agency collected three samples of the material, described as "dark brown in color and consist[ing] of fine grained sand with medium to course grained brick and cinder fragments . . . also contain[ing] slag, brick and concrete." *Id*. at 5, Mot. Attach 2, Exhibit B. The People state that the Agency compared the laboratory results of the January 30, 2008 soil samples with the Tiered Approach to Corrective Action Objectives (TACO standards) set out in Part 742 of the Board regulations. Mot. at 6, *citing generally* 35 Ill. Adm. Code 742.

The motion summarizes the laboratory results, which included levels of cadmium, lead, selenium, and mercury exceeding the TACO standards. Mot. at 6, Mot. Attach 1 at 8-9, 22-24. In addition, the People stated that cadmium in the soil samples collected by the Agency exceeded the Class I groundwater standard set out in the TACO standards. Mot. at 7, Mot. Attach 1 at 8-9, 22-24.

The People argue that Bright had no other plans for the material from the Pekin Site other than it remaining permanently at Clouse Quarry. Mot. at 11. The People support this argument with a letter submitted to the Agency by Bright that refers to the material as being located in "the bottom of the pit." Mot. Attach 3, Exhibit A. The Bright letter goes on by stating, "this fill was to help raise the round level to slop[e] toward existing pond." *Id.* As a consequence, the People argue that the respondents "did not return the [material] to the stream of commerce but, rather it was permanently deposited at the sand and gravel pit." Mot. at 11.

DISCUSSION

Summary judgment is appropriate when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any 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). In 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." *Id*. Summary judgment "is a drastic means of disposing of litigation," and therefore it should be granted only when the movant's right to relief "is clear and free from doubt." Gleason, 181 Ill. 2d at 483, *citing* Purtill v. Hess, 111 Ill. 2d 299, 240, 489 N.E.2d 867, 871 (1986).

The Board's procedural rules provide that, "within 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board…in its disposition of the motion." 35 Ill. Adm Code 101.500(d); People v. Envt'l Health and Safety Svcs., Inc, PCB 05-51, slip. op. at 13 (July 23, 2009).

Having already twice extended the deadline to March 28, 2013, the Board hearing officer denied Ironhustler and Bright's request for a third extension and instructed respondents to file their responses to the People's motion for summary judgment "as soon as possible." Hearing Officer Order at 1 (March 28, 2013). None of the respondents filed a response to the People's motion for summary judgment.

Despite respondent's stated intention to file a response to the People's motion, the Board finds that by failing to timely respond, respondents waived any objection to the Board granting the motion for summary judgment. For the reasons explained below, the Board finds that no genuine issues of material fact remain and granting the People's motion for summary judgment is appropriate. Below, the Board examines the facts in the record as applied to the alleged violations.

Section 21(a)

Section 21(a) of the Act forbids any person from causing or allowing the open dumping of any waste. 415 ILCS 5/21(a) (2010). "Open dumping" is defined to include the consolidation of refuse or waste, at a facility which does not meet the requirements of the Act. 415 ILCS 5/3.305 (2010). Clouse Quarry does not meet the requirements of the Act because it does not have the requisite permit for waste disposal. Mot. at 8, *see, e.g.*, 415 ILCS 5/21(d)(1) (2010).

Under the Act, "'waste' means any garbage . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations . . ." 415 ILCS 5/3.535 (2010). The material disposed of at Clouse Quarry included "deposits of silt, sand and gravel along with notable amounts of cinders and brick." Mot. at 4, Mot. Attach 2, Exhibit B.

The record includes TSC's conclusion that the material was unfit for reuse, and thereafter Intra-Plant subcontracted Ironhustler to excavate and remove it from the Pekin Site. *Id*. Once excavated and removed, the material became "discarded material," thereby falling within the definition of "waste" under the Act. *See* 415 ILCS 5/3.535 (2010).

Illinois courts have found that "materials that may otherwise be discarded by the supplier may be diverted from becoming waste and returned to the economic mainstream." Alternative Fuels v. Director of IEPA, 294 Ill. 2d 219, 242 (2004)). However, other than Bright's conflicting statements that the material is "being beneficially re-used by Bright as road base," and "this fill was to help raise the ground level to slop toward existing pond," the record provides no indication that Bright contemplated returning the material to the economic mainstream. Ans. at 2, Mot. Attach 3, Exhibit A. It is undisputed that Bright, operator of Clouse Quarry, accepted the material by allowing Ironhustler to dispose of it at Clouse Quarry between January 7, 2008 and January 24, 2008. Bright controlled Clouse Quarry. On August 24, 2010, over two and a half years after the material's arrival at Clouse Quarry, the Agency observed that the "easily identifiable" material had been committed to grade. Mot. Attach. 1 at 4. *See* Perkinson v. PCB, 187 Ill. App. 3d 689, 695 (3rd Dist. 1989) (control over premises on which disposal took place is sufficient to find violation). Accordingly, the Board finds that Bright violated Section 21(a) of the Act. 415 ILCS 5/21(a) (2010).

It has been established that "knowledge or intent is not an element to be proved for a violation of the Act. This interpretation of the Act … is the established rule in Illinois." People v. Fiorini, 143 Ill. 2d 318, 336 (1991); *see also* Freeman Coal Mining Corp. v. PCB, 621 Ill. App. 3d 157, 163, 313 N.E.2d 616, 621 (5th Dist. 1974) (the Act is *malum prohibitum* and no proof of guilty knowledge or *mens rea* is necessary to find liability).

Furthermore, "[t]he analysis applied by courts in Illinois for determining whether an alleged polluter has violated the Act is whether the alleged polluter exercised sufficient control over the source of the pollution." People v. A.J. Davinroy Contractors, 249 Ill. App. 3d 788, 793 (1993) (*quoting* People v. Fiorini, 143 Ill. 2d at 346 (internal citations omitted). Additionally, "[t]he Act contains a broad definition of "person." The definition contains no qualifying language limiting its scope to entities having an ownership interest in, or control over, a disposal site. Neither ownership, nor control, of an allegedly illegal disposal site is necessary to effect the consolidation of refuse. Therefore, an off-site generator, such as Intra-Plant or Ironhustler, "may cause open dumping within the plain meaning of subsections 21(a)" of the Act. People *ex rel.* Ryan v. McFalls, 728 N.E.2d 1152, 1155 (3rd Dist. 2000) (internal citations omitted).

By contracting to construct a wastewater treatment plant for Altivity, Intra-Plant received control over those tasks incidental to completing the project, including the disposal of unusable, excavated fill material. Intra-Plant was required to properly dispose of the waste. Therefore, the Board finds Intra-Plant exercised sufficient control over the waste to support a finding that it caused or allowed the open dumping of waste.

Finally, in its answer to the People's complaint, Ironhustler admits that Intra-Plant subcontracted the excavation and disposal of the material to Ironhustler. Ans. at 3. It is also

clear that Ironhustler transported the material to, and discarded the material at, Clouse Quarry, thus causing or allowing the open dumping of waste. Mot. Attach. 1 at 2-5.

These facts are sufficient to prove that all three remaining respondents violated Section 21(a) of the Act (415 ILCS 5/21(a) (2010)). The Board finds that there are no genuine issues of material fact, and that the People are entitled to judgment as a matter of law. The Board therefore grants the People's motion for summary judgment and finds that Bright, Intra-Plant, and Ironhustler violated Section 21(a) of the Act.

Section 21(e)

Section 21(e) of the Act (415 ILCS 5/21(e) (2010)) prohibits waste disposal anywhere except at a site or facility meeting the requirements of the Act. As stated in the People's motion, the Clouse Quarry "has never been permitted by the [Agency] as a sanitary landfill and does not meet the requirements of the Act and of the regulations . . . promulgated thereunder." Mot. at 7. The Board finds that by accepting waste for disposal at Clouse Quarry, Bright operated an unpermitted waste disposal site in violation of Section 21(e) of the Act. 415 ILCS 5/21(e) (2010). By possessing sufficient control over materials that were disposed of at the unpermitted Clouse Quarry, Intra-Plant violated Section 21(e) of the Act. *Id*. Finally, by transporting the material and discarding it at the unpermitted Clouse Quarry, Ironhustler violated Section 21(e) of the Act. *Id*.

The Board finds that the facts are sufficient to prove that all three remaining respondents violated Section 21(e) of the Act. 415 ILCS 5/21(e) (2010). The Board finds that there are no genuine issues of material fact and that the People are entitled to judgment as a matter of law. The Board therefore grants the motion for summary judgment and finds that Bright, Intra-Plant, and Ironhustler violated Section 21(e) of the Act.

PENALTY

In determining the appropriate civil penalty, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act. People v. Gilmer, PCB 99-27, slip op. at 6 (Aug. 24, 2000), *citing* 415 ILCS 5/33(c) and 42(h) (2010). The Board must take into account factors listed in Section 33(c) of the Act in arriving at a remedy, including whether to impose a civil penalty. *See* Toyal America, Inc. v. PCB, 2012 Il. App. 3d 100585, ¶45 (Section 33(c) factors taken into account in determining whether or not to impose penalty); *see also* Matteson WHP Partnership v. Martin's of Matteson, PCB 97-121, slip op. at 14, 18 (June 22, 2000) (Section 33(c) factors taken into account for remedy, including requests to cease and desist and remediate). The Board is expressly authorized by statute to consider the factors in Section 42(h) of the Act in determining an appropriate civil penalty amount. Toyal America at ¶47. In addition, the Board must bear in mind that no formula exists for deciding upon a penalty amount, and all facts and circumstances must be reviewed. Gilmer, PCB 99-27, slip. op. at 8. The Board will discuss each of the Section 33(c) and 42(h) factors below for each of the three remaining respondents.

Section 33(c) of the Act provides as follows:

> 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 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 emissions, discharges, or deposits resulting from such pollution source; and
>
> (v) any subsequent compliance. 415 ILCS 5/33(c) (2010).

The People provided brief statements regarding each of the above factors, as follows:

1. Human health and the environment were threatened by Respondents' violations.
2. There is a social and economic benefit to the disposal of waste material at [a] site permitted by the Illinois EPA as [a] landfill and meeting the requirements of the Act and regulations.
3. The disposal site is not permitted by the Illinois EPA as a landfill, does not meet the requirements of the Act and of the regulations and is not suitable for the disposal of the miscellaneous material.
4. Disposal of the miscellaneous material at a permitted landfill meeting the requirements of the Act and regulations was and is both technically practicable and economically reasonable.
5. Respondents still have not complied with the Act and the Board Regulations. The violations were discovered by the Illinois EPA in January of 2008 and are ongoing. Mot at 13.

The Board finds that respondents' improper disposal of waste, which contains elevated levels of cadmium, lead, mercury, and selenium, at Clouse Quarry endangers the health, general welfare, and physical property of the people of Illinois. The Board finds that an open dump has little social and economic value and determines that this factor also weighs against respondents.

Clouse Quarry has been operating as an unpermitted landfill by failing to meet the requirements of the Act and regulations, therefore making it an inappropriate place for disposal activities. Finally, the record indicates "that [respondents] have failed to comply with the suggested resolutions cited in the March 5, 2008 Violation Notices," and Clouse Quarry is not in compliance. Mot. Attach. 1 at 10. The record shows that on August 24, 2010 the miscellaneous material was "still easily identifiable against the contrasting yellowish-orange materials native to the disposal site." Mot. Attach. 1 at 4. The Board finds that removal of the material is technically practicable. In addition, there is no indication in the record that removal and proper disposal of the waste is economically unreasonable. Taking these factors into account, the Board finds that the specific relief requested by the People is appropriate along with a civil penalty. Therefore, the Board proceeds to discuss the Section 42(h) factors in determining the appropriate civil penalty.

Section 42(h) of the Act provides as follows:

> In determining the appropriate penalty to be imposed…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 the 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. 415 ILCS 5/42(h) (2010).

Regarding the factors set forth in Section 42(h) of the Act, the People state:

1. Respondents still have not complied with the Act and the Board Regulations. The violations were discovered by the Illinois EPA in January of 2008 and are ongoing. The gravity of the violations is considered moderate in their potential for harm and moderate in their deviation from the statutory and regulatory requirements.
2. Respondents have not been diligent in attempting to come back into compliance with the Act and Board regulations.
3. There was an economic benefit to Respondents in disposing of the miscellaneous material at the disposal site instead of properly disposing of it at a permitted landfill.
4. Complainant has determined, based upon the specific facts of this matter that a penalty of [$10,000] as to each Respondent will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant's knowledge, Respondents have no previously adjudicated violations of the Act.
6. Respondents did not self-report the violations.
7. Respondents have not offered to perform a Supplemental Environmental Project. Mot. at 14-15.

The Board finds that the duration and gravity of the violations weighs against the respondents. While the Board recognizes that Bright, as the operator of Clouse Quarry, was and still is in the best position to remediate the improperly discarded waste, neither Intra-Plant nor Ironhustler have diligently attempted to come back into compliance with the Act. The Board finds that in failing to rectify the violations witnessed by the Agency at Clouse Quarry, respondents have not demonstrated diligence, and this Section 42(h) factor weighs against respondents. Moreover, none of the respondents self-disclosed the violations and this factor similarly aggravates the assessment of a penalty. The Board finds that Intra-Plant and Ironhustler benefitted economically by avoiding the costs associated with the proper disposal of waste. *Id*. at 14. Bright also benefitted economically by operating a landfill while avoiding the costs associated with obtaining the proper permits. *Id*.

The deterrence of further violations is recognized by the courts as a critical factor in assessing the appropriate penalty upon the respondents. As stated in Lloyd A. Fry Roofing Company v. PCB, 46 Ill. App. 3d 412, 361 N.E. 2d 23, 28-29 (5th Dist. 1977), "[t]he assessment of penalties against recalcitrant defendants who have not sought to comply with the Act voluntarily but who have by their activities forced the Agency or private citizens to bring action against them may cause other violators to act promptly and not wait for the prodding of the

Agency." The Board finds that a $10,000 penalty against each respondent will serve to deter future violations of the Act by respondents and other similarly-situated persons.

The People's motion does not indicate any prior adjudicated violations involving the respondents, and the People indicate that they are unaware of any previous violations. As a result, this factor mitigates against a substantial penalty. However, the fact that none of the respondents self-disclosed the violations bolsters the People's argument in favor of the $10,000 penalty. The respondents have not offered to perform a supplemental environmental project and consideration of a compliance commitment agreement is not a factor in this matter.

The Board has stated that the statutory maximum penalty "is a natural or logical benchmark from which to begin considering factors in aggravation and mitigation of the penalty amounts." Gilmer, PCB 99-27, slip. op. at 8, *citing* IEPA v. Allen Barry, PCB 88-71, slip op. at 72 (May 10, 1990). The basis for calculating the maximum penalty is contained in Sections 42(a) and (b) of the Act. 415 ILCS 5/42(a) and (b) (2010). Section 42(a) provides for a civil penalty not to exceed $50,000 for violating a provision of the Act and an additional civil penalty not to exceed $10,000 for each day during which the violation continues. 415 ILCS 5/42(a) (2010). Because the violations continue at the Clouse Quarry, the statutory maximum civil penalty against each respondent is $40,620,000.[4] The People have asked for a civil penalty of $10,000 from each respondent.

While the People's motion did not quantify respondent's economic benefit due to non-compliance, the Board finds that imposition of the $10,000 on each respondent, as requested by the People, is appropriate. *See* Mot. at 14. Therefore, based on the record, the Board assesses a civil penalty of $10,000 on each respondent, and orders payment within 30 days.

CONCLUSION

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 grants the People's unopposed motion for summary judgment against Bright, Intra-Plant, and Ironhustler and therefore finds that the respondents each violated Sections 21(a) and 21(e) of the Act. After consideration of the Section 33(c) and Section 42(h) factors, the Board enters a cease and desist order, requires removal and proper disposal of the fill material, and assesses a civil penalty of $10,000 against each respondent.

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

ORDER

1. The Board grants the People's motion for summary judgment. Accordingly, the Board finds that Ron Bright, Intra-Plant Maintenance Corp., and Ironhustler

[4]This maximum statutory penalty reflects the ongoing nature of the violations first observed by the Agency in January 2008.

Excavating, Inc. violated Sections 21(a) and 21(e) of the Environmental Protection Act (415 ILCS 5/21(a), (e) (2010)).

2. Ron Bright, Intra-Plant Maintenance Corp., and Ironhustler Excavating, Inc. must each pay a civil penalty of $10,000 no later than August 26, 2013, which is the first business day after 30 days from the date of this order. Such payment must be made by certified check or money order payable to the Environmental Protection Trust Fund. The case number, case name, and Ron Bright's social security number, and Intra-Plant's and Ironhustler's respective federal employer identification numbers must be included on the respective certified checks or money orders.

3. Each respondent must send the certified check or money order to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield IL 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).

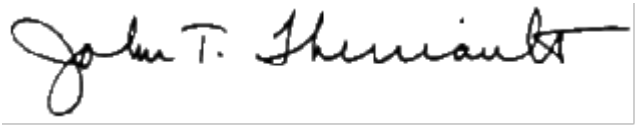
5. Respondents must remove the miscellaneous fill material from the disposal site and properly dispose of it in compliance with the Act.

6. Respondents must cease and desist from further violations of the Act.

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) (2008); *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.

I, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 25, 2013, by a vote of 4-0.



John Therriault, Clerk

Illinois Pollution Control Board