

ILLINOIS POLLUTION CONTROL BOARD
June 20, 2019

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 19-112
) (Enforcement - Land)
MARINO DEVELOPMENT LLC,)
an Arizona limited liability company, and)
A-W-BENNETT ENTERPRISES, INC.,)
an Oregon corporation,)
)
Respondents.)

ORDER OF THE BOARD (by B.K. Carter):

On June 7, 2019, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed an eight-count complaint against Marino Development LLC (Marino) and A-W-Bennett Enterprises, Inc. (Bennett). The complaint concerns Bennett's property located at 2816 North Main Street in Rockford, Winnebago County. For the reasons below, the Board accepts the complaint for hearing.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), 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 (2016); 35 Ill. Adm. Code 103. In this case, the People allege that Marino and Bennett:

Count I—Violated Section 21(a) of the Act (415 ILCS 5/21(a) (2016)) by causing or allowing the open dumping of mixed demolition debris and creosote-treated wood flooring constituting waste.

Count II—Violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2016)) by causing or allowing the open dumping of waste resulting in litter.

Count III—Violated Section 21(p)(7) of the Act (415 ILCS 5/21(p)(7) (2016)) by causing or allowing the open dumping of waste resulting in the deposition of general construction and demolition debris.

Count IV—Violated permit requirements in Section 812.101 of the Board's waste disposal regulations (35 Ill. Adm. Code 812.101) and Sections 21(d)(1) and (d)(2) of the Act (415 ILCS 5/21(d)(1), 21(d)(2) (2016)) by developing and operating a waste storage and disposal facility without a permit.

Count V—Violated Section 21(e) of the Act (415 ILCS 5/21(e) (2016)) by storing, disposing, and abandoning waste at a site not permitted for waste storage or disposal.

Count VI—Violated Section 808.121(a) of the Board’s waste disposal regulations (35 Ill. Adm. Code 808.121(a) and Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2016)) by failing to conduct a special waste determination for its creosote-treated flooring blocks waste generated at its property.

Count VII—Violated Section 722.111 of the Board’s waste disposal regulations (35 Ill. Adm. Code 722.111) and Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2016)) by failing to conduct a hazardous waste determination for its creosote-treated flooring blocks waste generated at its property.

Count VIII—Violated Section 12(d) of the Act (415 ILCS 5/12(d) (2016)) by dumping waste near storm sewers without barriers to prevent migration creating a water pollution hazard.

The People ask the Board order Marino and Bennett to: (1) cease and desist from any further violations of the Act; (2) complete removal of all waste from the facility and to provide proof to Illinois EPA that all waste has been disposed in accordance with the requirements of the Act and Board regulations; (3) erect barriers to prevent the migration of waste contaminants into the waters of the State of Illinois; (4) pay a civil penalty of \$50,000 for each violation and additional \$10,000 for each day during which each violation continued, (5) pay all costs and reasonable fees; and (6) any other such relief the Board deems appropriate..

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 Marino and Bennett fail 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 Marino and Bennett to have admitted the allegations. *See* 35 Ill. Adm. Code 103.204(d).

The Board directs the hearing officer to proceed expeditiously to hearing. Upon its own motion or the motion of any party, the Board or the hearing officer may order that the hearing be held by videoconference. In deciding whether to hold the hearing by videoconference, factors that the Board or the hearing officer will consider include cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties’ preferences, and the proceeding’s complexity and contentiousness. *See* 35 Ill. Adm. Code 101.600(b), 103.108.

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) (2016). 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. These factors include the following: the duration and gravity of the violation; whether the respondent showed due diligence in attempting to comply; any economic benefits that the respondent accrued from delaying compliance based upon the "lowest cost alternative for achieving compliance"; the need to deter further violations by the respondent and others similarly situated; and whether the respondent "voluntarily self-disclosed" the violation. 415 ILCS 5/42(h) (2016). Section 42(h) 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." *Id.* Such penalty, however, "may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent." *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 (3) 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, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 20, 2019, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board