

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
April 16, 2020

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 20-16
	)	(Enforcement – Land)
IRONHUSTLER EXCAVATING, INC., an	)	
Illinois corporation, and RIVER CITY	)	
CONSTRUCTION, LLC, an Illinois limited	)	
liability company,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by B.F. Currie):

On September 16, 2019, the Office of the Illinois Attorney General, on behalf of the People of the State of Illinois (People), filed a seven-count complaint against Ironhustler Excavating, Inc. (Ironhustler), River City Construction, LLC (River City), and Venovich Construction Co. (Venovich Construction). The complaint concerns the alleged improper disposal of demolition debris at a site located at the end of King Road and along the Mackinaw River in Hopedale Township, Tazewell County. On October 25, 2019, the Board accepted the complaint for hearing. On November 7, 2019, the Board issued an order accepting a stipulation and proposed settlement between the People and Venovich Construction. The People’s case continues against Ironhustler and River City, both of which filed a separate answer to the complaint. Below, the Board rules on the People’s pending motion to strike a portion of Ironhustler’s answer.

In its November 20, 2019, answer (Ans.) to the complaint, Ironhustler alleged what it described as an “affirmative defense,” consisting of 14 numbered paragraphs. Ans. at 14-16. On November 27, 2019, the People filed a motion to strike the entirety of Ironhustler’s alleged affirmative defense. In its response (Resp.) to the motion, filed with the hearing officer’s permission on January 10, 2020, Ironhustler states that it does not object to “the striking of the mitigating factors that were alleged as an affirmative defense” if “the striking of those mitigating factors shall not be deemed a waiver of, or a preclusion against, introducing at hearing evidence regarding mitigating factors.” Resp. at 1. The People did not seek permission to file a reply to Ironhustler’s response.

The Board construes Ironhustler’s response to the People’s motion to strike as a withdrawal of the 14 numbered paragraphs designated as an affirmative defense in its answer. The Board therefore denies as moot the People’s motion to strike those paragraphs. Nothing in today’s order precludes the parties from introducing evidence at hearing relevant to Section 33(c) or Section 42(h) of the Environmental Protection Act (415 ILCS 5/33(c), 42(h) (2018)). The

parties should make arguments about civil penalties in their post-hearing briefs. The Board directs the hearing officer to expeditiously set a schedule for discovery.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 16, 2020 by a vote of 4-0.

Don A. Brown

Don A. Brown, Clerk  
Illinois Pollution Control Board