

ILLINOIS POLLUTION CONTROL BOARD
November 5, 2008

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 08-92
) (Enforcement – Water)
ADVANTAGE NATIONAL BANCORP,)
INC., an Illinois corporation, and VACALA)
CONSTRUCTION, INC., an Illinois)
corporation,)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On May 28, 2008, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against Advantage National Bancorp, Inc. and Vacala Construction, Inc. (respondents). The complaint concerns respondents' construction activities at 165 West Lake Street in Bloomingdale, DuPage County. The parties now seek to settle without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), the Attorney General and the State's Attorneys may bring actions before the Board on behalf of the People to enforce Illinois' environmental requirements. *See* 415 ILCS 5/31 (2006); 35 Ill. Adm. Code 103. In this case, the People allege that respondents violated Sections 12(a), (d), and (f) of the Act (415 ILCS 12(a), (d), (f) (2006)) and Section 309.102(a) of the Board's water pollution regulations (35 Ill. Adm. Code 309.102(a)). The People allege that respondents violated these provisions by (1) causing or tending to cause water pollution by causing or allowing the discharge of contaminants from construction activities into Spring Creek; (2) depositing contaminants upon the land in such place and manner so as to create a water pollution hazard; and (3) violating the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) general permit.

On September 25, 2008, the parties filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2006)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2006)), 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). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in the *Geneva Republican* October 2, 2008. The Board did not receive any requests for hearing. The Board

grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2006); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. *See* 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of respondent's operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2006)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondents admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2006)), which may mitigate or aggravate the civil penalty amount. Each respondent agrees to pay a civil penalty of \$10,000, for a total civil penalty of \$20,000. The People and respondents have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

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

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. Each respondent must pay a civil penalty of \$10,000, for a total civil penalty of \$20,000, no later than December 5, 2008, which is the 30th day after the date of this order. Payment of the civil penalty must be by certified check or money order payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund. The case name, case number, and respondents' respective federal tax identification numbers must appear on the face of the respective certified checks or the money orders.
3. Payment of the civil penalty must be submitted to:

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

A copy of the certified checks or money orders and any transmittal letters must be sent to:

Vanessa Cordonnier
Assistant Attorney General
Illinois Attorney General's Office
69 W. Washington, Suite 1800
Chicago, Illinois 60602

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
5. Respondents must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject matter of the complaint.

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) (2006); *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, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 5, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board