ILLINOIS POLLUTION CONTROL BOARD July 21, 2005

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
-)	DCD 05 12
V.)	PCB 05-13 (Enforcement - Air)
PAUL DIFRANCO, SR. and MARK'S)	
CONSTRUCTION, INC.,)	
)	
Respondents.)	

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

On July 29, 2004, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against Paul DiFranco and Mark's Construction, Inc. (respondents) *See* 415 ILCS 5/31(c)(1) (2004); 35 Ill. Adm. Code 103.204. The People allege that respondents violated Section 9(a) and 9.1(d)(1), of the Environmental Protection Act (Act) (415 ILCS 5/9(a) and 9.1(d)(1) (2004)), 35 Ill. Adm. Code 201.141, and 40 C.F.R. §61.145(b)(1), §61.145(c)(1), §61.145(c)(6), §61.150(b). The People allege that respondents violated these provisions when renovating a facility at 911 West Busse Avenue, Park Ridge, Cook County.

On May 27, 2005, the People and respondents 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) (2004)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2004)). See 35 III. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in several newspapers published by Pioneer Press including the *Park Ridge Herald*. The notice was published on June 2, 2005. 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) (2004); 35 III. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. 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 respondents' 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) (2004)). The People and respondents have satisfied Section 103.302. Respondents neither admit nor deny the alleged violations and agree to pay a civil penalty of \$22,000. 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. Paul DiFranco and Mark's Construction, Inc. must pay a civil penalty of \$22,000, no later than August 22, 2005. Paul DiFranco and Mark's Construction must pay the civil penalty by certified check money order, or electronic transfer, payable to Illinois EPA designated for the Illinois Environmental Protection Trust Fund. The case number, case name, and respondents' social security number or federal employer identification number must be included on the certified check or money order.
- 3. Paul DiFranco and Mark's Construction 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, Illinois 62794-9276

4. A copy of each certified check, money order, or electronic funds transfer and any transmittal letter shall be sent to:

Stephen J. Sulvestor Assistant Attorney General Environmental Bureau 188 W. Randolph St., 20th Floor Chicago, Il. 60601

Chris Pressnall
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

- 5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
- 6. Paul DiFranco and Mark's Construction must cease and desist from the alleged violations.

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) (2004); 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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 21, 2005, by a vote of 5-0.

Dorothy M. Gunn, Clerk

Illinois Pollution Control Board