ILLINOIS POLLUTION CONTROL BOARD September 21, 2006

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
v.)	PCB 07-8 (Enforcement - Land)
THE CITY OF HARVEY,)	
Respondent.)	

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

On August 4, 2006, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against the City of Harvey (City). *See* 415 ILCS 5/31(c)(1) (2004); 35 Ill. Adm. Code 103.204. The complaint concerns an undeveloped parcel of land owned by the City situated within the right-of-way of Myrtle Street, south of 148th Street and north of the B & O Railroad property in Harvey, Cook County.

The People allege that the City violated Section 21(a) and (p) of the Environmental Protection Act (Act) (415 ILCS 5/21(a) and (p) (2004)). The People further allege that the City violated these provisions by causing or allowing open dumping at an unpermitted site and by causing or allowing open dumping resulting in litter. The People ask the Board to order the City to cease and desist from further violation and to pay a civil penalty in accordance with statute.

Along with the complaint, on August 4, 2006, the People and respondent also 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 Ill. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief from hearing. The Board published newspaper notice in the *Daily Southtown* on August 16, 2006; any timely hearing request was due to be filed September 6, 2006. 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 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. 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)), which bears on the reasonableness of the circumstances surrounding the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2004)), which may mitigate or aggravate the civil penalty amount.

Under the proposed stipulation, the respondent neither admits nor denies the alleged violations, but agrees to pay a total civil penalty of \$10,000. The People assert this penalty will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

The People and respondent have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement. This docket is now closed.

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. The respondent, the City of Harvey, must pay a civil penalty of \$10,000. Payment must be made no later than October 23, 2006, which is the first business day after the 30th day after the date of this order. Respondent's attorney of record must pay the civil penalty by certified check, money order, or electronic funds transfer, payable to the Illinois Environmental Protection Agency, designated to the Environmental Protection Trust Fund. The case number, case name, and respondent's federal employer identification number must be included on the certified check, money order, or electronic funds transfer statement.
- 3. Respondent, through its attorney of record, must send the certified check, money order, or electronic funds transfer to the indicated address:

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

4. Respondent, through its attorney of record, must send a copy of the certified check, money order, or electronic funds transfer and any transmittal letter to the following persons at the indicated addresses:

Vanessa Vail Assistant Attorney General Environmental Bureau 188 W. Randolph St., 20th Floor Chicago, Illinois 60601

Mark Gurnick 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. Respondent 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 September 21, 2006, by a vote of 4-0.

Druty M. Sunn

Dorothy M. Gunn, Clerk

Illinois Pollution Control Board