ILLINOIS POLLUTION CONTROL BOARD October 4, 2007

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
V.)	PCB 08-15
FOUR S, LLC,)	(Enforcement - Water)
Respondent.)	

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

On August 20, 2007, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against Four S, LLC (respondent) concerning respondent's 13-acre tract of land referred to as "Madison County Commons" and located along Highway 159 and Glenwood Drive in Madison 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 respondent violated Section 309.102(a) of the Board's water pollution regulations (35 Ill. Adm. Code 309.102(a)) and Section 12(f) of the Act (415 ILCS 5/12(f) (2006)) by causing or allowing or threatening the discharge of contaminants into waters of the State in violation of its National Pollutant Discharge Elimination System (NPDES) permit and failing to maintain adequate erosion controls at its site to prevent silt-laden storm water discharges as required by its NPDES permit. The People also allege that respondent caused or allowed the discharge of silt from the site into waters of the State so as to cause or tend to cause water pollution by creating a nuisance. By so causing and threatening to cause water pollution, the People maintain, and by violating Section 302.203 of the Board's water quality standards (35 Ill. Adm. Code 302.203), respondent violated Section 12(a) of the Act (415 ILCS 5/12(a) (2006)).

On August 20, 2007, the People and respondent filed with the complaint 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 *Edwardsville Intelligencer* on August 27, 2007. 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. Respondent does not affirmatively 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. Respondent agrees to pay a civil penalty of \$2,500. Respondent also agrees to make three donations totaling \$2,565 to the Madison County Soil and Water Conservation District for specified Supplemental Environmental Projects. The People and respondent 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. Respondent must pay a civil penalty of \$2,500 no later than November 5, 2007, which is the first business day following the 30th day after the date of this order. Respondent must pay the civil penalty by certified check to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Trust Fund. The case name and number must appear on the certified check.
- 3. Respondent must submit payment of the civil penalty to:

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

Respondent must send a copy of the certified check to:

Peggy Poitevint Office of the Attorney General Environmental Bureau 500 South Second Street Springfield, IL 62706

- 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. Respondent must cease and desist from future violations of the 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 October 4, 2007 by a vote of 4-0.

John Therriault, Assistant Clerk Illinois Pollution Control Board

John T. Therrian