## ILLINOIS POLLUTION CONTROL BOARD August 7, 2008

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	)	
v.	)	PCB 07-32 (Enforcement - Water)
SOUTHWIND CONSTRUCTION CORP., an Indiana corporation,	)	(Emorcement - water)
Respondent.	)	

## OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On November 1, 2006, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against Lake Arlann Drainage District (District), Cochran & Wilken, Inc. (CWI), and Southwind Construction Corp. (Southwind) (collectively respondents). The complaint concerns alleged violations resulting from a dredging operation to remove approximately 330,000 cubic yards of accumulated sedimentation and siltation from Lake Arlann in Pekin, Tazewell County. In a separate stipulation, Southwind now seeks to settle with the People without a hearing. Neither the District nor CWI is a party to this stipulation. 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 to enforce Illinois' environmental requirements on behalf of the People. See 415 ILCS 5/31 (2006); 35 Ill. Adm. Code 103. In this case, the People allege that respondents violated Sections 12(a), (f), and 21(a) of the Act (415 ILCS 5/12(a), (f), 21(a) (2006)) and Sections 302.203, 304.124(a), 305.102(b), 309.102(a), and 309.146(a) of the Board's water pollution regulations (35 Ill. Adm. Code 302.203, 304.124(a), 305.102(b), 309.102(a), 309.146(a)). The People further allege that respondents violated these provisions by (1) causing, allowing, or threatening the discharge of suspended solids, silt, sediment, and other contaminants to waters of the State so as to cause or tend to cause water pollution; (2) causing or allowing discharges of total suspended solids in excess of permitted and generally applicable effluent limits; (3) failing to monitor effluent and timely submit effluent sampling reports as required by the District's National Pollutant

settlements, one with the District and one with CWI, each accompanied by a request for relief

from the hearing requirement. Southwind was not a party to either of those stipulations.

<sup>&</sup>lt;sup>1</sup> The caption of this order does not include the District or CWI. In a separate order issued on July 10, 2008, the Board granted motions for hearing relief and accepted the respective stipulations and proposed settlements involving the District and CWI. See People v. Lake Arlann Drainage District, Cochran & Wilken, Inc., and Southwind Construction Corp., PCB 07-32 (July 10, 2008). On May 16, 2008, the People had filed the two stipulations and proposed

Discharge Elimination System (NPDES) permit; and (4) failing to maintain a storm water pollution prevention plan, implement the required storm water erosion controls and interim stabilization controls, and conduct the necessary inspections of storm water controls.

On June 25, 2008, the People and Southwind 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 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 the *Pekin Daily Times* on July 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 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. *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 a 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. 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. Southwind does not affirmatively admit the alleged violations, but agrees to pay a sum of \$2,500. The People and Southwind 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. Southwind must pay a sum of \$2,500 no later than September 8, 2008, which is the first business day following the 30th day after the date of this order. Southwind must pay the sum 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 Southwind's federal tax identification number must appear on the face of the certified check or money order.
- 3. Southwind must submit payment of the \$2,500 sum to:

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

Southwind must send a copy of the certified check or money order and any transmittal letter to:

Michael D. Mankowski Assistant Attorney General Environmental Bureau 500 South Second Street Springfield, Illinois 62702

## 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 August 7, 2008, by a vote of 4-0.

John Therriault, Assistant Clerk

In T. Therrian

Illinois Pollution Control Board