ILLINOIS POLLUTION CONTROL BOARD November 5, 2008

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 09-8
)	(Enforcement – Water)
LENZINI EXCAVATING COMPANY, an)	
Illinois corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

On July 28, 2008, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against Red Seal Development Corporation (Red Seal) and Lenzini Excavating Company (Lenzini) (collectively, respondents). The complaint concerns respondents' construction activities on an approximately 14.24-acre parcel of land known as "Deer Park Estates," located at the intersection of Long Grove Road and Quentin Road in Deer Park, Lake County. In a separate stipulation, the People and Lenzini now seek to settle without a hearing. Red Seal is not 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 Lenzini violated Sections 12(a) and (d) of the Act (415 ILCS 5/12(a), (d) (2006)) and Section 302.203 of the Board's water pollution regulations (35 Ill. Adm. Code 302.203). The People further allege that Lenzini violated these provisions by (1) causing, threatening, or allowing the discharge of contaminants so as to cause or tend to cause water pollution in surrounding wetlands and an unnamed tributary of Buffalo Creek; (2) causing, threatening, or allowing the discharge of contaminants that caused unnatural color and turbidity in surrounding wetlands and an unnamed tributary of Buffalo Creek; and (3) creating a water pollution hazard by depositing contaminants in such place and manner that they were

¹ Counts I through III of the complaint were alleged against both respondents while counts IV and V were alleged against only Red Seal.

² The caption of this order does not include Red Seal. In a separate order issued on September 30, 2008, the Board granted a motion for hearing relief and accepted the stipulation and proposed settlement involving Red Seal. *See* People v. Red Seal Development Corp. and Lenzini Excavating Co., PCB 09-8 (Sept. 30, 2008). On August 7, 2008, the People and Red Seal filed a stipulation, proposed settlement, and request for relief from the hearing requirement. Lenzini was not a party to that stipulation.

likely to be carried by stormwater runoff into surrounding wetlands and an unnamed tributary of Buffalo Creek.

On September 18, 2008, the People and Lenzini 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 *Lake Zurich Courier/Poineer Press Northwest Zone* on 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 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. Lenzini neither admits nor denies the alleged violations, but agrees to pay a civil penalty of \$10,000. The People and Lenzini 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. Lenzini must pay a civil penalty of \$10,000 no later than December 5, 2008, which is the 30th day after the date of this order. Lenzini must pay the civil penalty 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 Lenzini's federal tax identification number must appear on the face of the certified check or money order.
- 3. Lenzini 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, Illinois 62794-9276

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

Richard A. Perry Assistant Attorney general Environmental Bureau 69 W. Washington St., 18th Floor 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. Lenzini 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

John T. Therranks