

ILLINOIS POLLUTION CONTROL BOARD
September 17, 2009

PEOPLE OF THE STATE OF ILLINOIS,)
LISA MADIGAN,)
)
Complainant,)
)
v.) PCB 08-83
) (Enforcement - Water)
RUPE CONTRACTING, INC.,)
an Illinois corporation, and JOHN A. RUPE,)
individually and as owner and operator of)
Rupe Contracting, Inc.,)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by S.D. Lin):

On May 1, 2008, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against Rupe Contracting, Inc. and John A. Rupe (respondents). The complaint concerns respondents' breach of a sanitary sewer line during grading and filling of a low spot on property located in Spring Valley, Bureau 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 (2008)),¹ 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 (2008); 35 Ill. Adm. Code 103. In this case, the People allege that respondents violated Sections 12(a) and (d) of the Act (415 ILCS 5/12(a), (d) (2008)) and Section 306.304 of the Board's water pollution regulations (35 Ill. Adm. Code 306.304) by (1) causing or allowing the deposition of contaminants on the land so as to create a water pollution hazard and (2) causing a sanitary sewage overflow.

On June 30, 2009, 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) (2008)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2008)), 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 *Bureau County Republican* on August 11, 2009. The Board did not receive any requests for hearing.

¹ All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2008); 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 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) (2008)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondents do not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2008)), which may mitigate or aggravate the civil penalty amount. Respondents agree to pay a civil penalty of \$2,835. The People and respondents 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. Respondents must pay a civil penalty of \$2,835 no later than October 19, 2009, which is the first business day following the 30th day after the date of this order. Respondents must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name and case number must appear on the face of the certified check or money order.
3. Respondents 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

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

Andrew Armstrong
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 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) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).
5. Respondents 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) (2008); *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 September 17, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board