ILLINOIS POLLUTION CONTROL BOARD October 1, 2009

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
v.)	PCB 09-110 (Enforcement - Land)
E.F. HEIL, LLC, an Illinois limited liability corporation,)	(Emoreement - Land)
Respondent.))	

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

On May 20, 2009, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against E.F. Heil, LLC (Heil). The complaint concerns Heil's 93-acre clean construction and demolition debris (CCDD) facility at CR 098SE, in Kankakee, Kankakee 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 Heil violated Sections 21(d)(1), 21(e), 21.51(a), and 21.51(c) of the Act (415 ILCS 5/21(d)(1), 21(e), 22.51(a), 22.51(c) (2008)), Sections 722.111 and 808.121(a) of the Board's waste disposal regulations (35 Ill. Adm. Code 722.111, 808.121(a)), and Sections 1100.201(a) and 1100.205(a)(1), (b)(1), (c)(2), (c)(3), (f), and (g) of the Board's CCDD regulations (35 Ill. Adm. Code 1100.201(a), 1100.205(a)(1), (b)(1), (c)(2), (c)(3), (f), (g)). According to the complaint, Heil violated these provisions by (1) disposing of waste at the site without a permit; (2) failing to determine if waste accepted at the site was special waste or hazardous waste; (3) accepting for disposal non-clean construction or demolition debris waste at the site and failing to ensure that personnel were properly trained to identify material that was not CCDD; (4) failing to use a photo ionization detector or other equivalent device to check all incoming loads at the site; and (5) failing to conduct daily discharge inspections.

On August 27, 2009, the People and Heil 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,

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.

proposed settlement, and request for relief. The newspaper notice was published in the *Kankakee Daily Journal* on August 29, 2009. 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) (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 Heil'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) (2008)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Heil denies 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. Heil agrees to pay a civil penalty of \$20,000. The People and Heil 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. Heil must pay a civil penalty of \$20,000 no later than November 2, 2009, which is the first business day following the 30th day after the date of this order. Heil 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, case number, and Heil's federal tax identification number must appear on the face of the certified check or money order.
- 3. Heil must submit payment of the civil penalty to:

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

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

Stephen J. Sylvester Environmental Bureau Illinois Attorney General's Office 69 W. Washington Street, Suite 1800

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. Heil must cease and desist from future violations of the Act and Board regulations that were the subject 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 October 1, 2009, by a vote of 5-0.

John Therriault, Assistant Clerk Illinois Pollution Control Board

John T. Therrian