## ILLINOIS POLLUTION CONTROL BOARD February 4, 2010

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	)	
V.	)	PCB No. 09-31 (Water-Enforcement)
JAMES BUYSEE,	)	(Water Emoreement)
d/b/a J & B LANDSCAPING,	)	
	)	
Respondent.		

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

On November 12, 2008, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against James Buysee d/b/a J&B Landscaping (James Buysee). The complaint concerns James Buysee's business as a landscape contractor located at Route 6 and Niabi Road approximately two miles north of Coal Valley, Rock Island County Illinois ("site"). 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)), <sup>1</sup> 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 James Buysee violated Sections 12(a), 12(d), 21(a), 21(e), 21(p)(4) of the Act (415 ILCS 5/12(a), 12(d), 21(a), 21(e), 21(p)(4) (2008)) and Section 302.203 of the Board's Water Pollution Regulations (35 Ill. Adm. Code 302.203).

According to the complaint, James Buysee violated these provisions by (1) causing or allowing the discharge of a hydroseed mixture; (2) by dumping the hydroseed mixture on the bank of Shaffer Creek; (3) by causing or allowing dumping of leftover hydroseed mixture at the site; (4) by disposing of leftover hydroseed mixture at the site; (5) by spilling the hydroseed mixture onto the bank and into Shaffer Creek; and (6) by discharging the bright green colored hydroseed on to land and into the waters of the state.

On November 12, 2009, the People and James Buysee 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,

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<sup>&</sup>lt;sup>1</sup> 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 *Moline Dispatch* on December 26, 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 III. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of James Buysee'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. James Buysee admits 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. James Buysee agrees to pay a civil penalty of \$14,300. The People and James Buysee 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. James Buysee must pay a civil penalty of \$14,300. The timeframe for the civil penalty payment will be as follows: \$4,800 paid within 30 days after this order is entered, which is March 8, 2010, which is the first business day following the 30th day after the date of this order; \$4,800 paid within 190 days after the Board approves, which is August 13, 2010; and \$4,700 paid within 360 days of board approval, which is January 31, 2011. James Buysee 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 James Buysee's federal tax identification number must appear on the face of the certified check or money order.
- 3. James Buysee 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

James Buysee must send a copy of each certified check or money order and any transmittal letter to:

Environmental Bureau Illinois Attorney General's Office 500 South Second Street Springfield, Illinois 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) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).
- 5. James Buysee must cease and desist from future violations of the Environmental Protection 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 February 4, 2010, by a vote of 5-0.

John Therriault, Assistant Clerk Illinois Pollution Control Board