

ILLINOIS POLLUTION CONTROL BOARD
March 18, 2010

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 10-022
)	(Enforcement)
WESTERN SAND & GRAVEL COMPANY,)	
LLC., an Illinois corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by G. L. Blankenship):

On September 30, 2009, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a 3-count complaint against Western Sand & Gravel Company (WS &G). The complaint concerns WS & G's Clean Construction or Demolition Debris Facility at the intersection of 178 and I-80 in La Salle 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 Western Sand & Gravel Company violated 21(d)(2) and (e), and 22.51(a) of the Act (415 ILCS 5/21(d)(2), 21(e), 22.51(a) (2008)) and Sections 1100.201(a), 1100.205(a)(1), (b)(1), (c), (g), and (h), 1100.207(a) and (b), and 1100.210 of the Board's CCDD regulations (35 Ill. Adm. Code 1100.201(a), 1100.205(a)(1), (b)(1), (c), (g), (h), 1100.207(a), (b), 1100.210).

According to the complaint, WS&G violated these provisions under count I by failing to: (1) conduct visual inspections, inspections with a photo ionization detection (PID) instrument for each incoming load, and discharge inspections of at least one randomly selected load delivered to the facility each day, (2) failing to retain records evidencing that a load checking program is being used at the facility, (3) failing to properly train its personnel at the facility to identify material that is not CCDD, and (4) failing to keep and maintain a calibrated PID instrument at the facility for checking loads of CCDD. The complaint alleges under count II that WS&G failed to; (1) restrict unauthorized vehicular access to the working face of the facility and (2) post a permanent sign at the entrance to the facility stating that only CCDD is accepted for use as fill. Count III alleges that WS&G failed to maintain an operating record at the facility.

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.

On January 19, 2010, the People and WS&G 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 *News Tribune* on February 8, 2010. 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 WS&G'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. WS&G neither admits nor 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. WS&G agrees to pay a civil penalty of \$3,120.00. The People and WS&G 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. WS&G must pay a civil penalty of \$3,120.00 no later than April 19, 2010, which is the first business day after the 30th day after the date of this order. WS&G 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 WS&G's federal tax identification number must appear on the face of the certified check or money order.
3. WS&G 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

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

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. WS&G 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 March 18, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board