ILLINOIS POLLUTION CONTROL BOARD April 15, 2010

PCB 09-105 (Enforcement - Land)	

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On May 5, 2009, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against R. A. Cullinan & Son (R. A. Cullinan or respondent). The complaint concerns R. A. Cullinan's clean construction and demolition debris (CCDD) fill operation at the Farmdale Pit facility, located at 22493 Farmdale Road, in East Peoria, Tazewell 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)), 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 R. A. Cullinan violated Sections 21(d)(2), 21(e), 22.51(a), 22.51(b)(3), and 22.51(c)(2)(A), and 22(d)(1) of the Act, 415 ILCS 5/21 (d)(2), 21(e), 22.51(a), 22.51(b)(3), 22.51(c)(2)(A), and 22(d)(1) (2008), and Sections 1100.201(a), 1100.201(b), 1100.205(a)(1), 1100.205(b)(1), 1100.205(b)(1), 1100.205(b)(1), 1100.205(b)(1), 1100.205(b)(1), 1100.205(c)(1), 1100.205(b)(1), 1100.205(b)(1). The People further allege that respondent violated these provisions by allowing waste material that does not meet the definition of CCDD to commingle with the facility's CCDD fill material, failing to inspect incoming loads of clean construction and demolition debris at the site with a photo ionization detector (PID) device, failing to maintain CCDD records for the facility, and disposing of CCDD without a permit.

On February 25, 2010, the People and R. A. Cullinan 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

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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.

public hearing. *See* 35 III. 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 *Peoria Journal Star* on March 6, 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 III. 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 R. A. Cullinan'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. R. A. Cullinan 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. R. A. Cullinan agrees to pay a civil penalty of \$16,000. The People and R. A. Cullinan 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. R. A. Cullinan & Sons must pay a civil penalty of \$16,000 no later than May 17, 2010, which is the first business day following the 30th day after the date of this order. R. A. Cullinan & Sons 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 R. A. Cullinan & Sons' federal employer identification number must appear on the face of the certified check or money order.
- 3. R. A. Cullinan & Sons' 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 R. A. Cullinan & Sons' must send a copy of the 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. R. A. Cullinan & Sons 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 April 15, 2010, by a vote of 5-0.

John Therriault, Assistant Clerk Illinois Pollution Control Board

John T. Therriant