ILLINOIS POLLUTION CONTROL BOARD August 5, 2010

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
v.) PCB 09-) (Enforce	-65 ement - Land)
STARK EXCAVATING, INC., an Illinois corporation,)))	mone Land)
Respondent.)	

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

On February 26, 2009, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against Stark Excavating, Inc. (Stark). The complaint concerns Stark's construction and demolition debris disposal site located immediately north of Interstate 74 in Section 5 of Downs Township, McLean 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 Stark violated Sections 21(d)(2), 21(e), 22.51(a), and 22.51(c)(2)(A) of the Act (415 ILCS 5/21(d)(2), 21(e), 22.51(a), 22.51(c)(2)(A) (2008)), and Sections 1100.201(a), 1100.205(a)(1), 1100.205(b)(1), 1100.205(c)(1), 1100.205(g), 1100.205(h), and 1100.210(b) of the Board's clean construction or demolition debris (CCDD) regulations (35 Ill. Adm. Code 1100.201(a), 1100.205(a)(1), 1100.205(b)(1), 1100.205(c)(1), 1100.205(g), 1100.205(h), 1100.210(b)). The People further allege that Stark violated these provisions by (1) allowing for the accumulation and use of clean construction and demolition debris on the site without following the requisite inspection and record-keeping practices, and (2) failing to inspect incoming loads of clean construction and demolition debris with a photo ionization detector (PID) device.

On June 24, 2010, the People and Stark 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 Pantagraph on July 3, 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 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 Stark'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. Stark 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. The stipulation provides that Stark has performed a supplemental environmental project (SEP) with a settlement value of \$11,133.70, which the People agree to accept in lieu of a civil penalty payment. According to the stipulation, the SEP consisted of Stark providing material, labor, and equipment to demolish two dilapidated structures at 4000 North Peoria Road in Springfield, Sangamon County for the Illinois State Police Heritage Foundation, as well as Stark paying to remove and dispose of the demolition debris. The People and Stark 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, including the SEP described in the above opinion.
- 2. Stark 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 August 5, 2010, by a vote of 5-0.

John Therriault, Assistant Clerk Illinois Pollution Control Board