

ILLINOIS POLLUTION CONTROL BOARD
December 2, 2010

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 10-89
)	(Enforcement - Water)
FREEPORT AREA ECONOMIC)	
DEVELOPMENT FOUNDATION d/b/a)	
NORTHWEST ILLINOIS DEVELOPMENT)	
ALLIANCE, and WEITZ INDUSTRIAL,)	
LLC,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

On April 27, 2010, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against Freeport Area Economic Development Foundation, doing business as Northwest Illinois Development Alliance, a not-for-profit corporation (FAEDF), and Weitz Industrial, LLC, a foreign corporation (Weitz), (collectively, respondents). The complaint concerns a site known as “Mill Race Industrial Park,” a 145-acre property located east of Springfield Road, north of Hively Road, and south of Business 20, in Freeport, Stephenson County. In a separate stipulation, the People and FAEDF now seek to settle without a hearing. Weitz is not a party to this stipulation. For the reasons below, the Board accepts the 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 to enforce Illinois’ environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2008); 35 Ill. Adm. Code 103. In this case, the People allege that respondents violated the following provisions in the manner described: (1) Section 12(a) of the Act (415 ILCS 5/12(a) (2008)) by failing to maintain storm water controls at the site, thus causing or allowing contaminants to discharge into a water of the State, causing water pollution (count I); (2) Sections 302.203 and 304.106 of the Board’s water pollution regulations (35 Ill. Adm. Code 302.203, 304.106) and Section 12(a) of the Act (415 ILCS 5/12(a) (2008)) by allowing discharges containing color and turbidity of other than natural origin and causing bottom deposits in Silver Creek (count II); and (3) Section 12(d) of the Act (415 ILCS 5/12(d) (2008)) by depositing sediment onto the land in such a place and manner so as to create a water pollution hazard (count III). The People also allege that FAEDF alone violated Section 12(f) of the Act (415 ILCS 5/12(f) (2008)), Section 309.102(a) of the Board’s water pollution regulations (35 Ill. Adm. Code 309.102(a)), and Part IV of FAEDF’s National Pollutant Discharge Elimination System (NPDES) permit by failing to implement provisions of its storm water pollution prevention plan and allowing contaminants to discharge into Silver Creek (count IV).

On October 7, 2010, the People and FAEDF 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 *Journal-Standard* on November 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. 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 FAEDF'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. FAEDF 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. FAEDF agrees to pay a civil penalty of \$546. The People and FAEDF 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.¹

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. FAEDF must pay a civil penalty of \$546 by January 3, 2011, which is the first business day following the 30th day after the date of this order. FAEDF 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 number, case name, and FAEDF's federal employer identification number must be included on the certified check or money order.
3. FAEDF must submit payment of the civil penalty to:

Illinois Environmental Protection Agency
Fiscal Services Division

¹ The case against Weitz continues. Counts I through III of the complaint were alleged against both respondents while count IV was alleged against only FAEDF. As the Board today accepts the stipulation and proposed settlement involving the People and FAEDF, the caption of subsequent orders issued in this docket will not include FAEDF.

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

FAEDF 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. FAEDF 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, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 2, 2010, by a vote of 5-0.



John Therriault, Clerk
Illinois Pollution Control Board