ILLINOIS POLLUTION CONTROL BOARD December 16, 2010

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
v.)	PCB 07-81
DURRE BROS. WELDING AND MACHINE)	(Enforcement - Water)
SHOP, INC., an Illinois corporation,)	
Respondent.)	

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

On February 28, 2007, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against Durre Bros. Welding and Machine Shop, Inc. (Durre). The complaint concerns Durre's welding and machine shop located at 405 South Chestnut Street in Minonk, Woodford 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 Durre violated Sections 12(a), (d), and (f), and 21(a), (d)(2), and (e) of the Act (415 ILCS 5/12(a), (d), (f), 21(a), (d)(2), (e) (2008)) and Section 739.122 of the Board's used oil management regulations (35 Ill. Adm. Code 739.122). According to the complaint, Durre violated these provisions by causing, allowing, or threatening to cause water pollution (count I); by causing, threatening, or allowing the discharge of any contaminant into waters of the State without a National Pollutant Discharge Elimination System (NPDES) permit (count II); by causing or allowing contaminants to be deposited upon the land so as to create a water pollution hazard (count III); by causing or allowing the open dumping of waste (count IV); by disposing of waste at a site that is neither permitted by the Illinois Environmental Protection Agency as a sanitary landfill nor compliant with the requirements of the Act and regulations (count IV); and by storing containers filled with used oil without clearly labeling them as to their contents (count V).

On October 18, 2010, the People and Durre 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

Woodford County Journal on November 11, 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 Durre'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. Durre 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. Durre agrees to pay a civil penalty of \$5,000. The People and Durre 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. Durre must pay a civil penalty of \$5,000 by February 14, 2011, which is the 60th day after the date of this order. Durre 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 Durre's federal tax identification number must be included on the face of the certified check or money order.
- 3. Durre must send the certified check or money order to:

Illinois Environmental Protection Agency Fiscal Services Division 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276

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

Christine Zeivel
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. Durre 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 16, 2010, by a vote of 5-0.

John Therriault, Clerk

Illinois Pollution Control Board

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