ILLINOIS POLLUTION CONTROL BOARD August 4, 2011

PEOPLE OF THE STATE OF ILLINOIS,)
Complainant,))
v.) PCB 10-107) (Enforcement - Water)
ROCKFORD SAND AND GRAVEL, INC., a division of Rockford Blacktop Construction	
Co., an Illinois corporation,)
Respondent.)

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On June 21, 2010, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against Rockford Sand and Gravel, Inc. (RSG). The complaint concerns respondent's limestone quarry at 5300 Nimtz Road, Loves Park, Winnebago County. The parties now seek to settle without a hearing. 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 (2010)), 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 (2010); 35 Ill. Adm. Code 103. In this case, the People allege that RSG violated Section 12(a) and 12(f) of the Act (415 ILCS 5/12(a) and (f) (2010))¹, and Section 309.102(a) of the Board's Water Pollution Regulations (35 Ill. Adm. Code 309.102(a)) by: 1) causing or allowing the discharge of contaminants to waters of the State so as to cause water pollution in Illinois, and 2) causing or allowing the discharge of total suspended solids (TSS) in excess of its National Pollution Discharge Elimination System (NPDES) permit effluent limits.

On June 8, 2011, the People and RSG 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) (2010)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2010)), 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 *Rockford Register Star* on July 7, 2011. The Board did not receive any requests for hearing. The Board

¹The pleadings in this case refer to the 2008version of the Illinois Compiled Statutes. As there is no difference between the relevant sections in the 2008 and 2010 statutes, the Board will consistently reference the 2010 statutes.

grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2010); 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 RSG'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) (2010)), which bears on the reasonableness of the circumstances surrounding the alleged violations. RSG does not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2010)), which may mitigate or aggravate the civil penalty amount. RSG agrees to pay a civil penalty of \$8,000. The People and RSG 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.

<u>ORDER</u>

- 1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
- 2. Rockford Sand and Gravel, Inc., must pay a civil penalty of \$8,000 no later than September 6, 2011, which is the first business day following the 30th day after the date of this order. Rockford Sand and Gravel, Inc. 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. Rockford Sand and Gravel, Inc. must include the case name and case number on the face of the certified check or money order.
- 3. Rockford Sand and Gravel, Inc., 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

Rockford Sand and Gravel, Inc., must send a copy of the certified check or money order and any transmittal letter to:

Nancy J. Tikalsky Assistant Attorney General 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) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
- 5. Rockford Sand and Gravel, Inc., 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) (2010); *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 4, 2011, by a vote of 5-0.

John T. Therian

John Therriault, Assistant Clerk Illinois Pollution Control Board