ILLINOIS POLLUTION CONTROL BOARD August 18, 2011

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
V.)	PCB
)	(Enf
AMERICAN EXCAVATION & SEPTIC)	
SERVICES, INC., an Illinois corporation,)	
and CBS LEASING, L.L.C., an Illinois)	
limited liability company,)	
)	
Respondents.)	

PCB 11-55 (Enforcement - Water, Mine)

ORDER OF THE BOARD (by T.E. Johnson):

On February 28, 2011, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against American Excavation & Septic Services, Inc. (AESS) and CBS Leasing, L.L.C. (CBS) (collectively, respondents). The complaint concerns a site located at 8937 West Stagecoach Trail in Galena, Jo Daviess 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 (2010)), 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 (2010); 35 Ill. Adm. Code 103. In this case, the People allege that respondents violated Sections 12(a), 12(b), 12(d), and 12(f) of the Act (415 ILCS 5/12(a), 12(b), 12(d), 12(f) (2010)) and Sections 404.101(a)(1) and (a)(2) of the Board's mine-related water pollution regulations (35 Ill. Adm. Code 404.101(a)(1), (a)(2)). According to the People, respondents violated these provisions in the following manner: (1) by allowing silt-laden water to be discharged from the site into a roadside ditch and a tributary to the Galena River, respondents caused or allowed water pollution; (2) by operating heavy construction equipment in their mining operations which was capable of causing or contributing to water pollution in the roadside ditch and the tributary to the Galena River. without first obtaining an Illinois Environmental Protection Agency-issued construction or operating permit; (3) by depositing contaminants upon the land in such place and manner so as to create a water pollution hazard; (4) by allowing the discharge of a contaminant into the waters of the State without a National Pollutant Discharge Elimination System (NPDES) permit for point source discharges; and (5) by preparing land for mining activities and constructing a minerelated facility without a construction permit and by conducting mining activities without an operating permit.

On June 28, 2011, the People and respondents 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 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 *Galena Gazette* on July 20, 2011. 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) (2010); 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 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 respondents' 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. Respondents 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. CBS agrees to pay a civil penalty of \$3,000 and AESS agrees to pay a civil penalty of \$5,000. The People and respondents 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. CBS must pay a civil penalty of \$3,000 and AESS must pay a civil penalty of \$5,000. Each respondent's payment is due no later than September 19, 2011, which is the first business day following the 30th day after the date of this order. Respondents must pay the civil penalties 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 respondents' respective federal tax identification numbers must appear on the face of the respective certified checks or money orders.
- 3. Respondents must submit payment of the civil penalties to:

Illinois Environmental Protection Agency Fiscal Services Division 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276 Each respondent must send a copy of its certified check or money order and any transmittal letter to:

Jennifer A. Van Wie 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. Respondents 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 18, 2011, by a vote of 5-0.

phu T. Therrian

John Therriault, Assistant Clerk Illinois Pollution Control Board