

ILLINOIS POLLUTION CONTROL BOARD
March 21, 2013

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 12-132
)	(Enforcement - Land)
KEHRER BROTHERS CONSTRUCTION,)	
INC., an Illinois corporation,)	
)	
Respondent.)	

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

On June 6, 2012, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against Kehrer Brothers Construction, Inc. (Kehrer). The complaint concerns Kehrer’s property at 7100 Albers Road, Albers, Clinton 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 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 Kehrer violated Sections 21(a), (d)(2), (e), (p)(1), (p)(7)(i) and Section 55(a)(1) of the Act (415 ILCS 5/21(a), (d)(2), (e), (p)(1), (p)(7)(i), 55(a)(1) (2010)) and Sections 722.111 and 808.121 of the Board’s Waste Disposal Regulations (35 Ill. Adm. Code 722.111, 808.121). The People further allege that Kehrer violated these sections by: 1) causing or allowing the open dumping of waste; 2) disposing of waste at a site that does not meet the requirements of the Act and Board regulations; 3) causing or allowing open dumping of waste in a manner that resulted in litter and in deposition of general construction or demolition debris; 4) failing to make either a hazardous waste determination or a special waste determination for the contents of the 55 gallon drums found on site; and 5) causing or allowing the open dumping of used or waste tires.

On January 18, 2013, the People and Kehrer 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 *The Breese Journal* on February 7, 2013. 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 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 respondent'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. Kehrer 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. Kehrer agrees to pay a civil penalty of \$6,000. The People and Kehrer 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. Kehrer Brothers Construction Inc. must pay a civil penalty of \$6,000 no later than April 22, 2013 which is the first business day following the 30th day after the date of this order. Kehrer 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 name, case number, and Kehrer's federal tax identification number must appear on the fact of the certified check or money order.
3. Kehrer Brothers Construction, 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

A copy of the certified check or money order and any transmittal letter shall be sent to:

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) (2010)) at the rate

set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).

5. Kehrer must cease and desist future violations of the Act and Board Regulations that were the subject of the complaint.

IT IS SO ORDERED.

Chairman T.A. Holbrook abstained.

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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 21, 2013 by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board