

ILLINOIS POLLUTION CONTROL BOARD

November 15, 2007

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 06-33
) (Enforcement - Land)
FIRST CHOICE CONSTRUCTION, INC.,)
)
Respondent.)

ORDER OF THE BOARD (by N. J. Melas):

On September 1, 2005, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against J & S Companies, Inc. (J & S) and First Choice Construction, Inc. (First Choice) (collectively, respondents). *See* 415 ILCS 5/31(c)(1) (2006); 35 Ill. Adm. Code 103.204. The complaint results from activities occurring between February and December 2003 during the respondents' demolition of Lansdowne Junior High School in East St. Louis, St. Clair County. In a final order as to J & S only, the Board assessed a \$25,000 penalty against J & S, having previously granted the People's motion for summary judgment against J & S only. People v. J & S Companies, Inc., and First Choice Construction, Inc., PCB 06-33 (June 29, 2006) (summary judgment order) and (Aug. 17, 2006) (final order).

In this case, the People allege that respondent First Choice violated Sections 21(a), (e), (p)(1), and (p)(7) of the Environmental Protection Act (Act) (415 ILCS 5/21(a), (e), (p)(1), and (p)(7) (2006)). The People further allege that First Choice violated these provisions by (1) causing or allowing the open dumping of waste; (2) conducting a waste storage, waste treatment, or waste disposal operation without a permit or in violation of Board regulations; (3) disposing, treating, storing, abandoning, or transporting waste at a site that did not meet the requirements of the Act and Board regulations; (4) causing or allowing the open dumping of waste in a manner that resulted in litter; and (5) causing or allowing the open dumping of waste in a manner that resulted in deposition of general construction or demolition debris.

On October 7, 2007, the People and respondent First Choice 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) (2006)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2006)). *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 Belleville News-Democrat* on October 11, 2007. 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) (2006); 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 First Choice'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) (2006)). The People and First Choice have satisfied Section 103.302. First Choice admits the alleged violations and agrees to pay a civil penalty of \$2,000. 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. First Choice, by its attorney of record, must pay a civil penalty of \$2,000 no later than Monday December 17, 2007, which is the first business day after the 30th day after the date of this order. First Choice, by its attorney of record, must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Agency and designated to the Illinois Environmental Protection Trust Fund. The case number, case name, and First Choice's federal employer identification number must be included on the certified check or money order.
3. First Choice, by its attorney of record, must send the certified check or money order to:

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

4. A copy of the certified check or money order must be sent to:

Kristen Laughridge Gale
Assistant Attorney General
Environmental Bureau
500 S. Second Street
Springfield, IL 62702

Melanie Jarvis
Illinois Environmental Protection Agency
Assistant Counsel
1021 North Grand Avenue East
P.O. Box 19276

Springfield, Illinois 62794-9276

5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
6. First Choice must cease and desist from the alleged violations.

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) (2006); *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 November 15, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board