

ILLINOIS POLLUTION CONTROL BOARD  
September 30, 2008

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 09-8
	)	(Enforcement – Water)
RED SEAL DEVELOPMENT	)	
CORPORATION, an Illinois corporation, and	)	
LENZINI EXCAVATING COMPANY, an	)	
Illinois corporation,	)	
	)	
Respondents.	)	

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

On July 28, 2008, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against Red Seal Development Corporation (Red Seal) and Lenzini Excavating Company (Lenzini) (collectively respondents). The complaint concerns respondents' construction activities on an approximately 14.24-acre parcel of land known as "Deer Park Estates," located at the intersection of Long Grove Road and Quentin Road in Deer Park, Lake County. In a separate stipulation, the People and Red Seal now seek to settle without a hearing. Lenzini is not a party to this stipulation.<sup>1</sup> For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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 (2006); 35 Ill. Adm. Code 103. In this case, the People allege that Red Seal violated Sections 12(a), (b), (d), and (f) of the Act (415 ILCS 5/12(a), (b), (d), (f) (2006)), Sections 302.203, 309.102(a), and 309.202(a) of the Board's water pollution regulations (35 Ill. Adm. Code 302.203, 309.102(a), 309.202(a)), and specified terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) stormwater permit. The People further allege that Red Seal violated these provisions by (1) causing, threatening, or allowing the discharge of contaminants so as to cause or tend to cause water pollution in surrounding wetlands and an unnamed tributary of Buffalo Creek; (2) causing, threatening, or allowing the discharge of contaminants that caused unnatural color and turbidity in surrounding wetlands and an unnamed tributary of Buffalo Creek; (3) creating a water pollution hazard by depositing contaminants in such place and manner that they were likely to be carried by stormwater runoff into surrounding wetlands and an unnamed

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<sup>1</sup> In a separate order issued today in this docket, the Board directs the Clerk to cause notice of the stipulation, proposed settlement, and request for relief from the hearing requirement filed by the People and Lenzini on September 18, 2008. *See* People v. Lenzini Excavating Co., PCB 09-8 (Sept. 30, 2008).

tributary of Buffalo Creek; (4) failing to implement the storm water pollution prevention plan (SWPPP) in violation of the NPDES permit; and (5) constructing a sanitary sewer without obtaining a permit from the Illinois Environmental Protection Agency.

On August 7, 2008, the People and Red Seal 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)), 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 on August 28, 2008, in the Pioneer Press Northwest Zone, including the *Lake Zurich Courier*. 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. *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) (2006)), which bears on the reasonableness of the circumstances surrounding the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2006)), which may mitigate or aggravate the civil penalty amount. Red Seal neither admits nor denies the alleged violations, but agrees to pay a civil penalty of \$15,500. The People and Red Seal 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 with respect to Red Seal.<sup>2</sup>

### **ORDER**

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. Red Seal must pay a civil penalty of \$15,500 no later than October 30, 2008, which is 30th day after the date of this order. Red Seal must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund. The case name, case number and Red Seal's federal tax identification number must appear on the face of the certified check or money order.
3. Red Seal must submit payment of the civil penalty to:

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<sup>2</sup> The case against Lenzini continues. *See* n.1 above. However, as the Board today accepts the stipulation and proposed settlement involving the People and Red Seal, the caption of subsequent orders issued in this docket will not include Red Seal.

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

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

Richard A. Perry  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., 18th Floor  
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) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
5. Red Seal 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) (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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 30, 2008, by a vote of 4-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board