

ILLINOIS POLLUTION CONTROL BOARD
July 23, 2009

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 09-32
) (Enforcement – Land, Water)
WHALEN MANUFACTURING COMPANY,)
an Illinois corporation, and YETTER)
MANUFACTURING COMPANY, an Illinois)
corporation,)
)
Respondents.)

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

On November 12, 2008, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Whalen Manufacturing Company and Yetter Manufacturing Company (collectively, respondents). The complaint concerns Whalen's site, located at 1270 East Murray Street in Macomb, McDonough County, and Yetter's site, located at 109 S. McDonough in Colchester, McDonough 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 (2008)), the Attorney General and the State's Attorney may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2008); 35 Ill. Adm. Code. 103. In this case, the People allege in count I of the complaint that Yetter violated Section 21(j) of the Act (415 ILCS 5/21(j) (2008)) and Sections 809.201, 809.301, 809.302(b) of the Board's nonhazardous special waste regulations (35 Ill. Adm. Code 809.201, 809.301, 809.302(b)) by (1) hauling or otherwise transporting nonhazardous special waste generated within Illinois without a current, valid nonhazardous special waste hauling permit; (2) delivering nonhazardous special waste generated within Illinois without concurrently delivering a manifest to a special waste transporter; (3) delivering nonhazardous special waste in Illinois for disposal, storage, or treatment to a person who does not have a current, valid operating permit issued by the Illinois Environmental Protection Agency; and (4) conducting a special waste transportation operation in violation of regulations, standards, or permit requirements adopted by the Board.

Count II of the complaint alleges that Whalen violated Sections 21(d) and 21(e) of the Act (415 ILCS 5/21(d), 21(e) (2008)), Sections 807.201(a) and 807.202(a) of the Board's solid waste regulations (35 Ill. Adm. Code 807.201(a), 807.202(a)), and Section 809.302(a) of the Board's nonhazardous special waste regulations (35 Ill. Adm. Code 809.302(a)) by (1) operating, causing, or allowing the development of a solid waste management site without a development permit; (2) accepting special waste for disposal, storage, or treatment within Illinois from a

special waste transporter who does not have a valid nonhazardous special waste hauling permit; (3) conducting a waste storage operation; and (4) disposing, treating, storing, or abandoning waste.

In count III, the People allege that respondents violated Section 12(f) of the Act (415 ILCS 5/12(f) (2008)) and Section 309.204(a) of the Board's water pollution regulations (35 Ill. Adm. Code 309.204(a)) by (1) causing, threatening, or allowing the discharge of contaminants into waters of the State without a valid National Pollutant Discharge Elimination System (NPDES) permit; and (2) causing or allowing the use or operation of a treatment works, pretreatment works, or wastewater source without an NPDES permit.

On May 11, 2009, the People, Whalen, and Yetter 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) (2008)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2008)), 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). Under the proposed stipulation, Whalen and Yetter admit the alleged violations and agree to each pay a civil penalty of \$10,000 for a total civil penalty of \$20,000. The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in the *Macomb Journal* on May 29, 2009. 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) (2008); 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 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) (2008)). The People and respondents have satisfied Section 103.302. Respondents admit the alleged violations and agree to each pay a civil penalty of \$10,000, for a total civil penalty of \$20,000. 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. Each respondent must pay a civil penalty of \$10,000, for a total civil penalty of \$20,000, by August 24, 2009, which is the first business day following the 30th day after the date of this order. Payment of the civil penalty must be 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 respondents' respective federal tax identification numbers must appear on the face of the respective certified checks or the money orders.

3. Payment of the civil penalty must be submitted 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 checks or money orders and any transmittal letters must 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) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).
5. Respondents must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject matter 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) (2008); *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, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 23, 2009, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John Therriault, Clerk
Illinois Pollution Control Board