

ILLINOIS POLLUTION CONTROL BOARD

October 7, 2010

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 10-8
) (Enforcement – Land)
DON SWINSON, an individual, and)
CHAMPION ENVIRONMENTAL)
SERVICES, INC., a Wisconsin corporation,)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by G. L. Blankenship):

On July 28, 2009, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a six-count complaint (complaint) against Don Swinson (Mr. Swinson) and Champion Environmental Services, Inc. (Champion) (collectively respondents). The complaint concerns Mr. Swinson’s vacant lot at 2000 Cunningham Road in Rockford, Winnebago County, and the general construction or demolition debris (C&D) that Champion allegedly transported there. 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 Attorneys may bring actions before the Board on behalf of the People to enforce Illinois’ environmental requirements. *See* 415 ILCS 5/31 (2008); 35 Ill. Adm. Code 103. In this case, the People allege that respondents violated Sections 21(a) and (p)(1) of the Act (415 ILCS 5/21(a), (p)(1) (2008)) by causing or allowing the open dumping of waste without fulfilling the requirements of a sanitary landfill, which resulted in litter (counts I and V). The People also allege that respondents violated Sections 21(d)(1) and (e) of the Act (415 ILCS 5/21(d)(1), (e) (2008)) by disposing, treating, or storing C&D waste at the site without a permit from the Illinois Environmental Protection Agency (Agency) (counts II and IV). The People allege in count III that Mr. Swinson violated Section 21(d)(2) of the Act (415 ILCS 5/21(d)(2) (2008)) and Sections 807.201 and 807.202(a) of the Board’s Waste Disposal Regulations (35 Ill. Adm. Code 807.201, 807.202(a)) by not applying for and obtaining permits from the Agency to develop and operate a new solid waste management site. Lastly, count VI of the Complaint alleges that Mr. Swinson violated Section 22.38(b)(11) of the Act (415 ILCS 5/22.38(b)(11) (2008)) by failing to submit to the Agency the necessary information prior to accepting C&D waste at the site.

On June 24, 2010, the People and Champion only filed an amended stipulation and proposed settlement (Champion 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)). On August 16, 2010, the People and Mr. Swinson only filed a stipulation and proposed settlement (Swinson 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)). These filings are 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). The Board provided notice of the stipulations, proposed settlements, and requests for relief. The newspaper notice for the Champion settlement was published in the *Rockford Register Star* on August 18, 2010. The newspaper notice for the Swinson settlement was published in the *Rockford Register Star* on August 20, 2010. 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. *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) (2008)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondents do not affirmatively admit the alleged violations. Both stipulations also address the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2008)), which may mitigate or aggravate the civil penalty amount. Champion agrees to pay a civil penalty of \$2,500. Mr. Swinson 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.

In addition to the stipulations, on August 16, 2010, the People filed a motion to dismiss Count VI of the complaint, noting that Count VI was not mentioned in the stipulation. The Board grants the motion and dismisses Count VI.

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. Champion Environmental Services, Inc. (Champion) must pay a civil penalty of \$2,500 and Don Swinson (Mr. Swinson) must pay a civil penalty of \$5,000 no later than November 8, 2010, which is the first business day following the 30th day after the date of this order. Respondents must each pay their 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 and case number must appear on the face of the certified check or money order. Champion must also include the federal tax identification number on the face of the certified check or money order.
3. Respondents must submit payment of their civil penalties to:

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

Respondents each must send a copy of their certified checks or money orders and any transmittal letters to:

Zemeheret Bereket-Ab
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) (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 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, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 7, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board