

ILLINOIS POLLUTION CONTROL BOARD

June 2, 2005

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 05-89
)	(Enforcement - Water)
REDFEARN EARTHMOVING, INC., an)	
Illinois corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by J.P. Novak):

On November 9, 2004, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Redfearn Earthmoving, Inc. *See* 415 ILCS 5/31(c)(1) (2002); 35 Ill. Adm. Code 103.204. The complaint concerns Redfearn Earthmoving's expansion of its parking lot and construction of storage areas at its office building at 1480 Route 20 West, Elizabeth, Jo Daviess County. The parties now seek to settle. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)), 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 (2002); 35 Ill. Adm. Code 103. In this case, the People allege that Redfearn Earthmoving violated Section 12(f) of the Act (415 ILCS 5/12(f) (2002)) and 35 Ill. Adm. Code 309.102(a) by (1) failing to institute erosion controls on a construction site; and (2) failing to obtain coverage under the general National Pollutant Discharge Elimination System permit for stormwater discharges from construction sites.

On April 21, 2005, the People and Redfearn Earthmoving 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) (2002)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2002)), 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 from hearing. The Board published newspaper notice in the *Galena Gazette* on April 27, 2005. 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) (2002); 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

Redfearn Earthmoving'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) (2002)), which bears on the reasonableness of the circumstances surrounding the alleged violations.

Redfearn Earthmoving admits the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2002 State Bar Edition, 2003 Supp.)), which may mitigate or aggravate the civil penalty amount. Redfearn Earthmoving agrees to pay a civil penalty of \$2,000, which the parties stipulate is at least as great as Redfearn Earthmoving's economic benefit from delayed compliance, if any.

The People and Redfearn Earthmoving 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. Redfearn Earthmoving must pay a civil penalty of \$2,000 no later than July 5, 2005, which is the first business day after the 30th day after the date of this order. Redfearn Earthmoving must pay the civil penalty by certified check, money order, or electronic funds transfer, payable to the Environmental Protection Trust Fund. The case number, case name, and Redfearn Earthmoving's social security number or federal employer identification number must be included on the certified check or money order.
3. Redfearn Earthmoving must send the certified check, money order, or electronic funds transfer to the following person at the indicated address:

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

4. Redfearn Earthmoving must send a copy of the certified check, money order, or record of electronic funds transfer and any transmittal letter to the following person at the indicated address:

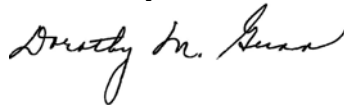
Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
6. Redfearn Earthmoving 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) (2002); *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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 2, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board