

ILLINOIS POLLUTION CONTROL BOARD  
March 18, 2004

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 02-162
	)	(Enforcement - Land)
FOX VALLEY DRY WALL, INC., an Illinois	)	
corporation,	)	
	)	
Respondent.	)	

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

On April 2, 2002, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Fox Valley Dry Wall, Inc. (Fox Valley) See 415 ILCS 5/31.1(c) (2000); 35 Ill. Adm. Code 108.202(c). The People allege that Fox Valley] violated Sections 57.6 and 57.7(b) of the Environmental Protection Act (Act) (415 ILCS 5/57.6 and 57.7(b) (2002)) and 35 Ill. Adm. Code 732.100(c), 732.202, 732.300(a), and 732.307(b). The People further allege that Fox Valley violated these provisions by failing to perform timely site classification and early action requirements following a release of petroleum from a leaking underground storage tank. The complaint concerns Fox Valley’s manufacturing facility at 707 North Highland, Aurora, Kane County.

On December 5, 2003, the People and Fox Valley 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) (2000)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2000)). 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 Beacon News on December 17, 2003. 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) (2000); 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 Fox Valley’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) (2000)). The People and Fox Valley have satisfied Section 103.302. Fox Valley admits the alleged violations and agrees to pay a civil penalty of \$8,000 to the Environmental Protection Trust Fund and to pay costs and fees of \$2,000 to the Attorney General State Projects and Court Ordered Distribution Fund.

On February 5, 2004, the Board requested that the parties file by March 8, 2004, clarification of authority on which the Board may rely in ordering payment of fees and costs into

the Attorney General State Projects and Court-Ordered Distribution Fund. On March 4, 2004, the Complainant filed its response to that request. The Board has not received a response from the respondent. First, the complainant argues that the proposed payment is fair. The respondent did not file an appearance in this matter until June 4, 2003, more than one year after the initial filing. During that period, the complainant bore costs of filing for and obtaining summary judgment, attending conferences, and preparing for a hearing on penalties. Complainant states that costs resulted directly from the respondent's delay in appearing in the case and suggests that this \$2,000 payment fairly reallocates those costs to the responsible party. Second, complainant argues that the payment aids in enforcement of the Act. By ordering this payment and increasing the cost of delay, complainant argues, this proposal will encourage the early negotiation and settlement of cases. Finally, complainant states that it is aware of no provision of the Act preventing the Board from ordering payment as agreed by the parties.

Because, "[a]s an administrative agency, the Board has the inherent authority to do all that is reasonably necessary to execute its specifically conferred statutory power," People v. Archer Daniels Midland Corp., 140 Ill. App. 3d 823, 825, 489 N.E.2d 887, 888 (3<sup>rd</sup> Dist. 1986), 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. Fox Valley must pay a civil penalty of \$8,000 no later than April 19, 2004, which is the 30th day after the date of this order. Fox Valley must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. Also, Fox Valley must pay fees and costs of \$2,000 no later than April 19, 2004, which is the 30<sup>th</sup> day after the date of this order. Fox Valley must pay the fees and costs by certified check or money order, payable to the Attorney General State Projects and Court Ordered Distribution Fund. The case number, case name, and Fox Valley's social security number or federal employer identification number must be included on the certified checks or money orders.
3. Fox Valley must send the certified checks or money orders to:
 

Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276
4. Penalties and unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2000)) at the rate

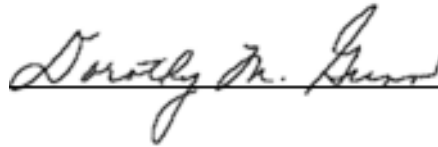
set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2000)).

5. Fox Valley 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) (2000); *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 March 18, 2004, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board