

ILLINOIS POLLUTION CONTROL BOARD  
August 19, 2004

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 04-98
	)	(Enforcement - Air, Land, Water)
ONYX ENVIRONMENTAL SERVICES,	)	
L.L.C., a Delaware limited liability company,	)	
and AURA II, INC., a Wisconsin corporation,	)	
	)	
Respondents.	)	

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

On December 18, 2003, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Onyx Environmental Services, L.L.C. (Onyx Environmental Services) and Aura II, Inc. (Aura II) (collectively, the respondents). See 415 ILCS 5/31(c)(1) (2002); 35 Ill. Adm. Code 103.204. The complaint concerns the respondents' transportation of waste on Interstate 94 in Lake 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 the respondents violated Sections 9(a), 12(a) and (d), and 21(a) and (b) of the Act (415 ILCS 5/9(a), 12(a) and (d), and 21(a) and (b) (2002)). The People further allege that the respondents violated these provisions by causing or allowing the discharge of acid vapor and waste from a tanker truck in transport so as to cause or allow air and water pollution, by creating a water pollution hazard, and by causing or allowing open dumping and abandonment of waste.

On May 26, 2004, the People and Onyx Environmental Services and the People and Aura II filed two separate stipulation and proposed settlements, each 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 *News-Sun* newspaper on June 13, 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) (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 the 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) (2002)), which bears on the reasonableness of the circumstances surrounding the alleged violations.

Under the proposed stipulation between the People and Onyx Environmental Services, Onyx Environmental Services neither admits nor denies the alleged violation but agrees to pay a civil penalty of \$85,000. Under the proposed stipulation between the People and Aura II, Aura II neither admits nor denies the alleged violation but agrees to pay a civil penalty of \$40,000. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2002), *as amended by P.A. 93-575* (eff. Jan. 1, 2004), which may mitigate or aggravate the civil penalty amount.

The People and the respondents 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. Onyx Environmental Services must pay a civil penalty of \$85,000 no later than September 20, 2004, which is the 30th day after the date of this order. Onyx Environmental Services must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and Onyx Environmental Services' federal employer identification number must be included on the certified check or money order.
2. Aura II must pay a civil penalty of \$40,000 no later than September 20, 2004, which is the 30th day after the date of this order. Aura II must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and Aura II's federal employer identification number must be included on the certified check or money order.
3. The respondents must each send their certified check or money order to:

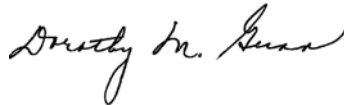
Illinois Environmental Protection Agency  
Fiscal Services Division  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

4. 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)).
5. The respondents 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 August 19, 2004, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board