

ILLINOIS POLLUTION CONTROL BOARD

September 1, 2005

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 04-139
)	(Enforcement - Land)
DECATUR FOUNDRY, INC., an Illinois)	
corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

On February 6, 2004, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Decatur Foundry, Inc. The complaint concerns the company's foundry at 1745 North Illinois Street in Decatur, Macon County. The parties now seek to settle without a public hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2004)), the Attorney General and the State's Attorneys may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2004); 35 Ill. Adm. Code 103. In this case, the People have brought a four-count complaint against Decatur Foundry. In count I, the People allege that Decatur Foundry violated the Act and Board hazardous waste regulations by failing to determine if the waste it generated was hazardous waste (415 ILCS 5/21 (2004); 35 Ill. Adm. Code 722.111), failing to properly contain and mark waste accumulations (415 ILCS 5/21 (2004); 35 Ill. Adm. Code 722.134(a)(1), (2), (3)), shipping hazardous waste without proper manifests and annual reports (415 ILCS 5/21 (2004); 35 Ill. Adm. Code 722.120, 722.140, 722.141), and improperly storing and disposing of hazardous waste (415 ILCS 5/21(e) (2004)).

In count II, the People allege that Decatur Foundry violated the Act and Board hazardous waste regulations by failing to analyze waste (415 ILCS 5/21 (2004); 35 Ill. Adm. Code 725.113(a), (b)), failing to inspect waste areas (415 ILCS 5/21 (2004); 35 Ill. Adm. Code 725.115(a), (b), (d)), failing to train personnel (415 ILCS 5/21 (2004); 35 Ill. Adm. Code 725.116), failing to test and maintain equipment (415 ILCS 5/21 (2004); 35 Ill. Adm. Code 725.133), failing to make emergency arrangements with local authorities (415 ILCS 5/21 (2004); 35 Ill. Adm. Code 725.137), failing to develop and maintain a contingency plan (415 ILCS 5/21 (2004); 35 Ill. Adm. Code 725.151, 725.153), failing to provide an on-scene emergency coordinator (415 ILCS 5/21 (2004); 35 Ill. Adm. Code 725.155), failing to keep an operating record (415 ILCS 5/21 (2004); 35 Ill. Adm. Code 725.173), failing to submit an annual report (415 ILCS 5/21 (2004); 35 Ill. Adm. Code 725.175), failing to provide a closure plan, a post-closure plan, and a cost estimate and financial assurance for closure (415 ILCS 5/21 (2004); 35

Ill. Adm. Code 725.212(a), 725.218(a), 725.242(a), 725.243(a)), operating without conducting inspections (415 ILCS 5/21 (2004); 35 Ill. Adm. Code 725.274), and failing to install two or more liners and a leachate collection and removal system (415 ILCS 5/21 (2004); 35 Ill. Adm. Code 725.401(a)).

In count III of the complaint, the People allege that Decatur Foundry violated the Act and Board special waste regulations by disposing of baghouse dust and cupola scrubber waste as non-special waste without first certifying that the waste was not special waste (415 ILCS 5/22.48 (2004); 35 Ill. Adm. Code 808.121(a)). Lastly, in count IV, the People allege that Decatur Foundry violated the Act and Board hazardous waste regulations by operating a hazardous waste facility and storing and disposing of hazardous waste without submitting a Resource Conservation and Recovery Act (RCRA) Part A permit application and without a RCRA permit (415 ILCS 5/21 (2004); 35 Ill. Adm. Code 703.121(a), 703.150).

On July 13, 2005, the People and Decatur Foundry 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) (2004)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2004)), 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. The newspaper notice was published in the *Decatur Herald-Review* on July 25, 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) (2004); 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 Decatur Foundry'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) (2004)), which bears on the reasonableness of the circumstances surrounding the alleged violations. The People and Decatur Foundry have satisfied Section 103.302.

The stipulation and proposed settlement also address the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2004)), which may mitigate or aggravate the civil penalty amount. Decatur Foundry does not affirmatively admit the alleged violations but agrees to pay a civil penalty of \$40,000. 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. Decatur Foundry must pay a total civil penalty of \$40,000 in the following installments:

- a. \$25,000 within 30 calendar days after the date of this order;
- b. \$5,000 within seven months after the date of this order;
- c. \$5,000 within 13 months after the date of this order; and
- d. \$5,000 within 19 months after the date of this order.

Decatur Foundry must pay the civil penalty by certified check, money order, or electronic funds transfer payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund.

3. Decatur Foundry must submit payment of the civil penalty to:

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

Decatur Foundry must send a copy of each certified check, money order, or record of electronic funds transfer and any transmittal letter to:

Delbert D. Haschemeyer
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 662706

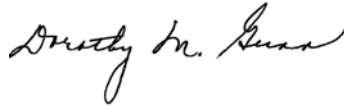
Kyle Davis
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
5. Decatur Foundry must cease and desist from future violations of the 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) (2004); *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 September 1, 2005, by a vote of 5-0.

A handwritten signature in black ink, appearing to read "Dorothy M. Gunn", written in a cursive style.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board