

ILLINOIS POLLUTION CONTROL BOARD

October 16, 2008

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 07-46
)	(Enforcement – Land)
D & L DISPOSAL, L.L.C., a Delaware)	
corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On December 13, 2006, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against D & L Disposal, L.L.C. (D & L). D & L is engaged in a waste hauling business with an office located at 900 Willard Street in Greenville, Bond County. The case concerns a glass vial of mercury that was found by a D & L driver to have been discarded or abandoned at or in a D & L dumpster near Carlyle Lake. After being placed in a trash bag at the D & L office, the glass vial of mercury broke and spilled outside of the office on a wooden deck and in the parking lot. 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 (2006)), 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 (2006); 35 Ill. Adm. Code 103. In this case, the People allege that D & L violated Sections 21(e), (f), and (g) of the Act (415 ILCS 5/21(e), (f), (g) (2006)) and Sections 722.111, 723.111(a), and 728.134 of the Board’s hazardous waste regulations (35 Ill Adm. Code 722.111, 723.111(a), 728.134). The People further allege that D & L violated these provisions by (1) conducting a hazardous waste transportation operation without a permit issued by the Illinois Environmental Protection Agency (Agency); (2) failing to make a required hazardous waste determination and failing to obtain an EPA identification number prior to transporting waste mercury; (3) conducting a hazardous waste storage operation at a facility that does not meet the requirements of the Act and regulations for handling waste storage; (4) conducting a hazardous waste storage operation without a permit issued by the Agency and in violation of regulations; (5) disposing of hazardous waste at a facility that does not meet the requirements of the Act and regulations; and (6) disposing of hazardous waste without a Resource Conservation and Recovery Act (RCRA) permit.

On September 4, 2008, the People and D & L 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) (2006)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS

5/31(c)(2) (2006)), 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 *Greenville Advocate* on September 11, 2008. 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) (2006); 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) (2006)), which bears on the reasonableness of the circumstances surrounding the alleged violations. D & L does not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2006)), which may mitigate or aggravate the civil penalty amount. D & L agrees to pay a civil penalty of \$8,500. The proposed settlement includes a supplemental environmental project (SEP), as authorized by Section 42(h)(7) of the Act (415 ILCS 5/42(h)(7) (2006)). The SEP consists of the provision of 1,300 tons of disposal capacity to be used by the People at any of three identified landfills. According to the proposed settlement, the SEP has a settlement value of \$45,500, which will offset penalties sought by the People and the Agency. The People and D & L 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. D & L must pay a civil penalty of \$8,500 by November 17, 2008, which is the first business day following the 30th day after the date of this order. D & L must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund. The case name, case number, and D & L's federal tax identification number must appear on the face of the certified check or the money order.
3. D & L 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

D & L must send a copy of the certified check or money order and any transmittal letter to:

Environmental Bureau
 Illinois Attorney General's Office
 500 South Second Street
 Springfield, Illinois 62706

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
5. D & L must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject of the complaint.
6. D & L must perform a SEP consisting of the provision of 1,300 tons of landfill capacity as described in the stipulation and proposed settlement.

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) (2006); *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 16, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
 Illinois Pollution Control Board

