

ILLINOIS POLLUTION CONTROL BOARD  
November 20, 2008

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 08-44
	)	(Enforcement – Water)
PRAIRIE MATERIAL SALES, INC., an	)	
Illinois corporation,	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On February 13, 2008, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a six-count complaint against Prairie Material Sales, Inc. (Prairie Material). The complaint concerns Prairie Material’s concrete production facility in its Yard 1014 located at 799 South Route 53 in the Village of Addison, DuPage County (Facility). 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 Prairie Material violated Sections 12(a), (d), and (f) of the Act (415 ILCS 12(a), (d), (f) (2006)) and Sections 304.105, 304.106, and 309.102(a) of the Board’s water pollution regulations (35 Ill. Adm. Code 304.105, 304.106, 309.102(a)). The complaint alleges that Prairie Material violated these provisions by (1) causing, threatening, or allowing water pollution; (2) causing or allowing offensive discharges and discharging an effluent in violation of a water quality standard; (3) allowing contaminants to be placed on the ground so as to create a water pollution hazard; (4) discharging into waters of the State without a National Pollutant Discharge Elimination System (NPDES) permit; (5) failing to obtain an NPDES stormwater permit for construction site activities; and (6) discharging in excess of effluent limits.

On October 2, 2008, the parties 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 *Addison Press* on October 9, 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 respondent'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) (2006)), which bears on the reasonableness of the circumstances surrounding 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.

According to the proposed stipulation, Prairie Material is now known as Southfield Corporation, an Illinois corporation (Southfield). Stipulation at 1. Further, on February 1, 2008, VCNA Prairie Illinois Building Materials, LLC, a Delaware limited liability company (VCNA), purchased certain assets of Southfield, including the Facility. *Id.* at 1-2. The stipulation states that VCNA currently engages in the batching of aggregate and cementitious materials to produce ready-mix concrete at the Facility. *Id.* Southfield formerly engaged in that activity at the Facility. *Id.* Under the proposed stipulation, the People contend that based on an April 25, 2008 inspection of the Facility by the Illinois Environmental Protection Agency (Agency), Southfield has violated Section 12(f) of the Act (415 ILCS 5/12(f) (2006)) and 35 Ill. Adm. Code 309.102(a) by failing to comply with the terms of NPDES Permit ILR005566 and failing to employ site stabilization practices as required by NPDES Permit ILR10H169. *Id.* at 3. The stipulation and proposal for settlement has been executed by the People, the Agency, Southfield, and VCNA. *Id.* at 12. Under the proposed stipulation, Southfield neither admits nor denies the violations alleged in the complaint or observed by the Agency on April 25, 2008. *Id.* at 4. The terms of the proposed settlement require Southfield and VCNA to jointly and severally pay a civil penalty of \$55,000. *Id.* at 7. Section 103.302 of the Board's procedural rules (35 Ill. Adm. Code 103.302) has been satisfied. 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. Southfield and VCNA must pay a total civil penalty of \$55,000 no later than December 22, 2008, which is the first business day following the 30th day after the date of this order. Payment of the civil penalty must be 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 either Southfield's or VCNA's federal tax identification number, as applicable, must appear on the face of the certified check or the money order.
3. Payment of the civil penalty must be submitted to:

Illinois Environmental Protection Agency  
Fiscal Services Division

1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

A copy of the certified check or money order and any transmittal letter must be sent to:

Rebecca A. Burlingham  
Supervising Attorney  
Environmental Bureau  
69 W. Washington St., 18th Floor  
Chicago, Illinois 60602

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. VCNA must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject matter 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) (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 November 20, 2008, by a vote of 5-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board