

ILLINOIS POLLUTION CONTROL BOARD
March 15, 2012

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 12-100
) (Enforcement - Land)
HOME DEPOT U.S.A., Inc., a Delaware)
corporation,)
)
Respondent.

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On January 3, 2012, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against Home Depot U.S.A., Inc., a Delaware Corporation (Home Depot). The complaint concerns two separate facilities: Home Depot Store #1924 (HD #1924) located at 1706 West Highway 50, O’Fallon, St. Clair County, and Home Depot Store #6961 (HD #6961) located at 1049 Collinsville Crossing, Collinsville, Madison County. 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 (2010)), 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 (2010); 35 Ill. Adm. Code 103. In this case, the People allege that Home Depot violated Sections 21(i) and 22.01 of the Act (415 ILCS 5/21(i), 22.01 (2010)), and Sections 722.111, 722.120(a), 728.107(a), 728.107(h), 808.121(a), and 809.501(a) of the Board’s hazardous waste regulations. According to the complaint, Home Depot violated these provisions by: 1) failing to determine if sump pit wastes were hazardous wastes; 2) failing to determine if sump pit wastes were special wastes; 3) failing to prepare a manifest for the HD #1924 sump pit water shipped in September 2007; 4) improperly listing the HD #6961 sump pit water as “non-RCRA” on manifest #001654744; 5) failing to send a one-time notice to the treatment, storage, and disposal facility where the HD #6961 sump pit water was shipped; and 6) failing to file annual nonhazardous special waste reports with the Illinois Environmental Protection Agency for nonhazardous special wastes shipped out-of-state.

On January 3, 2012, simultaneously with the filing of the complaint, the People and Home Depot 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) (2010)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2010)), 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 Belleville News-Democrat* on January 21, 2012, and in *The Collinsville Herald Journal* on January 25, 2012. 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) (2010); 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 Home Depot'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) (2010)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Home Depot 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) (2010)), which may mitigate or aggravate the civil penalty amount. Home Depot agrees to pay a civil penalty of \$12,000.00. The People and Home Depot 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. Home Depot must pay a civil penalty of \$12,000.00 no later than April 16, 2012, which is the first business day following the 30th day after the date of this order. Home Depot must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name, case number, and Home Depot's federal tax identification number must appear on face of the certified check or money order.
3. Home Depot 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

Home Depot must send a copy of the certified check or money order and any transmittal letter to:

Michael D. Mankowski
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) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
5. Home Depot must cease and desist from future violations of the Act and Board Regulations that were the subject matter of the complaint.

IT IS SO ORDERED.

Chairman T.A. Holbrook abstained.

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) (2010); *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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 15, 2012, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board