

Counts VI through VIII of the complaint concern alleged water pollution. Count VI alleges Alloy discharged manufacturing process water into the City of Champaign's storm sewer system, which ultimately enters a water of the State, causing or tending to cause water pollution and a water pollution hazard in violation of Section 12(a) of the Act (415 ILCS 5/12(a) (2002)). Count VII alleges Alloy discharged the process water without an industrial storm water National Pollutant Discharge Elimination System (NPDES) permit, violating 415 ILCS 5/12(f) (2002) and 35 Ill. Adm. Code 309.102(a). Lastly, count VIII alleges Alloy operated without an industrial storm water NPDES permit in violation of 415 ILCS 5/12(b) (2002). Comp. at 19-24.

STIPULATION

The People and Alloy filed a stipulation and proposed settlement on February 11, 2003. Though Alloy does not admit the alleged violations, the stipulation states that Alloy "has resolved the circumstances leading to the alleged emissions and waste disposal violations and has several months ago applied for the appropriate process water discharge permit." Stipulation at 6, 10. The stipulation further provides that after the Illinois Environmental Protection Agency (Agency) notified Alloy of "noncompliance," Alloy "worked with Illinois EPA" and "implemented control measures" to "resolve compliance issues" *Id.* at 7-8.

According to the stipulation, the alleged violations were "distinct in nature" and occurred from 1999 through 2001. Stipulation at 8. The stipulation provides that Alloy has not been previously found in violation of the Act. *Id.* at 9. The People maintain that a civil penalty of \$152,501 would serve to deter further violations and aid in voluntary compliance. This amount is reduced by a "penalty offset" of \$77,501 based on three Supplemental Environmental Projects (SEPs) Alloy would perform at an estimated total cost of approximately \$85,000. *Id.* at 9-10. Alloy therefore agrees to pay a civil penalty of \$75,000 to the Environmental Protection Trust Fund and to perform three SEPs approved by the Agency:

1. Add electronic photohelic controls to improve the pulsing cleaning system of air emission control devices (must complete by September 1, 2003);
2. Repair and replace air emission control ducting within two years; and
3. Install broken bag detectors in exhaust stacks of emission control devices within two years. *Id.* at 10.

Alloy must submit a project completion report, including a summary of actual costs, to the Agency within 90 days after (i) completing each SEP or (ii) the deadline for completing each SEP. Alloy also must "continue to operate the SEPs for at least ten years after completion." *Id.* If Alloy fails to perform the SEPs as required, it agrees to pay an additional civil penalty of \$77,501 to the Environmental Protection Trust Fund. *Id.*

PUBLIC HEARING

On March 25, 2003, the Board held a public hearing in the Champaign City Council Chamber to gather testimony and comment on the stipulation and proposed settlement.¹ Notice of the hearing appeared in the *Champaign News-Gazette* on February 21, 2003. Ten members of the public challenged the parties' proposal and the Environment Law Society of the Illinois College of Law filed an *amicus curiae* brief disputing the adequacy of the proposed civil penalty.

According to public testimony and comment, Alloy emitted large amounts of silica sand, iron particles, and other metals causing property damage (Tr. at 26, 27, 34-35, 50, 52, 59, 94), had fugitive emissions forcing residents to keep children indoors and shut windows (Tr. at 26, 96), and discharged wastewater contaminating the sediment of Copper Slough with metals (Tr. at 46-47, 85-86). Members of the public and the *amicus curiae* brief argued that the proposed \$75,000 civil penalty is insufficient to deter further violations of the Act by Alloy or other companies. Tr. at 52, 67, 71, 76, 87-88; Brief at 2-7; *see also* PC 3.

Assistant Attorney General Tom Davis appeared at hearing on behalf of the People. He stated that Alloy had come into compliance and that with the SEPs, Alloy would "go beyond compliance" and "greatly enhance the environmental controls." Tr. at 7, 10-11, 121-22. Davis emphasized that \$75,000 is only the "payment portion" of the roughly \$152,000 penalty that the People calculated—Alloy will spend about \$85,000 on SEPs. Tr. at 121, 125. He also stated that the economic benefit to Alloy from delayed compliance was calculated by the Agency as \$2,501 and that the People minimized litigation costs by settling. Tr. at 120, 126. Davis added that a report on contaminants in the sediment does not suggest any immediate hazard and that the contamination is likely typical of an urban watershed. Tr. at 122, 132. According to a supplemental comment filed by Alloy on April 28, 2003, data reveal most of the water discharged by Alloy was non-contact cooling water, and the Agency's concerns have been addressed without the Agency asking Alloy to "make any changes to its process wastewater discharges." Supp. Comment at 1-2.

DISCUSSION

The Board finds that the record adequately addresses the factors of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c), 42(h) (2002)), which bear on, among other things, the reasonableness of the circumstances surrounding the alleged violations and the need to deter future violations. The Board further finds that the stipulation and proposed settlement meet the content requirements of the Board procedural rules at 35 Ill. Adm. Code 103.302. Alloy has addressed the problems leading to the alleged violations and must pay \$75,000 to the Environmental Protection Trust Fund. Alloy also must perform three SEPs designed to go beyond legal requirements or else pay another civil penalty of \$77,501.

The "the law generally favors the encouragement of settlements" (*Chemetco, Inc. v. IPCB*, 140 Ill. App. 3d 283, 288, 488 N.E.2d 639, 643 (5th Dist. 1986)) and:

¹ The hearing transcript is cited as "Tr. at _."

[T]he public interest is better served by a procedure which encourages respondents to enter into settlement discussions and negotiations by which respondents may avoid the stigma of a finding of violation, and assist the State in effectuating the goals of the Act in those cases where the proof is tenuous or difficult to establish. By allowing the State and the respondents to reason together, the result will conserve resources which would otherwise be expended in litigation. People v. Archer Daniels Midland Corp., 140 Ill. App. 3d 823, 489 N.E.2d 887, 888-89 (3d Dist. 1986).

The Board finds that the parties' proposal furthers the "enhancement of the environment," which is the "primary goal of the Act." Chemetco, 140 Ill. App. 3d at 288, 488 N.E.2d at 643. After considering the record, including testimony and comment, and the Section 33(c) and 42(h) factors, the Board finds appropriate and 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, including Alloy's obligation to perform the three SEPs.
2. Alloy must pay a civil penalty of \$75,000 no later than October 8, 2003, which is the 90th day after the date of this order. Alloy must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Agency, designated to the Environmental Protection Trust Fund. The case number, case name, and Alloy's federal employer identification number must be included on the certified check or money order. If Alloy does not perform the SEPs as required, Alloy must likewise pay an additional civil penalty of \$77,501.
3. Alloy must send the certified check or money order to:

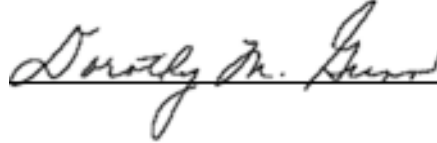
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East, P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties not timely paid will accrue interest under the Act (415 ILCS 5/42(g) (2002)) at the rate in the Income Tax Act (35 ILCS 5/1003(a) (2002)).

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 July 10, 2003, by a vote of 7-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board