ILLINOIS POLLUTION CONTROL BOARD June 17, 2004

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
V.)	PCB 01-104
)	(Enforcement – Water)
CITY OF WAUKEGAN, a municipal)	
corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

On January 5, 2001, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against the City of Waukegan, a Municipal Corporation (the City). *See* 415 ILCS 5/31.1(c) (2002); 35 Ill. Adm. Code 108.202(c). The People allege that the City violated Sections 12(a), (c), and (f) of the Act, and Sections 304.141(b), 306.102(a), 306.304, 306.305(c), and 309.102(a) of the Board's water pollution violations. 415 ILCS 5/12(a), (c), and (f) (2002); 35 Ill. Adm. Code 304.141(b), 306.102(a), 306.304, 306.305(c), and 309.102(a) of the Board's water pollution violations. 415 ILCS 5/12(a), (c), and (f) (2002); 35 Ill. Adm. Code 304.141(b), 306.102(a), 306.305(c), and 309.102(a). The People further allege that the City violated these provisions by discharging untreated sewage into waters of the State on July 23, 1999 when both electric sewage pumps at the City's facility failed. From July 23, 1999, until July 27, 1999, the City pumped approximately 31,600 gallons of untreated sewage from its facility into headwaters of the Middle Fork of the Chicago River. The complaint concerns the City's sewage lift station located at 4200 West McGaw Road, City of Waukegan, Lake County.

On August 23, 2001, the Board entered summary judgment in favor of the People and against the City on counts I, II, and IV (415 ILCS 5/12(a), (c), and (f) (2002); 35 Ill. Adm. Code 304.141(a), 306.102(a), and 309.102(a)). As to count III, the Board found that respondent violated Section 12(a) of the Act and Section 306.304 of the Board's regulations, but that Section 306.305(c) of the Board's regulations did not apply. The Board directed the parties to proceed to hearing on the issue of remedy.

On April 26, 2004, the People and the City filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act Act (415 ILCS 5/31(c)(1) (2002)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2002)). See 35 III. 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 News-Sun* on May 19, 2004. 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) (2000); 35 III. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. 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 the City'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) (2002)). The People and the City have satisfied Section 103.302. Under the proposed stipulation, the City agrees to pay a civil penalty of \$25,000. The Board accepts the stipulation and proposed settlement.

This opinion constitutes the Board's findings of fact and conclusions of law.

<u>ORDER</u>

- 1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
- 2. The City of Waukegan (the City) must pay a civil penalty of \$25,000 no later than July 17, 2004, which is the 30th day after the date of this order. The City must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and the City's social security number or federal employer identification number must be included on the certified check or money order.
- 3. The City 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

A copy of the check or money order and the transmittal letters shall be sent to:

Michael C. Partee (or other designee) Assistant Attorney General Environmental Bureau 188 West Randolph Street, Suite 2001 Chicago, Illinois 60601

- 4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
- 5. The City must cease and desist from the alleged violations.

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 June 17, 2004, by a vote of 5-0.

Drietly Mr. Sunn

Dorothy M. Gunn, Clerk Illinois Pollution Control Board