ILLINOIS POLLUTION CONTROL BOARD October 21, 2004

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
V.)	PCB 04-15
)	(Enforcement - Water)
ATKINSON GRAIN & FERTILIZER, INC., a	ι)	
Delaware corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

On June 30, 2003, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against Atkinson Grain & Fertilizer, Inc. (AGF). AGF is a wholesale agricultural chemical and fertilizer mixer and distributor located at 400 N. Spring Street in Atkinson, Henry County. The People's complaint concerns a shipment of liquid fertilizer that spilled when a truck driven by an AGF employee overturned, rupturing a fertilizer tank on the truck. The spill occurred at the intersection of U.S. Route 6 and Spring Street in Atkinson. The parties now seek to settle without a public hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2002)), the Attorney General and the State's Attorneys may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2002); 35 Ill. Adm. Code 103. In this case, the People allege that AGF violated water pollution provisions of the Act and Board regulations. Specifically, according to the complaint, AGF violated (1) Section 12(a) of the Act (415 ILCS 5/12(a) (2002)) by causing, threatening, or allowing water pollution from the fertilizer spill; (2) Section 12(d) of the Act (415 ILCS 5/12(d) (2002)) by creating a water pollution hazard from the fertilizer spill; (3) Section 12(a) of the Act and 35 Ill. Adm. Code 302.203, 302.208(g), and 302.212(a) by causing levels of contaminants in waters of the State to exceed water quality standards; and (4) Section 12(f) of the Act (415 ILCS 5/12(f) (2002)) and 35 Ill. Adm. Code 309.102(a) by discharging contaminants into waters of the State without a National Pollutant Discharge Elimination System (NPDES) permit.

On September 1, 2004, the People and AGF 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) (2002)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2002)), 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 *Star Courier* on September 17, 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) (2002); 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 AGF'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)), which bears on the reasonableness of the circumstances surrounding the alleged violations. The People and AGF have satisfied Section 103.302. AGF denies the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2002), *as amended by* P.A. 93-575, (eff. Jan. 1, 2004)), which may mitigate or aggravate the civil penalty amount. AGF agrees to pay a civil penalty of \$20,000, which the parties agree is "greater than the economic benefit arising from noncompliance." Stipulation at 8. 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. AGF must pay a civil penalty of \$20,000 no later than November 22, 2004, which is the first business day following the 30th day after the date of this order. AGF 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 number, case name, and AGF's federal employer identification number must be included on the certified check or money order.
- 3. AGF must send the certified check or money order by first class mail to:

Illinois Environmental Protection Agency Fiscal Services Division 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794

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. AGF must cease and desist from future violations of the Act and Board regulations that were the subject of the complaint as outlined in Section V of 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) (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 October 21, 2004, by a vote of 5-0.

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Dorothy M. Gunn, Clerk Illinois Pollution Control Board