ILLINOIS POLLUTION CONTROL BOARD April 6, 2006

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
V.)	PCB 0
)	(Enfor
ECOLAB, INC., a Delaware corporation, and)	
CHARLES A. WINSLETT,)	
)	
Respondents.)	
-		

PCB 06-45 (Enforcement - Land, Water)

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

On September 22, 2005, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against Ecolab, Inc. and Charles A. Winslett (respondents). *See* 415 ILCS 5/31(c)(1) (2004); 35 Ill. Adm. Code 103.204. The parties now seek to settle. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

The People allege that respondents violated Sections 21(a), 21(e), and 12(d) of the Environmental Protection Act (Act) (415 ILCS 5/21(a), 21(e), and 12(d) (2004)). The People further allege that respondents violated these provisions by open dumping of Phostoxin[®] powder waste along the side of Hurt Road. Hurt Road is approximately 1/4 mile west of Apple Road, South Pekin, Tazewell County.

On February 14, 2006, the People and respondents 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) (2004)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2004)), 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 from hearing. The Board published newspaper notice in the *Pekin Daily Times* on March 3, 2006. 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) (2004); 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. 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 respondents' 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) (2004)), which bears on the reasonableness of the circumstances surrounding the alleged violations.

Respondents admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2004)), which may mitigate or aggravate the civil penalty amount. Respondents agree to pay a civil penalty of \$2,500, which the parties stipulate is at least as great as respondents' economic benefit from delayed compliance, if any. People assert will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations. Respondents further agree to engage in a supplemental environmental project, which consists of the cash payment of \$10,000 for the restoration of a park and playground in South Pekin that was severely damaged by a tornado in May 2004.

The People and respondents have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement. This docket is now closed.

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. Respondents must pay a civil penalty of \$2,500 no later than May 8, 2006, which is the first business day after the 30th day after the date of this order. Respondents must pay the civil penalty by certified check, money order, or electronic funds transfer, payable to the Environmental Protection Trust Fund. The case number, case name, and respondents' social security number or federal employer identification number must be included on the certified check or money order.
- 3. Respondents must send the certified check, money order, or electronic funds transfer to the following person at the indicated address:

Illinois Environmental Protection Agency Fiscal Services Division 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276

4. Respondents must send a copy of the certified check, money order, or record of electronic funds transfer and any transmittal letter to the following person at the indicated address:

Kristen Laughridge, Assistant Attorney General Environmental Bureau 500 South Second Street Springfield, Illinois 62702

James G. Richardson, Assistant Counsel

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

- 5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
- 6. The respondents must pay \$10,000 for the restoration of a park and playground in South Pekin for which the local Veterans of Foreign Wars (VFW) post and Boy Scout Troop 1232 will perform the work: the painting and repair of all swings, slides, bars, and related equipment; installation of a new drinking fountain, procurement and installation of two or three park benches, repair of existing park fence, and addition of a gate, and 300 feet of fence to fully enclose the park; addition of topsoil to level the playground; seeding the site; and planting of five large trees on the west side of the park for shade.
- 7. The respondents must maintain contact with the local VFW post until the work is completed.
- 8. Respondents 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) (2004); *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 April 6, 2006, by a vote of 4-0.

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Dorothy M. Gunn, Clerk Illinois Pollution Control Board