ILLINOIS POLLUTION CONTROL BOARD January 26, 2007

| PEOPLE OF THE STATE OF ILLINOIS, |) | |
|----------------------------------|---|-----------------------|
| |) | |
| Complainant, |) | |
| |) | |
| V. |) | PCB 07-1 |
| |) | (Enforcement - Water) |
| KURT CARLSON, |) | |
| |) | |
| Respondent. |) | |

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

On July 3, 2006, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against Mr. Kurt Carlson. *See* 415 ILCS 5/31(c)(1) (2004); 35 Ill. Adm. Code 103.204. Mr. Carlson is the owner and developer of the residential subdivision known as Park Valley. Park Valley is located along McFarland Road in the City of Loves Park, Winnebago County. The parties now seek to settle. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2004)), 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 (2004); 35 Ill. Adm. Code 103. In this case, the People allege that Mr. Carlson violated Section 12(a), 12(d), and 12(f), of the Act (415 ILCS 5/12(a), (d), and (f) (2004)) by: causing or allowing water pollution, failing to comply with his National Pollutant Discharge Elimination System (NPDES) stormwater permit, and creating a water pollution hazard. In the complaint, the People allege that Mr. Carlson failed to implement adequate erosion controls, failed to implement stormwater pollution prevention plans for the Park Valley site, and failed to submit required noncompliance reports from September 23, 2004 to at least February 2005. The People ask the Board to order Mr. Carlson to cease and desist from further violation and pay a civil penalty of \$50,000 per violation and \$10,000 for each day the violations continued.

On November 20, 2006, the People and Mr. Carlson 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)). 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 *Rockford Register Star* on December 18, 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 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 Mr. Carlson'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) (2004)). The People and Mr. Carlson have satisfied Section 103.302. Under the proposed stipulation, Mr. Carlson neither admits nor denies the alleged violations and agrees to pay a civil penalty of \$22,000.

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. Mr. Kurt Carlson must pay a civil penalty of \$22,000 no later than February 25, 2007, which is the 30th day after the date of this order. Mr. Carlson must pay the civil penalty by a certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and Mr. Carlson's social security number or federal employer identification number must be included on the certified check or money order.
- 3. Mr. Carlson must send the certified check or money order and any transmittal letter to:

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

Copies of the check or money order and any submittal letter must be sent to:

Vanessa A. Vail Assistant Attorney General Environmental Bureau 188 W. Randolph St., 20th Floor Chicago, Illinois 60601

James Day Assistant Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East Springfield, Illinois 62794-9276

4. 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)).

5. Mr. Carlson 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 January 26, 2007, by a vote of 4-0.

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Dorothy M. Gunn, Clerk Illinois Pollution Control Board