ILLINOIS POLLUTION CONTROL BOARD June 7, 2007

)	
)	
)	
)	
)	PCB 06-51
)	(Enforcement – Air, Water, Land)
)	
)	
)	
)	
))))))))

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

On October 14, 2005, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against CSX Transportation, Inc. (CSX Transportation). *See* 415 ILCS 5/31(c)(1) (2004); 35 Ill. Adm. Code 103.204. The complaint concerns the derailment of 13 engines and cars of a 55-car freight train owned by CSX Transportation onto a farm field about a mile north of downtown Paris, Edwards County, on December 22, 2004. 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 on behalf of the People to enforce Illinois' environmental requirements. *See* 415 ILCS 5/31 (2004); 35 Ill. Adm. Code 103. The People allege that CSX Transportation violated Sections 9(a), 12(d), and 21(e) of the Act. 415 ILCS 5/9(a), 12(d), and 21(e) (2004). The People further allege that CSX Transportation violated these provisions by causing air pollution, abandoning waste, and creating a water pollution hazard at the derailment site.

On April 19, 2007, the People and CSX Transportation 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. The newspaper notice was published in the *Paris Beacon News* on April 25, 2007. 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

CSX Transportation'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)), which bears on the reasonableness of the circumstances surrounding the alleged violations. The People and CSX Transportation have satisfied Section 103.302. 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. Under the proposed stipulation, CSX Transportation does not affirmatively admit the alleged violations but agrees to pay a civil penalty of \$80,000. The Board 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.
- 2. CSX Transportation, Inc. (CSX Transportation) must pay a civil penalty of \$80,000 no later than July 9, 2007, which is the first business day after the 30th day from the date of this order. CSX Transportation must pay the civil penalty by a 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 CSX Transportation's social security number or federal employer identification number must be included on the method payment.
- 3. CSX Transportation must submit 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

Copies of the check or money order must be sent to:

Kristen Laughridge Gale Assistant Attorney General Environmental Bureau 500 South Second Street Springfield, Illinois 62706

Kyle Nash Davis Assistant Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East P.O. Box 19276 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. CSX Transportation 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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 7, 2007 by a vote of 4-0.

John T. Thereiant

John T. Therriault, Assistant Clerk Illinois Pollution Control Board