ILLINOIS POLLUTION CONTROL BOARD December 6, 2007

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
v.)	PCB 07-23 (Enforcement -Water)
REG GIERTZ d/b/a GIERTZ SWINE ARM #1,)	(Emoreement - water)
Respondent.)	

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

On October 13, 2006, complainant, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a seven-count complaint against respondent, Greg Giertz d/b/a Giertz Swine Farm #1 (Giertz). The complaint concerns livestock waste releases in March-April and November 2004 from the Giertz swine finishing facility located approximately twenty miles south of the City of Moline at 5212 Knoxville Road, New Windsor, Mercer County. The parties now seek to settle without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement. Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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 Giertz caused or allowed the release of livestock waste in violation of the Act and the Board's livestock waste rules at 35 Ill. Adm. Code 500 *et seq*.

According to the complaint, respondent violated, in separate incidents on various specified dates occurring in March-April and in November 2004: 1) Sections 12(a) and (d) of the Act (415 ILCS 5/12(a), (d) (2006)) by causing or allowing the discharge of livestock waste so as to cause or threaten water pollution and create a water pollution hazard and 35 Ill. Adm. Code 501.403(a) and 501.404(c)(4) (A) by failure to have in place appropriate diversion dikes and manure storage capacity, 2) Section 12(f) of the Act (415 ILCS 5/12 (f) (2006)) and 35 Ill. Adm. Code 309.102(a) by causing, allowing, or threatening the discharge of a contaminant without a permit under the National Pollutant Discharge Elimination System (NPDES), and 3) Section 4(h) of the Act (415 ILCS 5/4(h) (2006)) and 35 Ill. Adm. Code 580.105 by failing to timely report releases of livestock waste from a facility.

On October 26, 2007, the People and Giertz 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) (2006)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2006)). 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 *Times Record* on October 31, 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) (2006); 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 Giertz' 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) (2006)). The People and Giertz have satisfied Section 103.302. Giertz neither admits nor denies the alleged violations, but agrees to pay a civil penalty of \$3,500. 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. Greg Giertz d/b/a Giertz Swine Farm #1 (Giertz) must pay a civil penalty of \$3,500 no later than Monday, January 7, 2008, which is the first business day after the 30th day after the date of this order. Giertz must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Agency and designated to the Illinois Environmental Protection Trust Fund. The case number, case name, and Giertz' social security number or federal employer identification number (FEIN) must be included on the certified check or money order.
- 3. Giertz 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

Giertz must send a copy of the certified check or money order and any transmittal letter to:

Jane E. McBride Assistant Attorney General Environmental Bureau 500 South Second Street Springfield, IL 62702

Charles Gunnarson 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) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
- 5. Giertz 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) (2006); *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 December 6, 2007, by a vote of 4-0.

John T. Therriault, Assistant Clerk Illinois Pollution Control Board