ILLINOIS POLLUTION CONTROL BOARD November 20, 2008

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,))	
v.)	PCB 07-148
CARLYLE NORTH WATER COMPANY,)	(Enforcement – Water)
INC.,)	
Respondent.	ý	

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

On June 28, 2007, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against Carlyle North Water Company, Inc. (Carlyle North). The complaint concerns Carlyle North's water supply facility at Carlyle and Keyesport in Clinton 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 on behalf of the People to enforce Illinois' environmental requirements. *See* 415 ILCS 5/31 (2006); 35 Ill. Adm. Code 103. In this case, the People allege that, at various times beginning in 2004, Carlyle North violated Sections 15, 18, and 19 of the Environmental Protection Act (415 ILCS 5/15, 18, 19 (2006)), Section 1 of the Public Water Supply Operations Act (415 ILCS 45/1 (2006)), and Sections 602.101, 603.102, 611.521, 611.831, 652.101, 653.605, and 653.704 of the public water supply regulations (35 Ill. Adm. Code 602.101, 603.102, 611.521, 611.831, 652.101, 653.605, 653.704). The People further allege that Carlyle North violated these provisions by constructing and installing a water main and flush hydrant without a construction permit, failing to have a certified operator for some nine months, and failing to maintain and submit records (including one coliform sample report, and from October 2004 to the present, monthly operating reports, and monthly operating records for chlorination and fluoride).

On September 19, 2008, the People and respondent 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)), 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 *Union Banner* on October 15, 2008. 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. *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 Carlyle North'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) (2006)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Carlyle North neither admits nor denies the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2006)), which may mitigate or aggravate the civil penalty amount. Carlyle North agrees to pay a civil penalty of \$3,713. The People and Carlyle North have satisfied Section 103.302. 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. Carlyle North must pay a civil penalty of \$3,713 no later than December 22, 2008, which is the first business day following the 30th day after the date of this order. Carlyle North 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 name, case number, and Carlyle North's federal tax identification number must appear on the face of the certified check or the money order.
- 3. Carlyle North must submit payment of the civil penalty by certified mail to:

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

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

Environmental Bureau Illinois Attorney General's Office 500 South Second Street Springfield, Illinois 62706

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)).

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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 20, 2008, by a vote of 5-0.

In T. Therian

John Therriault, Assistant Clerk Illinois Pollution Control Board