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JAN 29 2009

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 28, 2008

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: *People v. Pekin Paperboard, Co.*
PCB 05-163

Dear Mr. Therriault:

This letter is a follow-up to our telephone conversation on Tuesday, January 27, 2009. As I explained to you on the phone, I intended to file an Amended Complaint with the previously filed Stipulation and Proposal for Settlement in the above-captioned matter. In inadvertently mailed the Stipulation without the Amended Complaint.

Enclosed for filing please find the original and ten copies of a Notice of Filing and Amended Complaint. Please file the original and return a file-stamped copy to me in the enclosed envelope. As a reminder, this is not a new case. The Amended Complaint is to be filed as part of the previously filed Stipulation and Proposal for Settlement in case number 05-163.

I apologize for this oversight and any inconvenience it may have caused. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Andrew J. Nicholas".

Andrew J. Nicholas
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

Enclosures

cc: Jane DiRenzo Pigott, Respondent's Attorney
Carol Webb, Hearing Officer IPCB

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
PEKIN PAPERBOARD COMPANY, L.P.,)
a Delaware limited partnership,)
)
Respondent.)

PCB No. 05-163
(Enforcement)

NOTICE OF FILING

RECEIVED
CLERK'S OFFICE

JAN 29 2009

STATE OF ILLINOIS
Pollution Control Board

To: Ms. Jane DiRenzo Pigott
Attorney at Law
One N. LaSalle St., Suite 1904
Chicago, IL 60602

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, an AMENDED COMPLAINT, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
ANDREW J. NICHOLAS
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 28, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on January 28, 2008, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING and AMENDED COMPLAINT


To: Ms. Jane DiRenzo Pigott
Attorney at Law
One N. LaSalle St., Suite 1904
Chicago, IL 60602

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794



Andrew J. Nicholas
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 PEKIN PAPERBOARD COMPANY, L.P.,)
 a Delaware limited partnership,)
)
 Respondent.)

PCB No. 05-163
(Water-Enforcement)

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STATE OF ILLINOIS
Pollution Control Board

AMENDED COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, PEKIN PAPERBOARD COMPANY, L.P., a Delaware limited partnership, as follows:

COUNT I
NPDES PERMIT VIOLATIONS

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2006).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act.

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. Pekin Paperboard Company, L.P. ("Pekin Paperboard"), is a Delaware limited partnership authorized to do business in the State of Illinois.

5. Pekin Paperboard manufactures cereal containers using recycled materials at a facility at 1525 South Second Street, Pekin, Tazewell County, Illinois. This facility includes a wastewater treatment plant ("WWTP") which receives and treats process wastewater from the production operations. The effluent from the WWTP is discharged via an outfall designated as A01 to a storm sewer which discharges to a ditch. This "effluent ditch" flows into a canal which connects Crystal Lake to the Illinois River. In addition to storm water from the facility site, which includes storm water from the facility's waste and paper storage and handling areas, the storm sewer also receives discharges of non-contact cooling water from a turbine generator and well water storage tank overflow via outfall D01, neutralized zeolite softener regeneration water via outfall C01, boiler blowdown via outfall B01, and acid regenerated demineralizer column wastewater from a water purification process. The discharges from the WWTP and the designated outfalls are authorized pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. IL0037729.

6. The effluent ditch, the canal, Crystal Lake, and the Illinois River are "waters" of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), as follows:

"Waters" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

7. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006), provides the following definition:

"Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the

State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

8. Section 12 of the Act, 415 ILCS 5/12 (2006), provide the following prohibitions:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act;

* * *

- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

* * *

9. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) (2005), provides:

- a) Except as in compliance with the provision of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

10. Section 304.141(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.141(a) (2005), provides:

- a) No person to whom an NPDES Permit has been issued may discharge any contaminant in his effluent in excess of the standards and limitations for that contaminant which are set forth in his permit.

11. Congruent with Section 304.120 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.120 (2005), Pekin Paperboard's NPDES Permit imposes effluent concentration limitations for total suspended solids ("TSS") and five-day carbonaceous biochemical oxygen demand ("CBOD₅"), each of which is a "contaminant" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2006). Discharge Monitoring Reports ("DMRs") are submitted monthly in accordance with the NPDES Permit to report the concentrations of contaminants in the effluent.

12. The effluent concentration limitations for CBOD₅ are 25 milligrams per liter ("mg/l") on a monthly average and 50 mg/l for a daily maximum. The concentration limitations for TSS are 30 mg/l on a monthly average and 60 mg/l for a daily maximum.

13. Pekin Paperboard reported in its DMRs for the months of January, February, and March of 2001; February, March, April, May, June, July, August, September, October, and November of 2002; January, February, April, and May of 2003; November of 2005, February, April, May, October and December of 2006; January, February, March, April, May, June, July, September, October, November, and December of 2007; and January, February, March, April, August, September, October, and November of 2008, that it had exceeded the monthly average effluent limitation of 30 mg/l for TSS.

14. Pekin Paperboard reported in its DMRs for the months of March of 2001;

February, April, May, June, August, September, and October of 2002; January, and February of 2003; February, April, May, and December of 2006; January, February, March, September, and December of 2007; and January, February, March, April, August, September, October, and November of 2008, that it had exceeded the daily maximum effluent limitation of 60 mg/l for TSS.

15. Special Condition 12 of Pekin Paperboard's NPDES Permit requires the facility to implement the provisions of a storm water pollution prevention plan at the facility. The storm water pollution prevention plan must include, among other items, storm water management controls which will be implemented by the facility. These controls must include good housekeeping and storm water management practices such as containment and debris control.

16. On August 30, 2002, the Illinois EPA inspected the WWTP to evaluate its compliance with the NPDES Permit. The Illinois EPA inspector observed that there were at least two storm drains near the powerhouse that receive paper waste runoff and spillage from the compactor box storage area. The Illinois EPA inspector observed paper waste on the ground in this area, covering one of the storm inlets. Paper waste is a "contaminant" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

17. Pekin Paperboard has caused or allowed the discharge of contaminants into waters of the State in violation of the terms or conditions of its NPDES Permit and has thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

18. By discharging contaminants into waters of the State in violation of the terms or conditions of its NPDES Permit, Pekin Paperboard has thereby violated Sections 304.120, 304.141(a), and 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.120, 304.141(a), and 309.102(a) (2005).

19. By discharging contaminants into waters of the State so as to violate regulations

or standards adopted by the Pollution Control Board under this Act, Pekin Paperboard has thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

20. By failing to maintain adequate storm water management controls at its facility as required by its NPDES Permit, Pekin Paperboard has caused, threatened or allowed the discharge of any contaminant into the waters of the State in violation of its NPDES permit, and has thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent PEKIN PAPERBOARD COMPANY, L.P.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT II
OPERATIONAL VIOLATIONS

1-10. Complainant realleges and incorporates herein by reference paragraphs 1 through 10 of Count I as paragraphs 1 through 10 of this Count II.

11. On August 30, 2002, the Illinois EPA inspected the WWTP to evaluate its compliance with the NPDES Permit. The effluent being discharged via outfall A01 and the water within the effluent ditch were brown and turbid. The Illinois EPA inspector noted that sludge had last been removed from the lagoon in 1997. There were paper solids and wastewater sludge within the ditch. The lagoon screens at the outfall were clogged, thereby causing the lagoon to be overfilled.

12. The Illinois EPA issued a violation notice to Pekin Paperboard on September 30, 2002. A meeting was held on November 25, 2002.

13. On December 5, 2002, the Illinois EPA again inspected the WWTP to evaluate its compliance with the NPDES Permit. The effluent being discharged via outfall A01 and the water within the effluent ditch were brown and turbid. There were additional paper solids and wastewater sludge within the ditch.

14. On January 29, 2003, the Illinois EPA conducted a reconnaissance inspection of the WWTP. There were not only solids and sludge in the ditch but also wastewater. A sample of the effluent was determined to contain 140 mg/l of TSS.

15. On March 5, 2003, the Illinois EPA conducted another reconnaissance inspection of the WWTP. The effluent was brown and turbid; the water in the effluent ditch contained floating solids.

16. On April 29, 2003, the Illinois EPA again inspected the WWTP to evaluate its compliance with the NPDES Permit. The Illinois EPA determined that the permitted outfalls B01, C01, and D01 were not being separately sampled as required by the NPDES Permit. The solids and sludge in the ditch had been removed. The water in the effluent ditch was brown.

17. On May 29, 2003, the Illinois EPA conducted a follow-up inspection and observed that the water in the effluent ditch was brown.

18. On June 23, and July 30, 2003, the Illinois EPA again inspected the WWTP, primarily to observe the dredging of the lagoon. On the latter occasion, the effluent was gray with a strong septic odor; the water in the effluent ditch was also gray with unnatural algal growth and sludge deposits. A sample of the effluent taken on July 30, 2003, was determined to contain 190 mg/l of BOD₅.

19. On August 28, and September 18, 2003, the Illinois EPA again inspected the WWTP after the completion of the lagoon dredging. On both occasions, the effluent was brown with a slight septic odor.

20. On October 28, 2003, the Illinois EPA conducted a reconnaissance inspection of the WWTP. There was sludge in a low area near the access gate to the lagoon.

21. On July 15, 2004, the Illinois EPA again inspected the WWTP. The lagoon effluent was not discharging, as the pump was air locked. The Illinois EPA noted some gray sludge deposits present in the receiving stream. Paper sludge was present in the low area downstream of the overflow pipe.

22. Section 306.102 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.102, provides:

System Reliability

Malfunctions: All treatment works and associated facilities shall be constructed and operated as to minimize violations of applicable standards during such contingencies as flooding, adverse weather, power failure, equipment failure, or maintenance, through such measures as multiple units, holding tanks, duplicative power sources, or such other measures as may be appropriate.

Spills: All reasonable measures, including where appropriate the provision of catchment areas, relief vessels, or entrapment dikes, shall be taken to prevent any spillage of contaminants from causing water pollution.

23. By failing to sample each of the permitted outfalls as required and discharging

contaminants into waters of the State in violation of the terms or conditions of its NPDES Permit, Pekin Paperboard has thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) (2005).

24. By allowing bypasses and overflows of untreated wastewater to occur, Pekin Paperboard has violated Section 306.102 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.102 (2005).

25. By discharging contaminants into waters of the State so as to violate regulations or standards adopted by the Pollution Control Board under this Act, Pekin Paperboard has thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent PEKIN PAPERBOARD COMPANY, L.P.:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

E. Granting such other relief as the Board may deem appropriate.

COUNT III
WATER POLLUTION

1-8. Complainant realleges and incorporates herein by reference paragraphs 1 through 8 of Count I as paragraphs 1 through 8 of this Count III.

9-19. Complainant realleges and incorporates herein by reference paragraphs 11 through 21 of Count II as paragraphs 9 through 19 of this Count III.

20. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203 (2005), provides:

Offensive Conditions

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

21. Section 304.105 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.105 (2005), provides:

Violations of Water Quality Standards

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard. . . .

22. Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106 (2005), provides:

Offensive Discharges

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

23. Pekin Paperboard has caused or allowed the discharge of effluent in violation of Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106 (2005). Since these offensive discharges resulted in violations of water quality standards, Pekin Paperboard also violated Sections 302.203 and 304.105 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, 304.105 (2005).

24. By so violating the Board's Water Pollution Regulations, Pekin Paperboard has thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

25. Pekin Paperboard has caused, threatened or allowed water pollution in that such discharges of contaminants likely rendered the waters of the State harmful or detrimental or injurious to public health, safety or welfare, or to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life and have likely created a nuisance.

26. By causing or allowing the discharge of contaminants in such a manner as to cause or threaten water pollution, Pekin Paperboard has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent PEKIN PAPERBOARD COMPANY, L.P.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

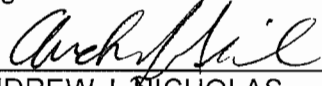
E. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: _____


ANDREW J. NICHOLAS
Environmental Bureau
Assistant Attorney General

Attorney Reg. No. 6285057
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 28, 2009

