

ILLINOIS POLLUTION CONTROL BOARD
February 19, 2009

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 09-29
)	(Enforcement)
KAPLAN DEVELOPMENT AND)	
INVESTMENT COMPANY.,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by S.D. Lin):

On October 28, 2008, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint (Complaint) against Kaplan Development and Investment Company (Kaplan) concerning Kaplan’s operation of the Summit Springs lift station¹, which serves the village of Caseyville, St. Clair 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 Kaplan violated Sections 12(a), 12(b), and 12(f) of the Act, and Sections 302.203, 304.106, 306.304, and 306.102(a) of the Board’s water rules (35 Ill. Adm. Code 302.203, 304.106, 306.304, and 306.102(a) (2006)) by causing four separate wastewater overflows which resulted in the discharge of untreated sewage into the environment. Specifically, the People allege that the fourth overflow “resulted in the discharge of sewage into a nearby creek, leaving deposits of unnatural origin.” *Comp.* at 3. The People further allege that Kaplan operated the lift station without the necessary safeguards against power or equipment failure, in violation of the terms of its Water Pollution Control Permit. *Comp.* at 6.

On January 7, 2009, the People and Kaplan 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 *Belleville*

¹ The “lift station” is used to collect untreated sewage and move the wastewater through the village’s wastewater treatment system to the Caseyville Township-West Sewage treatment plant. *Complaint* at 1-2.

News-Democrat, on January 13, 2009. 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 Kaplan'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. Kaplan 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. Kaplan agrees to pay a civil penalty of \$5,000.00. The People and Kaplan 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.

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. Kaplan must pay a civil penalty of \$5,000.00 no later than March 23, 2009, which is the first business day following the 30th day after the date of this order. Kaplan must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Trust Fund. The case name, case number, and Kaplan's Federal Employer Identification Number must appear on the face of the certified check or money order.
3. Kaplan must submit payment of the civil penalty to:

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

Kaplan 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)).
5. Kaplan 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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 19, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board