ILLINOIS POLLUTION CONTROL BOARD March 5, 2009

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,))	
v.)	PCB 05-163 (Enforcement - Water)
PEKIN PAPERBOARD COMPANY, L.P.,)	(Enforcement Water)
a Delaware limited partnership,)	
)	
Respondent.)	

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

On March 11, 2005, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against Pekin Paperboard Company (respondent) concerning a wastewater treatment plant (WWTP) on site at respondent Pekin's cereal container manufacturing facility located 1525 South Second Street, Pekin, Tazewell County. On January 29, 2009, the People filed an amended complaint. The Board accepts the amended complaint as meeting the applicable content requirements of the Board's procedural rules. *See* 35 Ill. Adm. Code 103.204.¹

The parties now seek to settle without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposal for 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 Pekin violated Sections 12(a) and (f) of the Act (415 ILCS 5/12(a), (f) (2006)), and Sections 302.203, 304.105, 304.106, 304.120, 304.141(a), 306.102, and 309.102(a) of the Board's water rules (35 Ill. Adm. Code 302.203, 304.105, 304.105, 304.106, 304.120, 304.141(a), 306.102, and 309.102(a) (2006)).

On January 13, 2009, the People and Pekin filed a stipulation and proposal for settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act

¹ The original complaint, filed March 11, 2005, included Count IV which alleged violations of Section 12(b) of the Act (415 ILCS 5/12(b) (2006)) and Section 309.154 of the Board's rules (35 III. Adm. Code 309.154 (2006)). The amended complaint eliminated Count IV, in accordance with the Stipulation and Proposal for Settlement, filed January 13, 2009. In a cover letter received by the Board along with the amended complaint, the People explained that the amended complaint was inadvertently not filed on January 13, 2009 along with the settlement proposal.

(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 *Pekin Daily Times* on January 27, 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 proposals for settlement. *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 Pekin'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. Pekin 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. Pekin agrees to pay a civil penalty of \$65,000.00. The People and Pekin 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

- The Board accepts and incorporates by reference the January 13, 2009 stipulation and proposed settlement. The Board also accepts the three-count January 25, 2009 amended complaint referenced in the January 13, 2009 stipulation and proposed settlement.
- 2. Pekin must pay a civil penalty of \$65,000.00 no later than April 6, 2009, which is the first business day following the 30th day after the date of this order. Pekin 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 Pekin's Federal Employer Identification Number must appear on the face of the certified check or money order.
- 3. Pekin 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

Pekin 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, IL 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. Pekin 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 March 5, 2009, by a vote of 5-0.

phu T. Sherrian

John Therriault, Assistant Clerk Illinois Pollution Control Board