## ILLINOIS POLLUTION CONTROL BOARD December 3, 2009

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
V.	)	PCB 08-07
	)	(Enforcement - Water)
UNION PACIFIC RAILROAD COMPANY,	)	
a Delaware corporation,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by C.K. Zalewski):

In summary, this order denies respondent's contested motion for reconsideration of the Board's order of August 20, 2009 directing that all claims in this enforcement complaint proceed to hearing in this docket.

## **THE CHALLENGED ORDER**

On July 16, 2007, the Attorney General, on behalf of the People of the State of Illinois (People) and at the request of the Illinois Environmental Protection Agency (Agency), filed a four-count complaint against the Union Pacific Railroad Company, a Delaware corporation (UPRC). *See* 415 ILCS 5/31(c)(1) (2008); 35 Ill. Adm. Code 103.204. The complaint charges that UPRC committed water pollution at UPRC's rail yard and intermodal facility located at 301 West Lake Street in Northlake, Cook County.

By order of August 20, 2009, the Board denied UPRC's April 3, 2009 motion to sever claims. <u>People v. Union Pacific Railroad Co.</u>, PCB 08-07 (Aug. 20, 2009). The essence of UPRC's argument was that

the four counts in the People's complaint improperly consolidate claims arising from two "separate and unrelated" events in November 2005 and February 2006. *Id.* UPRC argued that requiring UPRC to defend these claims in a single action would result in material prejudice against UPRC because a finding of liability as to either claim "would create an impermissible negative influence as to [UPRC's] liability related to the other." UPRC further argues that, due to the consolidated damages in the complaint, "[a]n objective damages determination as to either alleged event would also be impossible." (citations to motion omitted). *Id*, slip op. at 3.

The Board found that, as urged by the People in an April 22, 2009 reply in opposition to severance, the two incidents involve the same parties, the same facility, the same NPDES Permit, and the same theory of liability. People v. Union Pacific Railroad Co., PCB 08-07, slip op. at 6.

The Board found that UPRC would not be materially prejudiced by defending both claims in a consolidated action. *Id.* The Board concluded that, under these circumstances, "severance would not further the convenient, expeditious, and complete determination of the claims in this case". *Id.* at 7. The Board also stated that

"conducting two proceedings regarding alleged violations of the same NPDES Permit at the same facility by the same party would waste the resources of the Board and the parties involved. *Id.* 

## PENDING MOTION AND RELATED FILINGS

On September 29, 2009, the respondent UPRC timely filed a motion for reconsideration of the Board's August 20, 2009 order. Consistent with an October 1, 2009 hearing officer order, the People timely filed a response in opposition to the motion for reconsideration on October 23, 2009. On November 6, 2009, UPRC filed a reply in opposition to the People's response to its motion, accompanied by a motion for leave to file. *See* 35 Ill. Adm. Code 101.500 (e). In the absence of a response by the People, the Board grants the motion for leave to file the reply. *See* 35 Ill. Adm. Code 101.500 (d).

## **ANALYSIS AND CONCLUSION**

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902. The Board has stated that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." Citizens Against Regional Landfill v. County Board of Whiteside, PCB 92-156, slip op. at 3 (Mar. 11, 1993) (sanctions ruling in landfill siting appeal affirmed on reconsideration), citing the general rule set out in Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992) (review of trial court ruling on motion to reconsider).

After review of the filings, the Board finds that UPRC has produced no new evidence, citation to change in law, or convincing arguments that the Board misapplied existing law that would lead the Board to conclude that the August 20, 2009 order was in error. The Board accordingly denies UPRC's motion for reconsideration. This matter must proceed expeditiously to hearing as a single action, consistent with orders of the hearing officer.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 3, 2009, by a vote of 5-0.

John Therriault, Assistant Clerk

Illinois Pollution Control Board