ILLINOIS POLLUTION CONTROL BOARD July 15, 2010

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
v.)	PCB 10-105
KEVIN FAIRFIELD, an individual, and SUE FAIRFIELD, an individual)	(Enforcement - Water)
Respondents.)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On June 14, 2010, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against Kevin Fairfield and Sue Fairfield (Fairfields). The complaint concerns the Fairfields' residential property located at 1990 Lake Jacksonville Road in Jacksonville, Morgan 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 (2008)), 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 (2008); 35 Ill. Adm. Code 103. In this case, count I of the People's complaint alleges that the Fairfields violated Section 12(a) of the Act (415 ILCS 5/12(a) (2008)) by causing, allowing, or threatening to cause water pollution and by violating a Board water quality standard. In count I, the People also allege that the Fairfields violated Section 12(d) of the Act (415 ILCS 5/12(d) (2008)) by depositing a contaminant upon the land in such a place and manner as to create a water pollution hazard. The People further allege in count I that the Fairfields violated the water quality standard of Section 302.203 of the Board's water pollution regulations (35 Ill. Adm. Code 302.203) by causing, allowing, or threatening to allow offensive conditions in an unnamed tributary of Sandy Creek. In count II of the complaint, the People allege that the Fairfields violated Section 12(f) of the Act (415 ILCS 5/12(f) (2008)) and Section 309.102(a) of the Board's water pollution regulations (35 Ill. Adm. Code 309.102(a)) by causing, threatening, or allowing the discharge of a contaminant into a water of the State without a National Pollutant Discharge Elimination System (NPDES) permit.

On June 14, 2010, the People and the Fairfields also 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) (2008)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2008)), 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 *Jacksonville Journal Courier* on June 19, 2010. 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) (2008); 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 the Fairfields' 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) (2008)), which bears on the reasonableness of the circumstances surrounding the alleged violations. The Fairfields admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2008)), which may mitigate or aggravate the civil penalty amount. The Fairfields agree to pay a civil penalty of \$5,500. The People and the Fairfields 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. The Fairfields must pay a civil penalty of \$5,500 no later than August 16, 2010, which is the first business day following the 30th day after the date of this order. The Fairfields must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name and case number must appear on the face of the certified check or money order.
- 3. The Fairfields 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

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

Michael D. Mankowski Assistant Attorney General Environmental Bureau 500 South Second Street Springfield, Illinois 62702 4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).

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) (2008); *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 July 15, 2010, by a vote of 5-0.

John Therriault, Assistant Clerk Illinois Pollution Control Board

pluT. Therrian