## ILLINOIS POLLUTION CONTROL BOARD March 3, 2011

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	)	
v.	)	PCB 09-35
ALAN DURKEE d/b/a ALAN DURKEE	)	(Enforcement - Water)
SWINE FARM,	)	
Respondent.	)	

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

On November 25, 2008, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against Alan Durkee, doing business as Alan Durkee Swine Farm (respondent). The complaint concerns respondent's swine operation located at the intersection of County Road 800N and County Road 1700E, approximately two miles east of Stronghurst in Henderson County. On January 10, 2011, the parties filed a stipulation, proposal for settlement, and request for hearing relief. For the reasons below, the Board directs that a further filing be made to reconcile an inconsistency between the complaint and the stipulation.

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, the People allege that respondent violated Sections 12(a), 12(d), and 12(f) of the Act (415 ILCS 5/12(a), 12(d), 12(f) (2008)) and Sections 302.203, 309.102(a), and 501.405 of the Board's regulations (35 Ill. Adm. Code 302.203, 309.102(a), 501.405) by (1) causing, allowing, or threatening the discharge of contaminants to waters of the State so as to cause or tend to cause water pollution in Illinois; (2) depositing contaminants upon the land in such place and manner as to create a water pollution hazard; (3) causing or allowing the discharge of livestock wastewater to waters of the State without a National Pollutant Discharge Elimination System (NPDES) permit; (4) land applying livestock waste in exceedence of practical limits, and thereby allowing the discharge of facility contaminants to waters of the State; and (5) improperly applying livestock waste on land so as to allow a discharge and cause turbid, discolored, and odorous waters in an unnamed tributary of Middle Creek and a roadside ditch along County Road 1700E.

On January 10, 2011, as indicated, the People and respondent 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 III. Adm. Code 103.300(a). Under the proposed stipulation, respondent does not affirmatively admit the alleged violations but agrees to pay a civil penalty of \$5,500.

Generally, unless the Board determines that a hearing is needed, the Board causes notice of a stipulation, proposed settlement, and request for relief from the hearing requirement. Any person may file a written demand for hearing within 21 days after receiving the notice. If anyone timely files a written demand for hearing, the Board denies the parties' request for relief and holds a hearing. See 415 ILCS 5/31(c)(2) (2008); 35 Ill. Adm. Code 103.300(b), (c).

In this case, the statement of alleged violations in the stipulation refers specifically to counts I through III of the complaint, but does not include count IV of the complaint. *See* Stipulation at 2-3 ("Allegations of Non-Compliance"); *see also id.* at 3 ("Admission of Violations"). As the Board has stated, "the inclusion of a particular alleged violation might be significant to a citizen who is reading a proposed settlement and considering whether to demand a hearing. *See* 415 ILCS 5/31(c)(2) (2008); 35 Ill. Adm. Code 103.302." People v. Waste Management of Illinois, PCB 11-14, slip op. at 2 (Nov. 4, 2010). Accordingly, the Board directs that an appropriate filing be made by April 4, 2011, to reconcile the inconsistency between the complaint and the stipulation. *See*, *e.g.*, People v. Swinson, PCB 10-08, slip op. at 2 (June 17, 2010); People v. Village of Rockton, PCB 09-104, slip op. at 1-2 (Nov. 19, 2009).

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 3, 2011, by a vote of 5-0.

John Therriault, Assistant Clerk Illinois Pollution Control Board