

ILLINOIS POLLUTION CONTROL BOARD
April 21, 2011

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| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB 08-7 |
| |) | (Enforcement - Water) |
| UNION PACIFIC RAILROAD COMPANY, a |) | |
| Delaware Corporation, |) | |
| |) | |
| Respondent. |) | |

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

On July 16, 2007, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against Union Pacific Railroad Company, a Delaware Company (respondent). The complaint concerns respondent's intermodal facility at 301 West Lake Street, Northlake, Cook 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, the People allege that respondent violated Sections 12(a), (d), and (f) (415 ILCS 5/12(a), (d), and (f) (2008)) of the Act, Section 309.102(a) (35 Ill. Adm. Code 309.102(a)), and Sections 302.203 and 304.105 of the Board Water Pollution Regulations (35 Ill. Adm. Code 302.203, 304.105). The respondent violated the previously named provisions by allowing the discharge of the rainbow and silver colored fuel oil sheen and the diesel fuel, depositing petroleum products onto the land in such a place and manner as to cause a water pollution hazard on at least two occasions, discharging petroleum products from the Separator into Mud Creek in violation of respondent's NPDES permit, and allowing petroleum products to enter Mud Creek.

On March 7, 2011 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 *Chicago Sun-Times* on March 22, 2011. 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 respondent'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) (2008)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondent denies 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. Respondent agrees to pay a civil penalty of \$20,000. The People and respondent 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. Union Pacific Railroad Company (respondent) must pay a civil penalty of \$20,000 no later than May 23, 2011, which is the first business day following the 30th day after the date of this order. Respondent 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, case number, and respondent's federal tax identification number must appear on the face of the certified check or money order.
3. Respondent 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

Respondent must send a copy of the certified check or money order and any transmittal letter shall be sent to:

Zemeheret Bereket-Ab
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street. Suite 1800
Chicago, Illinois 60602

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 April 21, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board