## ILLINOIS POLLUTION CONTROL BOARD May 5, 2011

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	) )	
v.	) )	PCB 09-35 (Enforcement - Water)
ALAN DURKEE, doing business as ALAN	)	(Enforcement Water)
DURKEE SWINE FARM,	)	
Respondent.	)	

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

In summary, the Board grants the parties motion for leave to file a substitute stipulation clarifying that it addresses all four counts of the complaint, and orders the Clerk of the Board to publish newspaper notice of the substitute stipulation.

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 allegedly improper handling of livestock waste in 2007 at 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.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008<sup>1</sup>)), the Attorney General and the State's Attorneys may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2006); 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) (2006)) 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

<sup>&</sup>lt;sup>1</sup> The complaint cites to the 2006 edition of the Illinois Compiled Statutes. As there is no material difference in the cited sections between the 2006 and 2008 editions, the Board cites here to the 2008 edition.

turbid, discolored, and odorous waters in an unnamed tributary of Middle Creek and a roadside ditch along County Road 1700E.

On January 10, 2010, the People and both respondents 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)). By order of January 20, 2011, the Board caused publication of newspaper notice of the stipulation, proposed settlement, and request for relief from the hearing requirement. Notice was published in the *Hancock-Henderson Quill* on February 9, 2011. No one requested hearing.

But, in again reviewing the stipulation, on March 3, 2011 the Board entered an order noting that there was an inconsistency between the complaint and the stipulation. Specifically, the statement of alleged violations in the stipulation failed to include count IV of the complaint. In accord with precedent, the Board directed that the parties reconcile the inconsistency in an additional filing. *See, e.g.*, <u>People v. Swinson</u>, PCB 10-08, slip op. at 2 (June 17, 2010); <u>People v. Village of Rockton</u>, PCB 09-104, slip op. at 1-2 (Nov. 19, 2009). The Board directed the parties to address the inconsistency by April 4, 2011. On April 21, 2011, the Board granted the People's April 19, 2011 request for an extension of time; and the Board granted an extension through May 23, 2011.

On April 22, 2011, the People filed a motion for leave to file a substitute stipulation (Mot.). Mot. at 1. The revised stipulation makes clear that the respondent admits the violations of all 4 counts of the complaint, and agrees to pay a civil penalty of \$5,500.00.

The Board grants the People's motion to file a substitute stipulation clarifying that count IV is part of the stipulation. The Board notes that 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.

The Board directs the Clerk to provide newspaper notice of the substitute stipulation and proposed settlement, as so clarified, as well as the 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 will deny the parties' request for relief and hold a hearing. *See* 415 ILCS 5/31(c)(2) (2008); 35 Ill. Adm. Code 103.300(b), (c).

## IT IS SO ORDERED.

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

John T. Therrian

John Therriault, Assistant Clerk

Illinois Pollution Control Board