

ILLINOIS POLLUTION CONTROL BOARD
June 16, 2011

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

OPINION AND 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, d/b/a 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. 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 (2010))¹, 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) (2010)) 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). According to the complaint, respondent violated these provisions 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, 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)

¹ 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 2010 editions, the Board cites here to the 2008 edition.

of the Act (415 ILCS 5/31(c)(1) (2010)). In a March 3, 2011 order, the Board requested the parties to address the fact that the stipulation did not specifically address Count IV of the complaint. On April 22, 2011, the People filed a substitute stipulation, which made clear that all counts of the complaint were being settled.

The filing of a stipulation and proposal for settlement of enforcement cases is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2010)), 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 substitute stipulation, proposed settlement, and request for relief. The newspaper notice was published in the *Hancock-Henderson Quill* on May 18, 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) (2010); 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 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) (2010)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondent admits the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2010)), which may mitigate or aggravate the civil penalty amount. Respondent agrees to pay a civil penalty of \$5,500. 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. Alan Durkee, d/b/a Alan Durkee Swine Farm, must pay a civil penalty of \$5,500 no later than July 18, 2011, which is the 30th day after the date of this order. Alan Durkee 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 Alan Durkee's social security number or federal tax identification number must appear on the face of the certified check or money order.
3. Alan Durkee 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

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

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, IL 62706

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
5. Alan Durkee must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject of the complaint.

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) (2010); *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 June 16, 2011, by a vote of 5-0



John Therriault, Assistant Clerk
Illinois Pollution Control Board