ILLINOIS POLLUTION CONTROL BOARD April 19, 2012

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,))	
v.)	PCB 12-119 (Enforcement Woter)
EVERGREEN FS, INC., an Illinois agricultural cooperative,))	(Enforcement – Water)
Respondent.)	

OPINION AND ORDER OF THE BOARD (by T.A. Holbrook):

On February 28, 2012, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against Evergreen FS, Inc. (respondent), an agricultural cooperative and distributor of agricultural chemicals and seeds, and operator of grain elevators. The complaint concerns a 27-acre corn field located northeast of the City of Washington in Section 13 of Washington Township, Tazewell 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)), 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 (2010); 35 Ill. Adm. Code 103. In this case, the People allege that respondent violated Sections 12(a) and 12(d) of the Act (415 ILCS 5/12(a), 12(d) (2010)), and Section 302.210 of the Board's regulations (35 Ill. Adm. Code 302.210). The complaint alleges that respondent violated these provisions by causing, threatening, or allowing the discharge of agricultural chemicals into the environment so as to cause or tend to cause water pollution; by causing the discharge of toxic substances into the waters of the state; by applying herbicides in a manner that left deposits on both the ground and the stream bank and created a water pollution hazard; and by causing the death of fish or aquatic life.

Also on February 28, 2012, the parties 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) (2010)). This filing 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 stipulation, proposed settlement, and request for relief. The newspaper notice was published in *The Washington Courier* on March 21, 2012. The Board did not receive any request 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'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) (2010)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondent neither admits nor denies 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 \$11,000.00 and an additional \$1,206.33 for the value of the fish killed and expenses incurred by the Illinois Department of Natural Resources in investigating the fish kill. 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.

<u>ORDER</u>

- 1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
- 2. Evergreen FS, Inc. (respondent) must pay a civil penalty of \$11,000.00 no later than May 21, 2012, which is the first business day after the 30th day from 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.

Respondent must also pay a fish kill liability payment of \$1,206.33 no later than May 21, 2012, which is the first business day after the 30th day from the date of this order. The liability penalty must be paid by certified check or money order payable to the Treasurer of the State of Illinois for deposit in the State Wildlife and Fish Fund. The case name, case number, and respondent's federal tax identification number must appear on the face of certified checks or money orders.

3. Respondent must submit payment of the civil penalty and liability payments 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 checks or money orders and any transmittal letter to:

Raymond J. Callery Environmental Enforcement 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. Respondent shall cease and desist from future violations of the Act and the Board's regulations that were subject matter 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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 19, 2012, by a vote of 5-0.

John T. Themant

John T. Therriault, Assistant Clerk Illinois Pollution Control Board