ILLINOIS POLLUTION CONTROL BOARD September 16, 2004

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 04-15
)	(Enforcement - Water)
ATKINSON GRAIN & FERTILIZER, INC.,	a)	
Delaware corporation,)	
)	
Respondent.)	

ORDER OF THE BOARD (by A.S. Moore):

On June 30, 2003, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against Atkinson Grain & Fertilizer, Inc. (AGF). AGF is a wholesale agricultural chemical and fertilizer mixer and distributor located at 400 N. Spring Street in Atkinson, Henry County. The People's complaint concerns a shipment of liquid fertilizer that spilled when a truck driven by an AGF employee overturned, rupturing a fertilizer tank on the truck. The spill occurred at the intersection of U.S. Route 6 and Spring Street in Atkinson. The parties now seek to settle without a public hearing. For the reasons below, the Board directs the Clerk to provide public notice of the parties' stipulation, proposed settlement, and request for relief from the hearing requirement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2002)), 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 (2002); 35 Ill. Adm. Code 103. In this case, the People allege that AGF violated water pollution provisions of the Act and Board regulations. Specifically, according to the complaint, AGF violated (1) Section 12(a) of the Act (415 ILCS 5/12(a) (2002)) by causing, threatening, or allowing water pollution from the fertilizer spill; (2) Section 12(d) of the Act (415 ILCS 5/12(d) (2002)) by creating a water pollution hazard from the fertilizer spill; (3) Section 12(a) of the Act and 35 Ill. Adm. Code 302.203, 302.208(g), and 302.212(a) by causing levels of contaminants in waters of the State to exceed water quality standards; and (4) Section 12(f) of the Act (415 ILCS 5/12(f) (2002)) and 35 Ill. Adm. Code 309.102(a) by discharging contaminants into waters of the State without a National Pollutant Discharge Elimination System (NPDES) permit.

On September 1, 2004, the People and AGF 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) (2002)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2002)), 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). Under the proposed stipulation, AGF denies the

alleged violations and agrees to pay a civil penalty of \$20,000, which the parties agree is "greater than the economic benefit arising from noncompliance." Stipulation at 8.

Unless the Board determines that a hearing is needed, the Board must cause notice of the 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 will deny the parties' request for relief and hold a hearing. See 415 ILCS 5/31(c)(2) (2002); 35 Ill. Adm. Code 103.300(b), (c). The Board directs the Clerk of the Board to provide the required notice.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 16, 2004, by a vote of 5-0.

Dorothy M. Gunn, Clerk

Illinois Pollution Control Board