ILLINOIS POLLUTION CONTROL BOARD November 17, 2005

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
v.)	PCB 06-54
WEBB, AG, Inc., an Illinois corporation,)	(Enforcement – Land)
Respondent.)	

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

On November 2, 2005, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against Webb, Ag, Inc. (Webb). According to the complaint, Webb owns an agrichemical sales and distribution facility in Fairview, Fulton County. The complaint concerns an alleged spill of fertilizer solution from an overturned flatbed truck in Duncan Mills, Fulton County. In this order, the Board accepts for hearing two counts of the complaint and directs the People to address the Board's authority to hear a third count of the complaint.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2004)), 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 (2004); 35 Ill. Adm. Code 103. In this case, the People have brought a three-count complaint against Webb. The People allege that on June 5, 2003, a flatbed truck owned by Webb rolled on its side at the intersection of Ray Road and a private lane located just east of County Road 11 in Duncan Mills, Fulton County, spilling approximately 1,600 gallons of fertilizer solution into a ditch at the northeast corner of the intersection. The complaint further alleges that the spill site is in the Spoon River flood plain, approximately one-quarter mile southwest of an unnamed tributary of the Spoon River.

The complaint states that count I is brought under Section 31 of the Act (415 ILCS 5/31 (2004)) on the Attorney General's own motion and at the request of the Illinois Environmental Protection Agency (Agency). In count I, the People allege that Webb violated the Act (415 ILCS 5/12(d) (2004)) by depositing a contaminant within one-quarter mile of a water of the State so as to create a water pollution hazard. The complaint also states that count III is likewise brought under Section 31 of the Act on the Attorney General's own motion and at the request of the Agency. In count III, the People allege that Webb violated the Act (415 ILCS 5/21(e) (2004)) by abandoning waste at an improper site. As relief for counts I and III of the complaint, the People ask the Board to order Webb to cease and desist from further violations and to pay civil penalties. The Board finds that counts I and III of the complaint meet the content requirements of the Board's procedural rules and accepts those two counts of the complaint for hearing. *See* 35 Ill. Adm. Code 103.204(c), (f), 103.212(c).

Unlike counts I and III, count II does not allege a violation of the Act. Count II states that it is brought not only on the Attorney General's own motion, but also at the request of the Illinois Emergency Management Agency under Section 16(a) of the Illinois Emergency Planning and Community Right to Know Act (430 ILCS 100/16(a) (2004)). In count II, the People allege that Webb violated the Illinois Hazardous Materials Emergency Act (430 ILCS 50/7.01 (2004)) and 29 Ill. Adm. Code 430.30 by not reporting the release at the spill site as required. As relief for count II, the People ask the Board to order Webb to cease and desist from further violations and to pay civil penalties.

Before the Board will direct the hearing officer to proceed to hearing, the Board directs the People to address the Board's jurisdiction to hear count II of the complaint. The People must file this pleading by December 19, 2005. Webb may file a response within 14 days after being served with the People's pleading. The time period for Webb to file an answer or motion (35 Ill. Adm. Code 101.506, 103.204(d)) in response to the People's complaint is stayed until the Board orders otherwise.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 17, 2005, by a vote of 4-0.

Dorothy M. Gunn, Clerk

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