## ILLINOIS POLLUTION CONTROL BOARD October 18, 2001

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	)	
v.	)	PCB 02-29
BOB NICKEL d/b/a NICKEL AGRI- SERVICE,	)	(Enforcement – Water)
Respondent.	)	

## OPINION AND ORDER OF THE BOARD (by C.A. Manning):

On September 7, 2001, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Bob Nickel d/b/a Nickel Agri-Service (Nickel). *See* 415 ILCS 5/31(c)(1) (2000); 35 Ill. Adm. Code 103.204. The People allege that Nickel violated Section 12(a) and (d) of the Environmental Protection Act (Act) (415 ILCS 5/12(a), (d) (2000)) and 35 Ill. Adm. Code 501.403(a) and 501.404(c)(2), (c)(3), and (c)(4)(A) of the Board's livestock regulations. The People further allege that Nickel violated these provisions by cutting the berm on one or more livestock waste lagoons causing the discharge of livestock waste sludge. The complaint concerns a hog confinement operation located in Sangamon County.

On September 7, 2001, the People and Nickel 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) (2000)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2000)). See 35 III. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief, including published notice in *The State Journal-Register*. 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) (2000); 35 III. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. 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 Nickel'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) (2000)). The People and Nickel have satisfied Section 103.302. Nickel neither admits nor denies the alleged violations and agrees to pay a civil penalty of \$5,000. 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. Bob Nickel d/b/a Nickel Agri-Service (Nickel) must pay a civil penalty of \$5,000 no later than November 18, 2001, which is the 30th day after the date of this order. Nickel must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and Nickel's social security number or federal employer identification number must be included on the certified check or money order.
- 3. Nickel must send the certified check or money order to:

Illinois Environmental Protection Agency Fiscal Services Division 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276

- 4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2000)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2000)).
- 5. Nickel must cease and desist from the alleged violations.

## 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) (2000); *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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 18, 2001, by a vote of 7-0.

Dorothy M. Gunn, Clerk

Illinois Pollution Control Board