

ILLINOIS POLLUTION CONTROL BOARD

March 16, 2006

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 06-15
)	(Enforcement - Public Water Supply)
ILLINOIS-AMERICAN WATER)	
COMPANY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On August 1, 2005, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a one-count complaint against Illinois-American Water Company. *See* 415 ILCS 5/31(c)(1) (2004); 35 Ill. Adm. Code 103.204. The complaint concerns Illinois-American Water Company's public water supply facility that serves a new Home Depot store at 143rd Street and Bell Road, Homer Township, Will County. The parties now seek to settle. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2004)), 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 (2004); 35 Ill. Adm. Code 103. In this case, the People allege that Illinois-American Water Company violated Section 18(a)(3) of the Act (415 ILCS 5/18(a)(3) (2004)). The People further allege that Illinois-American Water Company violated this provision by failing to obtain an operating permit before operating water mains.¹

On January 26, 2006, the People and Illinois-American Water Company 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) (2004)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2004)), 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 from hearing. The Board published newspaper notice in the *Homer Sun* on February 15, 2006. 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) (2004); 35 Ill. Adm. Code 103.300(b).

¹ This same installation is or was the subject of other pending or settled enforcement actions: People v. Home Depot, PCB 05-168 (presently pending); People v. Weis Builders, Inc., PCB 06-44 (settlement accepted by an order dated January 5, 2006); and People v. STS Consultants, PCB 06-48 (presently pending).

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 Illinois-American Water Company'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) (2004)), which bears on the reasonableness of the circumstances surrounding the alleged violations.

Illinois-American Water Company 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) (2004)), which may mitigate or aggravate the civil penalty amount. Illinois-American Water Company agrees to pay a civil penalty of \$7,500, which the parties stipulate negates any economic benefit from delayed compliance derived by Illinois-American Water Company, and the People assert will deter further violations and aid in future voluntary compliance. Illinois-American Water Company further agrees to pay a cash contribution in the amount of \$5,000 to the Village of Homer Glen, for use in constructing an off-road multi-use trail system and trailhead, as a supplemental environmental project. Illinois-American Water Company further agrees to perform an environmental compliance audit valued at \$5,000 at one of its facilities in the Chicago Metropolitan area and submit the results to the People, as another supplemental environmental project.

The People and Illinois-American Water Company have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement. This docket is now closed.

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. Illinois-American Water Company must pay a civil penalty of \$7,500 no later than April 17, 2006, which is the first business day after the 30th day after the date of this order. Illinois-American Water Company must pay the civil penalty by certified check, money order, or electronic funds transfer, payable to the Environmental Protection Trust Fund. The case number, case name, and Illinois-American Water Company's social security number or federal employer identification number must be included on the certified check or money order.
3. Illinois-American Water Company must send the certified check, money order, or electronic funds transfer to the following person at the indicated address:

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

4. Illinois-American Water Company must send a copy of the certified check, money order, or record of electronic funds transfer and any transmittal letter to the following person at the indicated address:

Zemerehet Bereket-Ab, Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

5. Illinois-American Water Company must make a cash contribution of \$7,500 no later than April 17, 2006, which is the first business day after the 30th day after the date of this order, as a supplemental environmental project. Illinois-American Water Company must pay the civil penalty by certified check or money order, payable to the Village of Homer Glen, for use in constructing an off-road multi-use trail system and trailhead. The case number, case name, and Illinois-American Water Company's social security number or federal employer identification number must be included on the certified check or money order.
5. Illinois-American Water Company must conduct an environmental compliance audit valued at \$5,000 at one of its facilities in the Chicago no later than April 17, 2006, which is the first business day after the 45th day after the date of this order, as a supplemental environmental project.
6. Illinois-American Water Company must submit the results of the environmental compliance audit to the following person at the indicated address no later than 45 days after its completion:

Zemerehet Bereket-Ab, Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

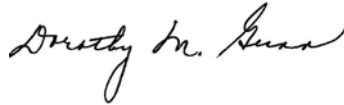
Joey-Logan-Wilkey, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

7. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
8. Illinois-American Water Company 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) (2004); *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 March 16, 2006, by a vote of 4-0.

A handwritten signature in black ink, appearing to read "Dorothy M. Gunn", written in a cursive style.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board