ILLINOIS POLLUTION CONTROL BOARD October 16, 2008

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 05-110
)	(Enforcement - Water)
J. McDANIEL, INC., an Illinois corporation,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On December 14, 2004, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against J. McDaniel, Inc. The complaint concerns two separate incidents that occurred in 2001: (1) the release of 2,900 gallons of gasoline from a tanker truck operated by J. McDaniel, Inc. at a service station located at the corner of Voorhees and Bowman Streets in Danville, Vermilion County; and (2) the release of over 8,000 gallons of gasoline from a tanker truck operated by J. McDaniel, Inc. on Route 136 in McLean County when the vehicle crossed into oncoming traffic, struck a car, rolled over, and struck a utility pole. The parties now seek to settle without a hearing. For the reasons below, the Board accepts the parties' two separate stipulations and proposed settlements, one for the Vermilion County incident and one for the McLean County incident.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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 (2006); 35 Ill. Adm. Code 103. In this case, the People allege that J. McDaniel, Inc. violated Sections 12(a) and (d) of the Act (415 ILCS 5/12(a), (d) (2006)) by (1) causing water pollution by causing or allowing the discharge of gasoline and dissolved petroleum constituents into a storm sewer, surface water drainage way, and Stony Creek, and by causing a fish kill; (2) creating a water pollution hazard by causing or allowing gasoline and dissolved petroleum constituents to be released from a tanker truck and deposited on land within a drainage way and subsequently failing to remove the contaminated soils or sediments; (3) causing water pollution by causing or allowing the discharge of gasoline and dissolved petroleum constituents into a surface water drainage way and Sugar Creek, and by causing a fish kill; and (4) creating a water pollution hazard by causing or allowing gasoline and dissolved petroleum constituents to be released from a tanker truck and deposited on land within a drainage way along either side of Route 136 and in the area between the release point and a nearby residential well.

On August 29, 2008, the People and J. McDaniel, Inc. filed two separate stipulations and proposed settlements, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2006)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2006)), 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 III. Adm. Code 103.300(a). The Board provided notice of the stipulations, proposed settlements, and request for relief. The newspaper notice was published in the *Danville Commercial -News* and the *Bloomington Pantagraph* on September 10, 2008. 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) (2006); 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. *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 the 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) (2006)), which bears on the reasonableness of the circumstances surrounding the alleged violations. J. McDaniel, Inc. does not admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2006)), which may mitigate or aggravate the civil penalty amount. J. McDaniel, Inc. agrees to pay a civil penalty of \$25,000 for the alleged violations in Vermilion County and a civil penalty of \$35,000 for the alleged violations in McLean County. The People and J. McDaniel, Inc. have satisfied Section 103.302. The Board accepts the stipulations and proposed settlements.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

- 1. The Board accepts and incorporates by reference the stipulations and proposed settlements.
- 2. J. McDaniel, Inc. must pay a civil penalty of \$25,000 for the alleged violations in Vermilion County and a civil penalty of \$35,000 for the alleged violations in McLean County by November 17, 2008, which is the first business day following the 30th day after the date of this order. J. McDaniel, Inc. must pay the respective civil penalties by certified checks or money orders payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund. The case name, case number, and J. McDaniel, Inc.'s federal tax identification number must appear on the face of the respective certified checks or the money orders.
- 3. J. McDaniel, Inc. must submit payment of the civil penalties to:

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

J. McDaniel, Inc. must send a copy of the respective certified checks or money orders and any transmittal letter to:

Environmental Bureau Illinois Attorney General's Office 500 South Second Street Springfield, Illinois 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) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).

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) (2006); see also 35 III. 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 III. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 16, 2008, by a vote of 4-0.

John Therriault, Assistant Clerk

Illinois Pollution Control Board