

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|--|---|------------------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB No. 2016-065 |
| |) | (Enforcement – Water) |
| TERMINAL RAILROAD ASSOCIATION |) | |
| OF ST. LOUIS, a Missouri corporation, |) | |
| |) | |
| Respondent. |) | |

**TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS’
MOTION TO MODIFY ORDER OF ILLINOIS POLLUTION CONTROL BOARD**

COMES NOW Terminal Railroad Association of St. Louis (“Terminal Railroad”) and for its Motion to Modify the January 21, 2016 Order of the Illinois Pollution Control Board (“Board”), states as follows:

1. On December 2, 2015, the State of Illinois simultaneously filed with the Board its Notice of Filing, Complaint, Stipulation and Proposal for Settlement (“Stipulation”), and Motion for Relief from Hearing Requirements in the above-referenced matter.

2. In Section I.C of the Stipulation, Terminal Railroad denied the violations alleged in the Complaint and the Stipulation. *See* Stipulation, at 4. Terminal Railroad also denied that the Brooklyn Shop site is or ever was a treatment, storage, or disposal facility within the meaning of RCRA or its Illinois state law counterpart. *See id.*

3. The Stipulation further provided: “The Respondent shall comply with the provisions of the Act and Board Regulations that were the subject matter of the Complaint.” *See id.* at 11.

4. On January 21, 2016, the Board entered an order, granting the motion for relief from hearing requirement and accepting the parties’ stipulation and proposed settlement. *See*

January 21, 2016 Order at 1 (attached as Exhibit A). The Board accepted and incorporated by reference the Stipulation. *See* January 21, 2016 Order at 2. The Board also acknowledged that Terminal Railroad “denied the alleged violations.” *Id.* However, the Order goes on to require: “Respondent must cease and desist from future violations of the Act and Board regulations that were the subject matter of the complaint.” *See* January 21, 2016 Order at 3.

5. The State of Illinois’ initial draft of the Stipulation contained “cease and desist” language. In the negotiations that lead to the Stipulation, Terminal Railroad specifically requested, as a material term of the settlement, that the “cease and desist” language be removed from the Stipulation because such language is inconsistent with the “non-admission” nature of the settlement agreed to by the parties. The State of Illinois agreed to the request to remove the “cease and desist” language from the Stipulation and, in its place, the parties substituted the language set forth in Paragraph 3 of this Motion above. *See* Stipulation at 11.

6. Given the Board’s incorporation of the Stipulation, including Section I.C and the language set forth in Paragraph 3 above, the January 21, 2016 Order’s “cease and desist” language is inconsistent with the terms of the Stipulation and the negotiated terms of the settlement embodied in the Stipulation.

7. Accordingly, Terminal Railroad respectfully moves the Board for a Modified Order that removes the “cease and desist” language from the Board’s January 21, 2016 Order and replaces it with the language agreed to in the Stipulation, as set forth in Paragraph 3 above.

8. This Motion has been shared with the Illinois Attorney General’s office prior to filing with the Board and the Attorney General’s office has indicated to counsel for Terminal Railroad that it does not object to this Motion or to Terminal Railroad’s request that the Board delete the “cease and desist” language and replace it with the language in Paragraph 3 above.

9. A form of requested Order is attached as Exhibit B for the Board's convenience. It is identical to the Board's original January 21, 2016 Order except that (i) the term "(MODIFIED)" has been added to the title, (ii) Paragraph 5 has been modified consistent with this Motion, (iii) Paragraph 6 has been added to make clear that the modified Order replaces the January 21, 2016 Order, and (iv) blanks have been added so that the Board can fill in the appropriate dates and vote information.

WHEREFORE, Terminal Railroad prays that Illinois Pollution Control Board grants its Motion to Modify, and modifies the Board's January 21, 2016 Order accordingly.

Respectfully submitted,

THOMPSON COBURN LLP

By 

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**Attorneys for Terminal Railroad
Association of St. Louis**

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served on the date of January ~~27~~2016 the attached Motion to Modify Order of the Illinois Pollution Control Board, upon the following persons by U.S. Mail, by the time of 7 pm, with proper postage of delivery charges prepaid:

Brian Clappier, Assistant Attorney General
State of Illinois - Office of the Attorney General
500 South Second Street
Springfield, IL 62706



Peter S. Strassner

1/27/16

Date

relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2014); 35 Ill. 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 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) (2014)), which bears on the reasonableness of the circumstances surrounding the alleged violations. In this case, respondent denied the alleged violations. Finally, Section 103.302 requires the parties to include "[t]he proposed penalty, if any, supported by the factors in mitigation or aggravation of penalty, including the factors set forth in Section 42(h) of the Act. The stipulation addresses the Section 42(h) factors. Respondent must pay a civil penalty of \$47,000. The People and respondent have satisfied Section 103.302. 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. Terminal Railroad Association of St. Louis, LLC (respondent) must pay a civil penalty of \$47,000 no later than February 22, 2016, which is the first business day after the 30th day after the date of this order. Respondent must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name and case number must appear on the face of the certified check or money order.
3. Respondent must submit payment of the civil penalty to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
PO Box 19276
Springfield IL 62794-9276

Respondent must send a copy of the certified check or money order and any transmittal letter to:

Brian Clappier
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield IL 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) (2014), at the rate set forth in Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2014).
5. Respondent must cease and desist from future violations of the Act and Board regulations that were the subject matter of the complaint.

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) (2014); *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, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 21, 2016 by a vote of 5-0.



John T. Therriault, Clerk
Illinois Pollution Control Board

Exhibit B

ILLINOIS POLLUTION CONTROL BOARD

January 21, 2016

| | | |
|---|---|-----------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB 16-65 |
| |) | (Enforcement – Water) |
| |) | |
| TERMINAL RAILROAD ASSOCIATION OF |) | |
| ST. LOUIS, LLC, a Missouri corporation, |) | |
| |) | |
| Respondent. |) | |

[PROPOSED] ORDER OF THE BOARD (MODIFIED) by C.K. Zalewski):

On December 2, 2015, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against Terminal Railroad Association of St. Louis, LLC (respondent). The complaint concerns a railroad equipment maintenance facility operated by respondent and located south of Bend Road in Lovejoy Township approximately 1,000 feet southeast of Brooklyn in St. Clair County. Accompanying the complaint was a stipulation, proposal for settlement, and request for relief from the hearing requirement. On December 17, 2015, the Board accepted the complaint and provided notice of the stipulation, proposed settlement, and request for relief. For the reasons below, the Board grants the motion for relief from the hearing requirement and accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2014)), the Attorney General may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. See 415 ILCS 5/31 (2014); 35 Ill. Adm. Code 103. In this case, the People allege that respondent violated Section 21(f) of the Act (415 ILCS 5/21(f) (2014)); Sections 702.141, 724.243, 725.115(c) and 725.213(b) of the Board's waste disposal regulations (35 Ill. Adm. Code 702.141, 724.243, 725.115(c), 725.213(b)); and Condition 9 of Remedial Action Plan Permit No. B-171, by failing to remedy deteriorating components of multiple monitoring wells, failing to submit a work plan to address groundwater contamination, failing to conduct sampling and analysis of groundwater at multiple wells, not maintaining financial assurance for the amount of the approved closure cost estimate, and violating a permit condition.

The parties' filing of a stipulation and proposal for settlement accompanied by a request for relief from the hearing requirement is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2014)), 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 in the East St. Louis *Monitor* on December 24, 2015. The Board did not receive any requests for hearing and therefore grants the parties' request for

relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2014); 35 Ill. 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 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) (2014)), which bears on the reasonableness of the circumstances surrounding the alleged violations. In this case, respondent denied the alleged violations. Finally, Section 103.302 requires the parties to include "[t]he proposed penalty, if any, supported by the factors in mitigation or aggravation of penalty, including the factors set forth in Section 42(h) of the Act. The stipulation addresses the Section 42(h) factors. Respondent must pay a civil penalty of \$47,000. The People and respondent have satisfied Section 103.302. 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. Terminal Railroad Association of St. Louis, LLC (respondent) must pay a civil penalty of \$47,000 no later than _____, 2016, which is the first business day after the 30th day after the date of this order. Respondent must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name and case number must appear on the face of the certified check or money order.
3. Respondent must submit payment of the civil penalty to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
PO Box 19276
Springfield IL 62794-9276

Respondent must send a copy of the certified check or money order and any transmittal letter to:

Brian Clappier
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield IL 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) (2014), at the rate set forth in Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2014).
5. Respondent shall comply with the provisions of the Act and Board regulations that were the subject matter of the complaint.
6. This Order modifies, replaces and supersedes the Order of the Board in this matter dated January 21, 2016.

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) (2014); *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, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on _____, 2016 by a vote of _____.

John T. Therriault, Clerk
Illinois Pollution Control Board