

the stipulation and proposed settlement of Counts I and II of the amended complaint, which is addressed below.

Based on its consideration of these arguments and circumstances, the Board is persuaded that it is appropriate to join Cheyenne. The Board grants the People's motion for joinder, joins Cheyenne as a respondent. and amends this case's caption above.

STIPULATION AND PROPOSED SETTLEMENT OF COUNTS I AND II

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), 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 (2016); 35 Ill. Adm. Code 103. In this case, the People's amended complaint alleges in Counts I and II that Illinois Fuel violated Sections 12(a) and 12(f) of the Act (415 ILCS 5/12(a), 12(f) (2016)) by discharging effluent from the I-1 mine into waters of the State so as to cause or tend to cause water pollution and in violation of National Pollutant Discharge Elimination System (NPDES) Permit No. IL0064611. The parties' stipulation states that "Cheyenne is not alleged to have violated any provisions of the Act and is added as a respondent in this matter solely based on their assumption of Illinois Fuels' liability for alleged violations in Count I and II of the Amended Complaint." Stip. at 3.

The stipulation and proposed settlement is accompanied by the People's motion for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2016)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2016)), 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).

Under the proposed stipulation, Cheyenne does not affirmatively admit the alleged violations in Count I and II of the amended complaint and agrees to pay a civil penalty of \$75,000. The stipulation states that it is intended to be "a final adjudication of this matter as to Respondent Cheyenne" but "does not resolve the State of Illinois' case against any other Respondent in this action, except as provided in Section V.E." Stip. at 1. Section V.E states in part that "Complainant releases, waives and discharges . . . Respondent Illinois Fuel from any further liability or penalties for the violations of the Act and Board regulations that were the subject matter of Counts I and II of the Amended Complaint herein." *Id.* at 9.

Unless the Board determines that a hearing is needed, the Board must cause notice of the stipulation, proposed settlement, and request for relief from the hearing requirement. Any person may file a written demand for hearing within 30 days after receiving the notice. If anyone timely files a written comment or demand for hearing, the Board will deny the parties' request for relief and hold a hearing. *See* 415 ILCS 5/31(c)(2) (2010); 35 Ill. Adm. Code 103.300(b), (c). The Board directs the Clerk to provide the required notice.

COUNTS III, IV, AND V

In their motion for relief from the hearing requirement, the People state that they intend to resolve the remaining counts of the amended complaint through the pending motion for summary judgment against Illinois Fuel.

On January 21, 2015, the People moved for summary judgment on Counts I, II, III, and V of the amended complaint. Counts III and V allege that Illinois Fuel violated Sections 12(a) and 12(f) of the Act (415 ILCS 5/12(a), 12(f) (2016)) at the Gallatin County mine by causing or tending to cause water pollution and by failing to submit an NPDES permit and operating without the required NPDES permit. The People did not move for summary judgment on Count IV of the amended complaint. That count also remains pending and alleges that Illinois Fuel violated Section 12(f) of the Act (415 ILCS 5/12(f) (2016)) by repeatedly discharging contaminants from the Gallatin County mine into waters of the State in violation of NPDES Permit No. IL0061166.

The Board expects to address the pending motion for summary judgement and the pending Count IV in one or more subsequent orders.

IT IS SO ORDERED.

Board Members C.M. Santos and B.K. Carter abstained.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 11, 2018, by a vote of 3-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large initial "D".

Don A. Brown, Clerk
Illinois Pollution Control Board