ILLINOIS POLLUTION CONTROL BOARD May 30, 2019

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,))	
V.))	PCB 19
ONE EARTH ENERGY, LLC, an Illinois)	(Enfor
limited liability company,)	
Respondent.)	

PCB 19-90 (Enforcement - Water)

ORDER OF THE BOARD (by A. Palivos):

The Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against One Earth Energy, LLC (OEE). The complaint concerns OEE's ethanol and distiller's grain production facility located at 202 North Jordan Drive in Gibson City, Ford County. The parties now seek to settle without a hearing. For the reasons below, the Board directs the Clerk to provide public notice of the parties' stipulation, proposed settlement, and request for relief from the hearing requirement. But first, the Board addresses two procedural matters.

PROCEDURAL MATTERS

The People filed their complaint against OEE on February 28, 2019. On March 28, 2019, the Board directed the People to file proof of service after finding that the People's complaint included a service list, but no proof of service was filed. In response, on April 16, 2019, the People filed a certificate of service, attaching a certified mail receipt and a "USPS Tracking" document. On April 26, 2019, OEE filed an unopposed motion for extension of time—to May 29, 2019—to file an answer to the People's complaint. On May 23, 2019, the People and OEE filed a stipulation and proposal for settlement with a motion for relief from the statutory hearing requirement. Before turning to the complaint and proposed settlement, the Board addresses OEE's motion for extension and the People's service of the complaint.

In its motion for extension, OEE explained that both parties were discussing settlement needed more time to negotiate terms. OEE Motion at 3. The proposed settlement filed six days before OEE's requested May 29, 2019 deadline to answer the complaint. The Board therefore denies the motion for extension as moot.

For serving a complaint by certified mail, the People did not file the requisite proof of service, *i.e.*, a recipient-signed return receipt. *See* 35 Ill. Adm. Code 101.304(c)(2), (d)(2), 103.204(a). OEE's motion for extension, however, states that OEE accepts service of the complaint and, to "avoid unnecessary motion practice and furtherance of settlement", waives any objection to the People's "failure to file proof of service." OEE Motion at 3.

COMPLAINT AND PROPOSED SETTLEMENT

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 complaint alleges that OEE violated Section 12(a) of the Act (415 ILCS 5/12(a) (2016)) and Sections 302.203 and 304.106 of the Board's water pollution regulations (35 Ill. Adm. Code 302.203, 304.106). The People allege that OEE caused or allowed the accumulation of turbid and odorous storm water containing bottom sediment, settleable solids, and sludge from the facility. And the People allege OEE caused or allowed the discharge of this turbid and odorous storm water into Drummer Creek.

As noted, the People and OEE 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) (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, the OEE does not affirmatively admit the alleged violations and agrees to pay a civil penalty of \$25,000.

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) (2016); 35 Ill. Adm. Code 103.300(b), (c). The Board directs the Clerk to provide the required notice.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 30, 2019, by a vote of 4-0.

(1)on a. Brown

Don A. Brown, Clerk Illinois Pollution Control Board