

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 10-86
)	(Water-Enforcement)
ILLINOIS FUEL COMPANY, LLC,)	
a Kentucky limited liability company, and)	
CHEYENNE RESOURCES, INC., a Kentucky)	
corporation,)	
)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on August 26, 2019, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, NOTICE OF FILING and PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL OF COUNT IV OF COMPLAINANT'S AMENDED COMPLAINT WITHOUT PREJUDICE, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

KWAME RAOUL
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

By: s/Rachel R. Medina
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**PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL OF COUNT IV OF
COMPLAINANT'S AMENDED COMPLAINT WITHOUT PREJUDICE**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois ("Complainant"), and hereby moves, pursuant to Section 2-1009 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1009, and Section 101.500 of the Illinois Pollution Control Board ("Board") regulations, 35 Ill. Adm. Code 101.500, the Board to dismiss Count IV of Complainant's Amended Complaint without prejudice. In support of its Motion, Complainant states as follows:

1. On April 22, 2010, Complainant filed a Complaint in the above-referenced matter. Complainant filed a Motion for Leave to File Amended Complaint on April 10, 2013. On May 16, 2013, the Board issued an Order accepting the Amended Complaint.
2. On January 21, 2015, Complainant filed its Motion for Summary Judgment on Counts I, II, III and V of its Amended Complaint.

3. Since Count IV was brought in the alternative to Count III, Complainant did not include it in the initial Motion for Summary Judgment.

4. On November 2, 2015, Complainant filed a Motion to Stay Proceedings due to potential settlement with Cheyenne Resources, Inc.

5. On December 22, 2017, Complainant filed a Motion for Joinder joining Cheyenne Resources, Inc. and a Stipulation for Settlement settling Counts I and II of the Amended Complaint. Subsequently, the Board granted the Motion for Joinder on January 11, 2018, and entered the order for stipulation and settlement on February 22, 2018.

6. On January 11, 2018, the Board lifted the stay on the Motion for Summary Judgment against Respondent Illinois Fuel Company, LLC.

7. On July 25, 2019, the Illinois Pollution Control Board granted Complainant's unopposed Motion for Summary Judgment on Counts III and V of the Amended Complaint.

8. Section 2-1009(a) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1009(a), provides as follows:

The plaintiff may, at any time before trial or hearing begins, upon notice to each party who has appeared or each party's attorney, and upon payment of costs, dismiss his or her action or any part thereof as to any defendant, without prejudice, by order filed in the cause.

9. As this matter has not yet reached hearing on Count IV, the Board having ruled in Complainant's favor on Count III, Complainant is authorized by 735 ILCS 5/2-1009(a) to dismiss Count IV without prejudice.

10. Section 5-117 of the Illinois Code of Civil Procedure, 735 ILCS 5/5-117, provides, in relevant part, as follows:

In all actions commenced for and on behalf of the people of this state...if the action is dismissed voluntarily by the

plaintiff...the defendant shall not recover any costs whatsoever.

11. As required by the plain language of 735 ILCS 5/5-117, the Complainant requests that Count IV be dismissed without prejudice, with both parties to each bear their own costs.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, respectively requests that the Board enter an order dismissing Count IV of Complainant's Amended Complaint without prejudice, with both parties to each bear their own costs.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL, Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: s/Rachel R. Medina

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CERTIFICATE OF SERVICE

I hereby certify that I did on August 26, 2019, cause to be served by electronic mail and First Class Mail as indicated, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF FILING and PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL OF COUNTY IV OF COMPLAINANT'S AMENDED COMPLAINT WITHOUT PREJUDICE upon the persons listed on the Service List.

s/Rachel R. Medina
RACHEL R. MEDINA
Assistant Attorney General