

ILLINOIS POLLUTION CONTROL BOARD

September 19, 2019

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 10-86
	)	(Enforcement – Water, NPDES)
ILLINOIS FUEL COMPANY, LLC, a	)	
Kentucky limited liability company, and	)	
CHEYENNE RESOURCES, INC., a Kentucky	)	
corporation,	)	
	)	
Respondents.	)	

OPINION AND ORDER OF THE BOARD (by C.M. Santos):

On April 29, 2013, the Board granted the Office of the Attorney General, on behalf of the People of the State of Illinois (People), leave to file a five-count amended complaint (Comp.) against Illinois Fuel Company, LLC (Illinois Fuel). The amended complaint concerns two coal mines. The first, known as the I-1 mine and located in Saline County, is the subject of counts I and II of the amended complaint. The second, known as the #4 mine and located in Gallatin County, is the subject of counts III, IV, and V.

After the People filed a motion for summary judgment on Counts I, II, III, and V of the amended complaint, the Board granted the People's motion to stay and then extended the stay at the People's request.

On December 22, 2017, the People filed a motion to join Cheyenne Resources, Inc. (Cheyenne) as a respondent. On the same date, the People and Cheyenne filed a stipulation and proposed settlement of counts I and II of the amended complaint. The Board joined Cheyenne as a respondent on January 22, 2018 and accepted the proposed settlement on February 22, 2018.

On July 25, 2019, the Board granted the People's motion for summary judgment on Counts III and V of the amended complaint. After reviewing the record and the People's arguments on the statutory penalty factors, the Board found that a civil penalty of \$100,000 is appropriate for the violations alleged in Counts III and V. The Board stated that, when it issued a final opinion and order, it would assess a civil penalty in that amount. People v. Illinois Fuel Company, LLC and Cheyenne Resources, Inc., PCB 10-86, slip op. at 13-22 (July 25, 2019).

However, the Board noted that both Count IV and the People's request for fees under Section 42(f) of the Environmental Protection Act remained pending. Section 42(f) provides that the Board "may award costs and reasonable attorney's fees, including the reasonable costs of expert witnesses and consultants" to the Attorney General in the case of willful, knowing or repeated violations. *See* 415 ILCS 5/42(f) (2018). The Board directed its hearing office to

proceed with those two pending matters. People v. Illinois Fuel Company, LLC and Cheyenne Resources, Inc., PCB 10-86, slip op. at 22 (July 25, 2019).

On August 26, 2019, the People filed a motion for voluntary dismissal of Count IV (Mot.). While Count III of the amended complaint alleges that Illinois Fuel operated the Gallatin County mine without a permit (Comp. at 21-22), Count IV alleges that Illinois Fuel discharged contaminants from the mine in violation of a permit. Comp. at 23-27). The People state that they did not include Count IV in their motion for summary judgment because it “was brought in the alternative to County III.” Mot. at 2. Because the Board granted summary judgment on Count III, the People seek voluntary dismissal of Count IV without prejudice and with the parties bearing their own costs. Mot. at 3.

The Board grants the People’s motion for voluntary dismissal of Count IV. As the People no longer seek costs under Section 42(f) of the Act, the Board proceeds below to issue its final order.

### **ORDER**

1. The Board grants the People’s motion for voluntary dismissal of Count IV of the amended complaint, with the parties bearing their own costs.
2. Illinois Fuel Company, LLC must pay a civil penalty of \$100,000 no later than Monday, October 21, 2019, which is the first business day following the 30th day after the date of this order. Illinois Fuel, LLC 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, case number, and Illinois Fuel, LLC’s federal employer identification number must appear on the face of the certified check or money order.
3. Illinois Fuel, LLC must submit payment of the civil penalty to:

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

Illinois Fuel, LLC must send a copy of the certified check or money order and any transmittal letter to:

Rachel R. Medina, Assistant Attorney General  
Illinois Attorney General’s Office  
500 South 2nd Street  
Springfield, Illinois 62706  
rmedina@atg.state.il.us

- 4 Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2018)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2018)).
5. As long as Illinois Fuel, LLC operates the #4 mine in Gallatin County, it must obtain a National Pollutant Discharge Elimination System (NPDES) Permit and until the Illinois Environmental Protection Agency issues a new NPDES permit must comply with the terms of expired NPDES Permit No. IL0061166.

IT IS SO ORDERED.

Board Member B.K. Carter abstained.

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) (2016); *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. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

<b>Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court</b>	
<b>Parties</b>	<b>Board</b>
Office of the Attorney General Attn: Rachel R. Medina, Asst. Atty. General 500 S. 2nd St. Springfield, Illinois 62706 <a href="mailto:rmedina@atg.state.il.us">rmedina@atg.state.il.us</a>	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601
Illinois Fuel Company, LLC c/o CT Corporation System 208 S. LaSalle St., Suite 814 Chicago, Illinois 60604	
Illinois Fuel Company, LLC c/o Stephen Addington 1512 N. Big Run Rd. Ashland, Kentucky 41102	

Cheyenne Resources, Inc. Attn: Justin Leinenweber Leinenweber, Baroni & Daffada, LLC 203 N. LaSalle St., Suite 1620 Chicago, Illinois 60601 <a href="mailto:justin@ilesq.com">justin@ilesq.com</a>	
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I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 19, 2019 by a vote of 3-0.



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Don A. Brown, Clerk  
Illinois Pollution Control Board