

ILLINOIS POLLUTION CONTROL BOARD
December 16, 2004

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 04-224
)	(Enforcement - Water)
HERITAGE FS, INC., an Illinois incorporated)	
cooperative,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On June 23, 2004, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Heritage FS, Inc. (Heritage FS). See 415 ILCS 5/31(c)(1) (2002); 35 Ill. Adm. Code 103.204. At issue is the People's allegation that Heritage FS violated Section 12(a), (d), and (f) of the Environmental Protection Act (Act) (415 ILCS 5/12(a), (d), and (f) (2002)) and 35 Ill. Adm. Code 304.105, 304.106, and 309.102(a) by releasing approximately 790 gallons of diesel fuel in July 2003. The People allege that approximately 540 of the 790 gallons were deposited on the ground, of which a portion flowed, aided by heavy rain, over land about 400 feet to a drainage ditch that leads to Soldier Creek, a tributary of the Kankakee River, and ultimately to the Kankakee River, where it was carried a mile downstream. The remaining 250 gallons were allegedly caught and retained by a recovery tank. The complaint concerns Heritage FS's branch bulk fuel facility at 2201 Grinnel Road, Kankakee, Kankakee County.

Under the Act (415 ILCS 5/1 *et seq.* (2002)), the Attorney General and the State's Attorneys may bring actions before the Board on behalf of the People to enforce Illinois' environmental requirements. See 415 ILCS 5/31 (2002); 35 Ill. Adm. Code 103. The October 26, 2004, stipulation and proposed settlement was accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act. 415 ILCS 5/31(c)(1) (2002). These filings are authorized by Section 31(c)(2) of the Act. 415 ILCS 5/31(c)(2) (2002). See 35 Ill. Adm. Code 103.300(a). Under the proposed stipulation, Heritage FS neither admits nor denies the violations alleged in the complaint, and agrees to pay a civil penalty of \$10,000. Heritage FS also agrees to perform two supplemental environmental projects.

The Board provided notice of the stipulation, proposed settlement, and request for relief from hearing. The Board published newspaper notice in the *Kankakee Daily Journal* on October 29, 2004. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. See 415 ILCS 5/31(c)(2) (2002); 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. 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 the respondents' 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) (2002)), which bears on the reasonableness of the circumstances surrounding the alleged violations.

As previously stated, Heritage FS does not admit to the violations alleged in the complaint, but agrees to pay a civil penalty. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2002), *as amended by P.A. 93-575*, (eff. Jan. 1, 2004), which may mitigate or aggravate the civil penalty amount. The People initially determined that a civil penalty of \$30,000 was appropriate, but has agreed to mitigate the civil penalty to \$10,000 because Heritage FS has agreed to perform two supplemental environmental projects (SEP) with a combined value of approximately \$83,783. For the first SEP, Heritage FS will make upgrades to its bulk petroleum facility in Peotone. Specifically, Heritage FS will install a specialized loading system, install a computerized system to ensure loading lines are closed unless in use, construct a building over the retention pad, and install an overfill alarm system. For the second SEP, Heritage FS will donate \$2,000 to the Kankakee County Emergency Services Disaster Agency.

The People and the 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. Heritage FS, Inc. (Heritage FS) must pay a civil penalty of \$10,000 no later than January 17, 2005, which is the first business day following the 30th day after the date of this order. Heritage FS must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and Heritage FS's federal employer identification number must be included on the certified check or money order.
3. Heritage FS must send its certified check or money order to:

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

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act. 35 ILCS 5/1003(a) (2002).
5. Heritage FS must perform two Supplemental Environmental Projects (SEP). For the first SEP, Heritage FS must make the following upgrades at its bulk petroleum facility in Peotone:
 - a. Install a specialized loading system with pressure valves and sensors to reduce drips, spill potential and overfill when loading;
 - b. Install a computerized/electronic system to ensure that all loading lines will be closed except when in use;
 - c. Construct a building over the retention pad to reduce volume of rain water to be environmentally handled; and
 - d. Install an overfill alarm system.

Subsequent to their implementation, Heritage FS must at all times operate the above-referenced equipment, assure that it is properly calibrated and maintain it in good working order.

For the second SEP, Heritage FS must donate \$2,000 to the Kankakee County Emergency Service Disaster Agency. Payment must be made by certified check or money order, payable to the Kankakee County Emergency Service Disaster Agency and be sent by first class mail and delivered to:

Kankakee County Emergency Service Disaster Agency
470 East Merchant
Kankakee, Illinois 60901

Included with the check must be a cover letter stating that the check or money order is being tendered pursuant to a SEP in settlement of this case and is a donation to be used as the Kankakee County Emergency Service Disaster Agency deems appropriate.

Heritage FS must complete the first SEP parts a, b and d, as well as all of the second SEP by October 31, 2004. Heritage FS must submit all applicable documentation necessary to construct part c of the first SEP by December 31, 2004. Part c of the first SEP must be completed by March 31, 2005.

6. In the event that Heritage FS fails to implement the SEPs it described above and in Section VIII.C of the stipulation, it must remit \$20,000 to the Agency within 30 days after the event or circumstances resulting in nonperformance. Payment of

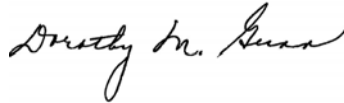
the remittance must be made according to Section VIII.1.e and VIII.1.f of the stipulation.

7. Heritage FS must cease and desist from the alleged violations.

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) (2000); *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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 16, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board