

ILLINOIS POLLUTION CONTROL BOARD

June 19, 2008

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 00-104
)	(Enforcement - Water)
MURPHY FARMS, LLC,)	
)	
Respondent.)	

ORDER OF THE BOARD (by N.J. Melas):

On December 21, 1999, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against The Highlands, LLC (Highlands), and Murphy Farms, Inc.¹ (Murphy Farms), and Bion Technologies, Inc. (Bion). See 415 ILCS 5/31(c)(1) (2006); 35 Ill. Adm. Code 103.204. The complaint concerns management of livestock waste at a 3,650 sow farrow-to-wean facility located south of Williamsfield in Elba Township, Knox County, Illinois. The complaint alleged that the property and buildings are owned by Highlands, which also provided labor for the facility. The complaint went on to allege that Murphy Farms, owner of the hogs, had a contractual relationship with Highlands, which ended January 1, 2003, after which the hogs were removed from the facility. Finally, the complaint alleged that Bion designed the facility's livestock waste management system.

The Board accepted a stipulation and settlement as to Bion only on January 24, 2001². On February 18, 2004, the People filed a second amended complaint against Highlands and Murphy Farms. The Board accepted a stipulation and settlement as to Highlands only on January 4, 2007³.

¹ Murphy Farms, Inc. is a division of Murphy Brown, LLC, a North Carolina limited liability corporation, and Smithfield Foods, Inc., a Virginia corporation.

² Bion "did not admit responsibility for" any of the alleged violations, but agreed to pay a civil penalty of \$9,000.

³ Highlands admitted that it caused or allowed unreasonably offensive odors in 1999, 2000, 2002, and 2003, as alleged in the second amended complaint. Highlands further admitted that it caused or allowed a release of livestock waste from the facility on June 18, 2002. The Highlands denied all other alleged violations in the second amended complaint. In addition to approximately \$116,320 in compliance costs, and a fish kill claim of \$1,114.51, Highlands agreed to pay a civil penalty of \$9,000.

The People and the sole remaining respondent, Murphy Farms, now seek to settle. For the reasons below, the Board directs the Clerk to provide public notice of the stipulation, proposed settlement, and request for relief from the hearing requirement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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 (2006); 35 Ill. Adm. Code 103. The People allege in the three-count second amended complaint that respondents violated Sections 9(a) and 12(a), (d), and (f) of the Act and Section 501.405(a) of the Board's agriculture regulations (415 ILCS 5/9(a) and 12(a), (d), and (f); 35 Ill. Adm. Code 501.405(a)). The People further allege that respondents violated these provisions by causing or allowing the emission of offensive odors, and causing or allowing the discharge of livestock waste to a tributary of French Creek without a National Pollutant Discharge Elimination System (NPDES) permit so as to create a water pollution hazard.

On June 16, 2008, the parties filed a stipulation and proposed settlement (Stip), accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2006)). These filings are authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2006)), 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, Murphy Farms:

neither admits nor denies that the facility was the source of unreasonably offensive odors in 1999, 2000, 2002, and 2003, as alleged in the second amended complaint. Murphy Farms disputes that it controlled, or had the ability to control, operation of the facility, and further denies that it had any role in the highlands' choice and design of the buildings and waste treatment facility. Murphy Farms denies all other alleged violations in the second amended complaint. Stip. at 8.

The proposed stipulation does not contain a stipulated civil penalty. But, Murphy Farms agrees to pay a "monetary payment" in the sum of \$35,000 to the University of Illinois, College of Agriculture, Consumer and Environmental Sciences, for the college's Discovery Farms research project.⁴ Stip. at 14.

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 21 days after receiving the notice. If anyone timely files a written demand for hearing, the Board will deny the parties' request for relief and hold a hearing. See 415 ILCS 5/31(c)(2) (2006); 35 Ill. Adm. Code 103.300(b), (c). The Board directs the Clerk to provide the required notice.

⁴ This "monetary payment" appears to be akin to a "supplemental environmental project" (SEP) as authorized by Section 42(h)(7) of the Act, which defines a SEP as an "environmentally beneficial project" that a respondent "agrees to undertake in settlement of an enforcement action . . . but which the respondent is not otherwise legally required to perform." 415 ILCS 5/42(h)(7) (2006).

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 19, 2008 by a vote of 4-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is fluid and cursive, with a long horizontal stroke at the end.

John Therriault, Assistant Clerk
Illinois Pollution Control Board