

ILLINOIS POLLUTION CONTROL BOARD

August 7, 2008

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

OPINION AND 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), Murphy Farms, Inc.¹, and Bion Technologies, Inc. (Bion) (collectively respondents). *See* 415 ILCS 5/31(c)(1) (2006); 35 Ill. Adm. Code 103.204. The complaint concerns the 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, Inc., 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, Inc. The Board accepted a stipulation and settlement as to Highlands only on January 4, 2007³.

¹ Since the original complaint was filed, Murphy Farms, Inc. merged into respondent Murphy Farms, LLC, which is a subsidiary of Murphy-Brown, LLC, which is the hog production group for and a subsidiary of Smithfield Foods, Inc. Stipulation at 3.

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, LLC (Murphy Farms), now seek to settle without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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 (2006); 35 Ill. Adm. Code 103. In this case, the People allege in a 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), 12(a), (d), (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 water pollution.

On June 16, 2008, the People and Murphy Farms 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) (2006)). This filing is 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). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in the *Tri County News-Williamsfield Edition* on July 3, 2008. 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) (2006); 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. *See* 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 respondent's 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) (2006)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Under the proposed stipulation, Murphy Farms:

neither admits nor denies that the facility was the source of unreasonably offensive odors in 1999, 2000 and 2001, as alleged in the Second Amended Complaint. Murphy disputes that it controlled, or had the ability to control, operation of the facility and denies that it had any role in Highlands' choice and design of the buildings and waste treatment facility. Respondent Murphy denies each and every violation alleged against Respondent Murphy in the Second Amended Complaint filed in this matter and referenced herein. Stipulation at 8.

The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2006)), which may mitigate or aggravate the civil penalty amount. The proposed stipulation does not contain a stipulated civil penalty. However, 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 Stipulation at 14. The People and Murphy Farms 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. Murphy Farms must pay a monetary payment in the sum of \$35,000 to the University of Illinois, College of Agriculture, Consumers and Environmental Sciences, for the college's Discovery Farms research project. Murphy Farms must pay the monetary payment no later than September 8, 2008, which is first business day following the 30th day after the date of this order. Murphy Farms must pay the monetary payment by certified check, money order or electronic funds transfer payable to the University of Illinois, designated for the Discovery Farms research project. The case name, case number, and Murphy Farms' Federal Employer Identification Number must appear on the face of the certified check, money order, or electronic funds transfer.
3. Murphy Farms must submit payment of the \$35,000 sum to:

University of Illinois, Urbana-Champaign
Office of Sponsored Programs & Research Administration
1901 South First Street
Suite A – MC685
Champaign, Illinois 61820

Murphy Farms must send a copy of the certified check, money order, or electronic funds transfer and any transmittal letter to:

Jane E. McBride
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62702

and

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).

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4. Payment unpaid within the time prescribed will accrue interest at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
5. Murphy Farms agrees not to and shall not violate the Environmental Protection Act and Board regulations that were the subject of the complaint.

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) (2006); *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, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 7, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board