

ILLINOIS POLLUTION CONTROL BOARD
October 1, 2009

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 06-82
) (Enforcement - Water)
BARGER ENGINEERING, INC., an Indiana)
corporation,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On December 1, 2005, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a one-count complaint against Barger Engineering, Inc. (Barger Engineering). On June 29, 2006, October 16, 2007, and September 15, 2008, the People filed amended complaints. The five-count, third amended complaint concerns Barger Engineering's Phillipstown Unit Water Flood Plant located approximately five miles south of Crossville, two wells on the CT Spencer lease, 1814 County Road 1750, Crossville, and a compression coupler located on a flow line at the Everett Spencer #9 Production Well, 1814 County Road 1720, Crossville, all in White County. The parties 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 (2008)),¹ 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 (2008); 35 Ill. Adm. Code 103. In this case, the People allege that Barger Engineering violated Sections 12(a), (d), and (f) of the Act (415 ILCS 5/12(a), (d), (f) (2008)) and Sections 302.203 and 302.208(g) of the Board's water quality standards (35 Ill. Adm. Code 302.203 and 302.208(g)). The People further allege that Barger Engineering violated these provisions by (1) causing or allowing discharges so as to create offensive conditions of sludge and floating debris; (2) causing or allowing discharges so as to cause chlorides to exceed the water quality standard; (3) causing or allowing discharges into waters of the State without a National Pollutant Discharge Elimination System (NPDES) permit; (4) causing or allowing discharges into waters of the State so as to cause or tend to cause water pollution; and (5) causing or allowing deposits in close proximity to waters of the State so as to create water pollution hazards.

On August 27, 2009, the People and Barger Engineering 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) (2008)). This filing is authorized by Section 31(c)(2) of the Act

¹ All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

(415 ILCS 5/31(c)(2) (2008)), 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 *Carmi Times* on August 31, 2009. 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) (2008); 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 Barger Engineering'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) (2008)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Barger Engineering does not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2008)), which may mitigate or aggravate the civil penalty amount. Barger Engineering agrees to pay a civil penalty of \$50,000. In addition, Barger Engineering agrees to perform a Supplemental Environmental Project (SEP) consisting of a \$20,000 donation to the Illinois Petroleum Resources Board to fund cleanups of abandoned oil production sites. The People and Barger Engineering 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. Barger Engineering must pay a civil penalty of \$50,000 no later than November 2, 2009, which is the first business day following the 30th day after the date of this order. Barger Engineering must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency for deposit into the Illinois Environmental Protection Trust Fund. The case name, case number, and Barger Engineering's federal tax identification number must appear on the face of the certified check or money order.
3. Barger Engineering 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

Barger Engineering must send a copy of the certified check or money order and any transmittal letter to:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).
5. No later than November 2, 2009, which is the first business day following the 30th day after the date of this order, Barger Engineering must pay, as a SEP, \$20,000 to the Illinois Petroleum Resources Board to fund cleanups of abandoned oil production sites. Barger Engineering must pay the \$20,000 sum by certified check or money order made payable to Illinois Petroleum Resources Board.
6. Barger Engineering must submit payment of the \$20,000 SEP sum to:

Charles Williams, Executive Director
Illinois Petroleum Resources Board
P.O. Box 941
Mt. Vernon, Illinois 62864

Barger Engineering must send a copy of the certified check or money order and transmittal letter to:

Thomas Davis
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

John Waligore
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

7. Barger Engineering must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject matter of the third amended 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) (2008); *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 October 1, 2009, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board