

ILLINOIS POLLUTION CONTROL BOARD

June 17, 2010

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
Complainant,)
)
)
v.) PCB 10-43
) (Enforcement - Water)
ROBERT MILLER, D/B/A MIL-R-MOR)
FARM, an Illinois corporation,)
)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On December 15, 2009, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a six-count complaint against Robert Miller, d/b/a Mil-R-Mor Farm (the Farm). The complaint concerns the Farm's 1,300 acre dairy farm, consisting of two separate parcels: 765 East Rock Grove Road, Orangeville, Stephenson County; and 1984 Hickory Grove Road, Dakota, Stephenson 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 the Farm violated Sections 12(a) and 12(d) of the Act (415 ILCS 5/12(a), 12(d) (2008)).

The People contend that the Farm violated Section 12(a) of the Act in five different ways: first, by causing and threatening the discharge of manure and manure-containing runoff into a small tributary, so as to cause water pollution (415 ILCS 5/12(a) (2008)); second, by causing and allowing offensive conditions, in violation of Section 302.203 of the Board's water pollution regulations (35 Ill. Adm. Code 302.203; 415 ILCS 5/12(a) (2008)); third, by failing to provide adequate runoff structures at the Farm, in violation of Section 501.403(a) of the Board's water pollution regulations (35 Ill. Adm. Code 501.403(a); 415 ILCS 5/12(a) (2008)); fourth, by failing to construct a temporary manure stack at the Farm, in violation of Section 501.404(b)(1) of the Board Water Pollution regulations (35 Ill. Adm. Code 501.404(b)(1); 415 ILCS 5/12(a) (2008)); and finally by placing livestock wastes on soils, in violation of Section 501.405(a) of the Board's water pollution regulations (35 Ill. Adm. Code 501.405(a); 415 ILCS 5/12(a) (2008)). In addition, the Farm allegedly violated Section 12(d) of the Act by depositing contaminants on land so as to cause water pollution (415 ILCS 5/12(d) (2008)).

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.

On April 16, 2010, the People and the Farm 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 (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 *Freeport Journal-Standard* on May 20, 2010. 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 the Farm'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.

The Farm neither admits nor denies the violations alleged in Counts II and V in the Complaint filed in this matter, and denies the violations alleged in Counts I, III, IV, and VI. 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. The Farm agrees to pay a civil penalty of \$2,000. The stipulation also contains a detailed compliance plan, and provision for stipulated damages of \$25.00 per day for failure to timely complete required actions.

The People and the Farm 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. The Robert Miller, d/b/a Mil-R-Mor Farm (Farm) must pay a civil penalty of \$2,000 no later than July 19, 2010, which is the first business day following the 30th day after the date of this order. The Farm 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 and number must appear on the face of the certified check or money order.
3. The Farm 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

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

Jennifer A. Van Wie
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

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. The Farm must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject matter 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) (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 June 17, 2010, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board