

ILLINOIS POLLUTION CONTROL BOARD
September 4, 2014

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 10-86
)	(Enforcement-Water)
ILLINOIS FUEL COMPANY, LLC,)	
a Kentucky limited liability company,)	
)	
Respondent.)	

ORDER OF THE BOARD¹ (by J.D. O’Leary):

On July 29, 2014, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a motion to deem admitted by Illinois Fuel Company, LLC (respondent) matters of fact and genuineness of documents. For the reasons below, the Board grants the People’s motion.

This order first reviews the procedural history of the case before summarizing the amended complaint and the People’s motion to deem facts admitted. The Board then discusses and decides the motion.

PROCEDURAL HISTORY

On April 22, 2010, the People filed a four-count complaint against respondent. On May 6, 2010, the Board accepted the complaint for hearing. On October 25, 2010, respondent filed an answer and affirmative defenses. On October 29, 2010, the People filed a response to respondent’s affirmative defenses.

On April 10, 2013, the People filed a motion for leave to file an amended complaint accompanied by a five-count amended complaint (Comp.). In an order dated May 16, 2013, the hearing officer granted the motion for leave to file. On May 16, 2013, the Board accepted the amended complaint for hearing. On June 13, 2013, respondent filed an answer to the amended complaint.

On June 16, 2014, the People filed notice that they had served respondents with a request for admissions of fact and genuineness of documents. On July 29, 2014, the People filed a motion to deem admitted by respondent facts and genuineness of documents (Mot.).

¹ Chad Kruse, who worked for the Illinois Environmental Protection Agency prior to joining the Board as an attorney assistant on March 19, 2013, took no part in the Board’s drafting or deliberation of any order or issue in this matter.

SUMMARY OF AMENDED COMPLAINT

The amended complaint concerns two coal mines allegedly operated by respondent, the I-1 Mine located five miles northeast of Herod in Saline County and Mine #4 located in Gallatin County. Comp. at 1-2 (¶3).

Count I alleges that, “[b]y repeatedly discharging contaminants from the Saline County mine into waters of the State in violation of the terms or conditions of NPDES [National Pollutant Discharge Elimination System] Permit No. IL0064611,” respondent violated Section 12(f) of the Environmental Protection Act (Act). Comp. at 19 (¶33); *see* 415 ILCS 5/12(f) (2012).

Count II alleges that, through repeated discharges of contaminants in excess of permitted level from the Saline County mine, respondent caused or tended to cause water pollution in violation of Section 12(a) of the Act. Comp. at 20 (¶¶33, 34); *see* 415 ILCS 5/12(a) (2012).

Count III alleges that, “[b]y failing to submit a NPDES permit and operating the Gallatin County mine without the requisite NPDES permit,” respondent violated Section 12(f) of the Act. Comp. at 22 (¶22); *see* 415 ILCS 5/12(f) (2012). Alternatively, the amended complaint alleges that, if a renewal application prevented the expiration of a previously-issued permit, the respondent remains liable for permit violations alleged in Count IV. Comp. at 22 (¶23).

Count IV alleges that “[b]y repeatedly discharging contaminants from the Gallatin County mine into waters of the State in violation of the terms and conditions of NPDES Permit No. IL0061166,” respondent violated Section 12(f) of the Act. Comp. at 27 (¶26); *see* 415 ILCS 5/12(f) (2012).

Count V alleges that, through repeated discharges of contaminants in excess of permitted levels from the Gallatin County mine, respondent caused or tended to cause water pollution in violation of Section 12(a) of the Act. Comp. at 28 (¶¶25, 26); *see* 415 ILCS 5/12(a) (2012).

SUMMARY OF PEOPLE’S MOTION TO DEEM FACTS ADMITTED

On June 16, 2014, the People filed with the Board notice that they had served respondent with a Request for Admission of Facts and Genuineness of Documents. The People state that, on June 27, 2014, they received certification that respondents’ registered agent had been served with the request. Mot. at 2, citing Exhibit 2 (return receipt); *see* 35 Ill. Adm. Code 101.300(c) (Computation of Time).

Section 101.618(f) of the Board’s procedural rules provides that

[e]ach of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either a sworn statement denying specifically the matters of which

admission is requested or setting forth in detail the reasons why the party cannot truthfully admit or deny those matters, or written objections on the ground that some or all of the requests admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part. 35 Ill. Adm. Code 101.618(f).

The People claim that respondent “has failed to respond to the Request for Admission of Facts and Genuineness of Documents.” Mot. at 2. The People further claim that, by failing to respond to the requests with a sworn statement denying them, respondent has admitted each matter of fact and the genuineness of each document. Mot. at 3.

DISCUSSION

The Board’s procedural rules provide an opportunity to respond to a request for admission of facts and genuineness of documents. 35 Ill. Adm. Code 101.618(f). If a party fails to deny or object within 28 days, each matter of fact and the genuineness of each document is admitted. *Id.*

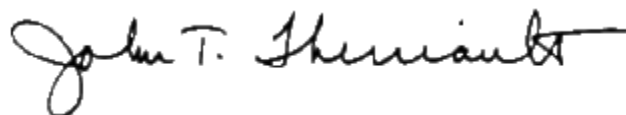
On June 16, 2014, the People filed notice with the Board that they had served respondents with a request for admissions of fact and genuineness of documents. The People state that respondent received notice of this request on June 27, 2014. Mot., Exh. 2. The People further state that respondent failed to respond to the request within 28 days. Mot. at 2. No response has been filed with the Board.

Section 101.500(d) of the Board’s procedural rules provides that, “[w]ithin 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board . . . in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d). The Board has received no response to the People’s July 29, 2014 motion to deem facts and genuineness of documents admitted. Respondent has waived any objection to granting the motion.

Having reviewed the People’s request for admission and the People’s motion to deem admitted, and in the absence of a response to either, the Board grants the People’s motion and deems admitted each matter of fact and the genuineness of each document included in the People’s June 16, 2014 request. *See* 35 Ill. Adm. Code 101.618.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 4, 2014, by a vote of 4-0.



John T. Therriault, Clerk

Illinois Pollution Control Board