

ILLINOIS POLLUTION CONTROL BOARD

February 22, 2018

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 10-86
	)	(Enforcement – Water, NPDES)
ILLINOIS FUEL COMPANY, LLC, a	)	
Kentucky limited liability company, and	)	
CHEYENNE RESOURCES, INC., a Kentucky	)	
corporation,	)	
	)	
Respondents.	)	

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

On April 29, 2013, the Board granted the Office of the Attorney General, on behalf of the People of the State of Illinois (People), leave to file a five-count amended complaint against Illinois Fuel Company, LLC (Illinois Fuel). On January 11, 2018, the Board granted the People's unopposed motion for joinder and joined Cheyenne Resources, Inc. (Cheyenne) as a respondent.

The amended complaint concerns two coal mines operated by Illinois Fuel. The first, known as the I-1 mine and located five miles north of Herod in Saline County, is the subject of counts I and II of the amended complaint. The second, known as the #4 mine and located five miles southwest of Junction in Gallatin County, is the subject of counts III, IV, and V of the amended complaint. The parties now seek to settle Counts I and II without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

**STIPULATION AND PROPOSED SETTLEMENT OF COUNTS I AND II**

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), 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 (2016); 35 Ill. Adm. Code 103. In this case, the People's amended complaint alleges in counts I and II that Illinois Fuel violated Sections 12(a) and 12(f) of the Act (415 ILCS 5/12(a), 12(f) (2016)) by discharging effluent from the I-1 mine into waters of the State so as to cause or tend to cause water pollution and in violation of National Pollutant Discharge Elimination System (NPDES) Permit No. IL0064611.

On December 22, 2017, the People and Illinois Fuel and Cheyenne filed a stipulation and proposed settlement (Stip.). The parties' stipulation states that "Cheyenne is not alleged to have violated any provisions of the Act and is added as a respondent in this matter solely based on their assumption of Illinois Fuels' liability for alleged violations in Count I and II of the Amended Complaint." Stip. at 3. The parties also filed a request for relief from the hearing

requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2016)), which is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2016)). Section 31(c)(2) 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 *Harrisburg Register* on January 16, 2018, and in the *Gallatin Democrat* on January 17, 2018. The Board did not receive any written comment or demand for hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2010); 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 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) (2016)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Cheyenne does not affirmatively admit the violations alleged in counts I and II of the amended complaint. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2016)), which may mitigate or aggravate the civil penalty amount. Cheyenne agrees to pay a civil penalty of \$75,000. The stipulation states that it is intended to be "a final adjudication of this matter as to Respondent Cheyenne" but "does not resolve the State of Illinois' case against any other Respondent in this action, except as provided in Section V.E." Stip. at 1. Section V.E states in part that "Complainant releases, waives and discharges . . . Respondent Illinois Fuel from any further liability or penalties for the violations of the Act and Board regulations that were the subject matter of Counts I and II of the Amended Complaint herein." *Id.* at 9. The People and Cheyenne have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

### **COUNTS III, IV, AND V**

In their motion for relief from the hearing requirement, the People state that they intend to resolve the remaining counts of the amended complaint through the pending motion for summary judgment against Illinois Fuel.

On January 21, 2015, the People moved for summary judgment on counts I, II, III, and V of the amended complaint. Counts III and V allege that Illinois Fuel violated Sections 12(a) and 12(f) of the Act (415 ILCS 5/12(a), 12(f) (2016)) at the #4 mine by causing or tending to cause water pollution, failing to submit an NPDES permit, and operating without the required NPDES permit. The People did not move for summary judgment on count IV of the amended complaint. That count also remains pending and alleges that Illinois Fuel violated Section 12(f) of the Act (415 ILCS 5/12(f) (2016)) by repeatedly discharging contaminants from the #4 mine into waters of the State in violation of NPDES Permit No. IL0061166.

The Board will address the pending motion for summary judgement and the pending count IV in one or more subsequent orders.

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. Cheyenne Resources, Inc. must pay a civil penalty of \$75,000 no later than Monday, March 26, 2018, which is the first business day following the 30th day after the date of this order. Cheyenne Resources, Inc. 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, case number, and Cheyenne Resources, Inc.'s name must appear on the face of the certified check or money order.
3. Cheyenne Resources, Inc. 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

Cheyenne Resources, Inc. must send a copy of the certified check or money order and any transmittal letter to:

David G. Samuels, Assistant Attorney General  
Illinois Attorney General's Office  
Environmental Bureau  
500 South 2nd Street  
Springfield, Illinois 62701

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2016)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2016)).
5. Cheyenne Resources, Inc. must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject of the amended complaint.

IT IS SO ORDERED.

Board Members C.M. Santos and B.K. Carter abstained.

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) (2016); *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. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

<b>Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court</b>	
<b>Parties</b>	<b>Board</b>
Office of the Attorney General Attn: David G. Samuels, Asst. Atty. General 500 S. 2nd St. Springfield, Illinois 62706 <a href="mailto:dsamuels@atg.state.il.us">dsamuels@atg.state.il.us</a>	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601
Illinois Fuel Company, LLC c/o CT Corporation System 208 S. LaSalle St., Suite 814 Chicago, Illinois 60604	
Illinois Fuel Company, LLC c/o Stephen Addington 1512 N. Big Run Rd. Ashland, Kentucky 41102	
Cheyenne Resources, Inc. Attn: Justin Leinenweber Leinenweber, Baroni & Daffada, LLC 203 N. LaSalle St., Suite 1620 Chicago, Illinois 60601 <a href="mailto:justin@ilesq.com">justin@ilesq.com</a>	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 22, 2018 by a vote of 3-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board