

ILLINOIS POLLUTION CONTROL BOARD
October 20, 2011

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 04-192
) (Enforcement - Land, Water)
SMITHFIELD PROPERTIES IV, LLC, an)
Illinois limited liability company, and)
WOOTON CONSTRUCTION, LTD., an)
Illinois corporation,)
)
 Respondents.)

ORDER OF THE BOARD (by T.E. Johnson):

On May 5, 2004, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed an eleven-count complaint against Smithfield Properties IV, LLC (Smithfield), Wooton Construction, Ltd. (Wooton), and Chicago Sun-Times, Inc. (Sun-Times). The complaint concerns a leaking underground storage tank (UST) site located at 222 South Racine Avenue in Chicago, Cook County. The site had been used by Sun-Times as a fleet maintenance facility, after which Smithfield and Wooton redeveloped the site for residential purposes. The first eight counts of the complaint were alleged only against Smithfield and Wooton, while the last three counts of the complaint were alleged only against Sun-Times.

The People and Sun-Times previously executed a stipulation and settlement agreement, which the Board accepted by order of January 19, 2006. *See People v. Smithfield Properties, LLC, Wooton Construction, Ltd., and Chicago Sun-Times, Inc., PCB 04-192 (Jan. 19, 2006).*¹ Smithfield and Wooton were not parties to that stipulation. Now, in another stipulation, the People and both remaining respondents, Smithfield and Wooton, seek to settle without a hearing.² For the reasons below, the Board directs the Clerk to provide public notice of the parties' stipulation, proposed settlement, and request for relief from the hearing requirement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), the Attorney General and the State's Attorneys may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See 415 ILCS 5/31 (2010); 35 Ill. Adm.*

¹ The caption of orders issued in this docket have not included Sun-Times since the Board accepted the stipulation and proposed settlement involving the People and Sun-Times.

² In the complaint, Smithfield is referred to as "Smithfield Properties, LLC," but in the pending stipulation and proposal for settlement, Smithfield is identified as "Smithfield Properties IV, LLC." It is assumed that the latter reference is correct and the caption of this order is amended accordingly.

Code 103. In this case, the People allege that Smithfield and Wooten violated the following provisions of the Act and the Board's petroleum UST regulations in the manner described: (1) Section 732.100(c) of the regulations (35 Ill. Adm. Code 732.100(c)) and Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2010)) by failing to perform site evaluation and classification; (2) Section 732.200 of the regulations (35 Ill. Adm. Code 732.200) and Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2010)) by failing to comply with reporting and response requirements; (3) Section 732.202(a) of the regulations (35 Ill. Adm. Code 732.202(a)) and Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2010)) by failing to perform initial response actions; (4) Section 732.202(b) of the regulations (35 Ill. Adm. Code 732.202(b)) and Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2010)) by failing to perform initial abatement measures; (5) Section 732.202(d) of the regulations (35 Ill. Adm. Code 732.202(d)) and Section 57.6(a) of the Act (415 ILCS 57.6(a) (2010)) by failing to assemble information about the site; (6) Section 57.7(a)(1) of the Act (415 ILCS 5/57.7(a)(1) (2010)) by failing to submit a physical soil classification and groundwater investigation plan; (7) Section 12(a) of the Act (415 ILCS 5/12(a) (2010)) by causing or tending to cause water pollution; and (8) Section 732.202(e) of the regulations (35 Ill. Adm. Code 732.202(e)) and Section 57.6(a) of the Act (415 ILCS 5/57.6(a) (2010)) by failing to submit a 45-day report.

On October 11, 2011, the People, Smithfield, and Wooten 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) (2010)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2010)), 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). Under the proposed stipulation, Smithfield and Wooten neither admit nor deny the alleged violations but agree to jointly and severally pay a civil penalty of \$25,000.

Unless the Board determines that a hearing is needed, the Board must cause notice of the stipulation, proposed settlement, and request for relief from the hearing requirement. Any person may file a written demand for hearing within 21 days after receiving the notice. If anyone timely files a written demand for hearing, the Board will deny the parties' request for relief and hold a hearing. *See* 415 ILCS 5/31(c)(2) (2010); 35 Ill. Adm. Code 103.300(b), (c). The Board directs the Clerk to provide the required notice.

IT IS SO ORDERED.

Board Member J.A. Burke abstained.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 20, 2011, by a vote of 4-0.



John Therriault, Assistant Clerk

Illinois Pollution Control Board