

ILLINOIS POLLUTION CONTROL BOARD
December 1, 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.)

OPINION AND 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 accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), 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 (2010); 35 Ill. Adm. Code 103.

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.

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). The Board provided notice of the stipulation, proposed settlement, and request for relief. The newspaper notice was published in the *Chicago Sun-Times* on October 26, 2011. 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) (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 operations at issue. 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) (2010)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Smithfield and Wooten neither admit nor deny the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2010)), which may mitigate or aggravate the civil penalty amount. Smithfield and Wooten agree to jointly and severally pay a civil penalty of \$25,000. The People, Smithfield, and Wooten have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

Finally, the Board notes that on February 9, 2011, Wooten filed a motion to dismiss or for summary judgment as to counts I-VI and VIII. On February 28, 2011, the People filed a motion to strike Wooten's motion. The Board did not rule on either motion but now finds that "acceptance of the stipulation and settlement agreement moots all pending motions." People v.

Amsted Industries, Inc., PCB 97-38, slip op. at 2 (June 19, 1997). The Board therefore denies as moot the motions filed on February 9, 2011 and February 28, 2011.

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. The Board therefore denies as moot the motion filed by Wooton on February 9, 2011, and the motion filed by the People on February 28, 2011.
2. Smithfield and Wooton must jointly and severally pay a civil penalty of \$25,000 no later than January 3, 2012, which is the first business day following the 30th day after the date of this order. Smithfield and Wooton 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 the respective federal tax identification numbers of Smithfield and Wooton must appear on the face of the certified check or money order.
3. Smithfield and Wooton must submit payment of the civil penalty to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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

Zemeheret Bereket-Ab
Environmental Bureau
Illinois Attorney General's Office
69 South 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) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
5. Smithfield and Wooton must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject of the complaint.

IT IS SO ORDERED.

Member Burke 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) (2010); *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 December 1, 2011, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board