

ILLINOIS POLLUTION CONTROL BOARD

August 25, 2016

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 13-41
)	(Enforcement - Land)
AMERENENERGY RESOURCES)	
GENERATING COMPANY, INC., an Illinois)	
corporation, and AMERENENERGY)	
MEDINA VALLEY COGEN, LLC, an Illinois)	
limited liability company,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by J.D. O'Leary):

On February 4, 2013, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against Ameren Energy Generating Company, Inc. On March 7, 2013, the Board granted the People's unopposed motion to substitute AmerenEnergy Resources Generating Company (AERG) as respondent. The complaint concerns the Duck Creek Power Generating Station located at 17751 North Cilco Road in Canton, Fulton County. On July 21, 2016, the Board granted the parties' agreed motion to join Ameren Medina Valley Cogen, LLC (Medina Valley) as a respondent. 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 5/1 *et seq.* (2014)), 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 (2014); 35 Ill. Adm. Code 103. In this case, the People allege that AERG and Medina Valley violated Sections 21(a), (d)(1), (d)(2), (e), and (r) of the Act (415 ILCS 5/21(a), (d)(1), (d)(2), (e), (r) (2014)) and Section 812.101(a) of the Land Pollution Regulations (35 Ill. Adm. Code 812.101(a)). According to the complaint, AERG and Medina Valley violated these provisions by causing or allowing the open dumping of coal combustion waste (CCW) and by operating a CCW disposal site without a permit granted by the Illinois Environmental Protection Agency (Agency). The People also alleged that AERG and Medina Valley violated these provisions by conducting a waste-storage and waste-disposal operation at the site that did not meet the requirements of the Act and regulations, and by conducting the same operation without a permit granted by the Agency and without submitting an application for a permit.

On July 15, 2016, the parties filed a stipulation and proposed settlement (Stip.), accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2014)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS

5/31(c)(2) (2014)), 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). On July 21, 2016, the Board directed the Clerk to publish notice of the parties' stipulation and proposed settlement. The newspaper notice was published in the Canton Daily Ledger on July 25, 2016. 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) (2014); 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 respondents' 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) (2014)), which bears on the reasonableness of the circumstances surrounding the alleged violations. AERG and Medina Valley do not affirmatively admit the alleged violations.

The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2014)), which may mitigate or aggravate the amount of a civil penalty. AERG and Medina Valley agree to pay a civil penalty of \$60,000. In addition, "to minimize groundwater migration through the coal combustion material fill area," AERG and Medina Valley agree to construct a low permeability barrier wall at the site and to take additional steps as provided in the stipulation and proposal for settlement under Section D: Future Compliance. Stip. at 10-14. In addition, AERG and Medina Valley must cease and desist from future violations that were the subject of the complaint. The parties 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. AmerenEnergy Resources Generating Company (AERG) and Ameren Medina Valley Cogen, LLC (Medina Valley) (collectively, respondents) must pay a civil penalty of \$60,000 no later than Monday, September 26, 2016, which is the first business day following the 30th day after the date of this order. Respondents 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 respondents' federal tax identification number(s) must appear on the face of the certified check or money order.
3. Respondents 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

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

Raymond J. Callery, Assistant Attorney General
 Illinois Attorney General's Office Environmental Bureau
 500 S. Second St.
 Springfield, Illinois 62706

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2014)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2014)).
5. Respondents must construct a low permeability barrier wall at the site and take additional steps, all as provided in the stipulation and proposal for settlement under Section D: Future Compliance.
6. Respondents must cease and desist from future violations of the Act and Board regulations that were the subject 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) (2014); *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 T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 25, 2016 by a vote of 4-0.



John T. Therriault, Clerk
 Illinois Pollution Control Board