

ILLINOIS POLLUTION CONTROL BOARD
January 19, 2017

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 10-84
)	(Enforcement - Water)
PROFESSIONAL SWINE MANAGEMENT,)	
LLC, HILLTOP VIEW, LLC, WILDCAT)	
FARMS, LLC, HIGH-POWER PORK, LLC,)	
EAGLE POINT, LLC, LONE HOLLOW,)	
LLC, TIMBERLINE, LLC, PRAIRIE STATE)	
GILTS, LTD., and LITTLE TIMBER, LLC,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

The State of Illinois (People) alleges water pollution violations at nine livestock facilities managed by Professional Swine Management (PSM). One facility owner already settled and a contractor was voluntarily dismissed. The People, PSM, and the remaining eight facility owners now propose to settle for a total penalty \$116,500. The Board held a hearing on the proposed settlements as requested by members of the public. The Board¹ accepts the parties' stipulations and settlements. These settlements bring this docket to a close.

SETTLEMENT BACKGROUND

The People allege water pollution violations of the Environmental Protection Act (Act) and Board regulations. The People seek to settle with PSM and the remaining eight owners: Hilltop View, LLC; Wildcat Farms, LLC; High-Power Pork, LLC; Eagle Point, LLC; Lone Hollow, LLC; Timberline, LLC; Prairie State Gilts, Ltd; and Little Timber, LLC. For each livestock facility, the People, PSM, and the respective owner filed a proposed settlement.

The Board provided notice of the stipulations, proposed settlements, and requests to not hold a hearing. Newspaper notice was published on October 11, 2016 in the *Canton Daily Ledger*, and on October 12, 2016 in the *Hancock County Journal-Pilot*, the *Quincy Herald-Whig*, and the *Rushville Times*.

HEARING SUMMARY

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.

The Board received two requests for hearing. After consulting with the parties and the two requestors, the Board held a hearing in Springfield on December 13, 2016. The People moved to admit one exhibit: the settlement agreements.

Five individuals offered public comment at hearing: Connie King, Cindy Arnett, Lindsay Keeney (on behalf of the Illinois Environmental Council), Karen Hudson (on behalf of Illinois Citizens for Clean Air and Water, and the Socially Responsible Agricultural Project), and Molly Hall (on behalf of Menard Citizens for Clean Air and Water).

The Board received two post-hearing comments, one from the People (People Br.) and a joint comment from the respondents (Resp. Br.).²

DISCUSSION

The Board's procedural rules prescribe the contents for stipulations and settlements. *See* 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the respondents' operations as well as the extent and causes of the alleged violations. Each settlement includes these stipulated facts. *See* Stipulation and Proposal for Settlement (Stip.).

The Board considers the factors of Sections 33(c) and 42(h) of the Act to determine whether a stipulation and settlement is appropriate. People v. Alloy Engineering and Casting Co., PCB 01-155, slip op. at 4 (July 10, 2003). Additionally, the Board considers public comments and the record.

The parties stipulate to each of the Section 33(c) factors (415 ILCS 5/33(c) (2014)) relating to the circumstances of the alleged violations. *E.g.*, Stip. at 8-9. The parties agree that (1) the environment was threatened, (2) the facilities provided social and economic benefit, (3) facility locations were suitable, (4) compliance was technically practicable and economically reasonable, and (5) the facilities have come into compliance with the Act. *Id.*

The parties also stipulate to the factors of Section 42(h) (415 ILCS 5/42(h) (2014)) which may mitigate or aggravate the civil penalty amount. *E.g.* Stip. at 8-9. While not every respondent recognized and stopped the violations on their own volition, violations were corrected after the Illinois Environmental Protection Agency directed them to do so. The settlements noted minimal or no economic benefit due to the violations. The People contend that the penalty amount deters future violations. No facility owner had previous adjudicated violations against them. However, PSM was a respondent in a previous action relating to a separate facility. *See* People v. Pinnacle Genetics, LLC and Professional Swine Management, PCB 07-29. Further, respondents have improved, installed, or will install equipment to reduce the potential for future violations. *E.g.*, Stip. at 6.

As a result, Respondents agree to pay civil penalties totaling \$116,500. PSM is a party to each count. The facilities and respective penalties are:

² The Board received a third comment referencing a facility not at issue in this case, and therefore the Board does not consider that comment in its decision.

Count I: Hilltop View (Schuyler County)	\$14,500
Count II: Wildcat Farms (Hancock County)	\$10,500
Count III: High Power Pork (Adams County)	\$18,000
Count IV: Eagle Point Farms (Fulton County)	\$16,000
Count V: Lone Hollow (Hancock County)	\$17,500
Count VI: Timberline (Schuyler County)	\$11,000
Count VII: Prairie State Gilts (Schuyler County)	\$14,000
Count VIII: Little Timber (Hancock County)	\$15,000

Commenters expressed concern that the amount of the fine would not deter future violations by the respondents or similarly situated operators. Transcript (Tr.) at 14, 26, 29, 31. Ms. Cook stated that the proposed penalties are less than fines for similar violations at other facilities, including a previous \$27,000 fine against PSM. *Id.* at 15. However, this concern compares each individual facility violation against the prior \$27,000 penalty. The People contend that the case should be viewed as one enforcement action, rather than multiple, with a total penalty of \$116,600. People Br. at 1. The People consider this increased penalty coupled with six years of litigation to be a deterrent to violating the Act. *Id.* at 1-2, citing Pinnacle, PCB 07-29.

Ms. Hall stated that the settlements did not propose any clean-up. Tr. at 31. Respondents noted at hearing, however, that the violations have been addressed to the People's satisfaction, with the last violation occurring in 2009. *Id.* at 12. The People also conducted a final inspection at each facility prior to finalizing the settlements. *Id.* at 12-13. Each settlement includes steps each respondent will take to ensure future compliance, including additional equipment construction or improvement. Stip. at 6, 14-16.

Commenters argued the fines were insufficient because they did not adequately compensate for damage to the environment or neighboring properties, clean-up, and investigative costs. Tr. at 16-17, 23-24, 26-27. Commenters further asked what the social and economic benefit of the facilities are, and whether the locations of the facilities are suitable. *Id.* at 18, 21-22, 25-26, 28. No neighbors have asserted claims in this action, and the People did not seek relief for neighboring site clean-up. Further, the parties stipulated to social and economic benefit, location suitability, and compliance with the Act. Stip. at 8-9. Ultimately, the People determined that the penalty addresses the violations alleged in the complaint.

The primary goal of the Act is to enhance the environment. Chemetco, Inc. v. PCB, 140 Ill. App. 3d 283, 288 (5th Dist. 1986). Additionally, the law encourages settlements. *Id.* Taking these two objectives together, allowing settlements allows the People and respondents to

conserve resources that would otherwise be spent in litigation, effectuates the goals of the Act, and avoids the stigma of a violation. See People v. Archer Daniels Midland Corp., 140 Ill. App. 3d 823, 825 (3d Dist. 1986). The Board finds that the settlement here furthers these goals.

The Board notes the settlements represent good faith negotiations between the People and respondents, covering compliance activities and penalty payments. Tr. at 8. The settlements also represent respondents' compliance with the Board's livestock regulations promulgated after this case began. Resp. Br. at 4, citing Concentrated Animal Feeding Operations: Proposed Amendments to 35 Ill. Adm. Code Parts 501, 502, and 504, R12-23 (Aug. 7, 2014).

Further, the settlements relate to the wholly past violations detailed in the complaint, and do not shield any respondent from an enforcement action if violations occur in future. Each settlement notes that it may be used against respondents in a subsequent enforcement action or permit proceeding as proof of a past adjudication of the Act and Board regulations.

The Board considered the comments at hearing along with the rest of the record in this case. The Board finds that the People and respondents satisfied Section 103.302 of the Board's regulations, as well as Sections 33(c) and 42(h) of the Act. The Board therefore accepts the stipulations and proposed settlements. To effectuate the terms of the settlement regarding Count VIII of the second amended complaint, the Board dismisses the alleged violation of 35 Ill. Adm. Code 620.301.

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. Respondents must pay civil penalties as outlined below:
 - a. Hilltop View and PSM must pay a civil penalty of \$14,500.
 - b. Wildcat Farms and PSM must pay a civil penalty of \$10,500.
 - c. High Power Pork and PSM must pay a civil penalty of \$18,000.
 - d. Eagle Point Farms and PSM must pay a civil penalty of \$16,000.
 - e. Lone Hollow and PSM must pay a civil penalty of \$17,500.
 - f. Timberline and PSM must pay a civil penalty of \$11,000.
 - g. Prairie State Gilts and PSM must pay a civil penalty of \$14,000.
 - h. Little Timber and PSM must pay a civil penalty of \$15,000.

The civil penalties must be paid no later than February 21, 2017, which is the first business day after 30 days from 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 the respective respondents' federal tax identification number 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 Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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

Environmental Bureau
Illinois Attorney General's Office
500 South Springfield Street
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) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
5. Respondents 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.

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, Don Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 19, 2017, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The letters are cursive and slightly slanted to the right.

Don Brown, Assistant Clerk
Illinois Pollution Control Board