ILLINOIS POLLUTION CONTROL BOARD September 7, 2023

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
v.)	PCB 23-123 (Enforcement - Water)
TENNIS DAIRY FARMS LLP, an Illinois)	()
limited liability partnership,)	
Respondent.)	

ORDER OF THE BOARD (by M. Gibson):

On June 7, 2023, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against Tennis Dairy Farms, LLP (Tennis Dairy). The complaint concerns Tennis Dairy's animal feeding operation located at 3907 North 1400 Boulevard in Browns, Wabash County. 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 (2022)), 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 (2022); 35 Ill. Adm. Code 103. In this case, the People allege that Tennis Dairy violated the following sections of the Act and Board regulations:

Count I: Section 12(a) of the Act, 415 ILCS 5/12(a) (2022), by causing, threatening, or allowing the discharge of manure-laden wastewater into a tributary of Bonpas Creek and causing or tending to cause water pollution.

Count II: Section 12(d) of the Act, 415 ILCS 5/12(d) (2022), by causing or allowing the release of contaminants upon the land in such a place and manner so as to create a water pollution hazard.

<u>Count III</u>: Section 302.203 and 304.105 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, 304.105, by causing or allowing the discharge of manure-laden wastewater resulting in sludge or bottom deposits, odor, and color or turbidity of other than natural origin in the tributary.

On July 28, 2023, the People and Tennis Dairy 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) (2022)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2022)), 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 III. 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 Newton Hometown Register, Clay County Hometown Register, Carmi Hometown Register, Mt. Carmel Hometown Register, and Olney Hometown Register on August 11, 2023. 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) (2022); 35 III. 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 Tennis Dairy'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) (2022)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Tennis Dairy does not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2022)), which may mitigate or aggravate the civil penalty amount. Under the proposed settlement, Tennis Dairy agrees to pay a civil penalty of \$7,200 within 30 days after the date of this order. The People and Tennis Dairy have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

On August 21, 2023, Tennis Dairy filed a motion for extension of time answer the complaint. However, because the Board accepted the stipulation and proposed settlement, the motion is moot.

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. Tennis Dairy must pay a civil penalty of \$7,200 no later than October 10, 2023, which is the first business day following the 30th day after the date of this order. Tennis Dairy 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 and case number must appear on the certified check or money order.
- 3. Tennis Dairy 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 Tennis Dairy must send a copy of the certified check or money order and any transmittal letter to:

Kevin D. Barnai Assistant Attorney General Environmental Bureau Illinois Attorney General's Office 500 South Second 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) (2022)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2022)).
- 5. Tennis Dairy 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) (2022); 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.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court		
Parties	Board	
Illinois Attorney General's Office Attn: Kevin D. Barnai Assistant Attorney General Environmental Bureau 500 South Second Street Springfield, Illinois 62706 Kevin.Barnai@ilag.gov Jackson Kelly, PLLC	Illinois Pollution Control Board Attn: Don A. Brown, Clerk 60 E. Van Buren St., Suite 630 Chicago, Illinois 60605 don.brown@illinois.gov	

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I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 7, 2023, by a vote of 4-0.

Don A. Brown, Clerk

Illinois Pollution Control Board