

ILLINOIS POLLUTION CONTROL BOARD

January 26, 2007

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 00-104
)	(Enforcement – Water)
THE HIGHLANDS, L.L.C., and MURPHY)	
FARMS INC. (a division of MURPHY)	
BROWN, LLC, a North Carolina limited)	
liability corporation, and SMITHFIELD)	
FOODS, INC., a Virginia corporation),)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

On February 18, 2004, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a second amended complaint against The Highlands, LLC (Highlands), and Murphy Farms, Inc.¹ (Murphy Farms) (collectively, respondents). *See* 415 ILCS 5/31(c)(1) (2004); 35 Ill. Adm. Code 103.204. The Board granted the People leave and accepted the second amended complaint for hearing on May 6, 2004. The complaint concerns a swine facility located just south of Williamsfield in Elba Township, Knox County. The People and Highlands now seek to settle. 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. (2004)), 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 (2004); 35 Ill Adm. Code 103. The People allege in the three-count second amended complaint that respondents violated Sections 9(a) and 12(a), (d), and (f) of the Environmental Protection Act (Act) and Section 501.405(a) of the Board's agriculture regulations (415 ILCS 5/9(a) and 12(a), (d), and (f); 35 Ill. Adm. Code 501.405(a)). The People further allege that respondents violated these provisions by causing or allowing the emission of offensive odors, and causing or allowing the discharge of livestock waste to a tributary of French Creek without a National Pollutant Discharge Elimination System (NPDES) permit so as to create a water pollution hazard.

On December 20, 2006, the People and the Highlands 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) (2004)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2004)). *See* 35 Ill. Adm. Code 103.300(a). The Board provided notice of

¹ Murphy Farms, Inc. is a division of Murphy Brown, LLC, a North Carolina limited liability corporation, and Smithfield Foods, Inc., a Virginia corporation.

the stipulation, proposed settlement, and request for relief. The newspaper notice was published in *The Paper* on December 27, 2006. 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) (2004); 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. 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 Highlands' 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) (2004)). The People and Highlands have satisfied Section 103.302. Under the proposed stipulation, the Highlands admits that it caused or allowed unreasonably offensive odors in 1999, 2000, 2002, and 2003, as alleged in the second amended complaint. The Highlands further admits that it caused or allowed a release of livestock waste from the facility on June 18, 2002. The Highlands denies all other alleged violations in the second amended complaint. In addition to approximately \$116,320 in compliance costs, and a fish kill claim of \$1,114.51 already paid by Highlands, the Highlands agrees to pay a civil penalty of \$9,000. 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. The Highlands, LLC (Highlands) must pay a civil penalty of \$9,000 no later than February 25, 2007, which is the 30th day after the date of this order. Highlands must pay the civil penalty by certified check, money order, or electronic funds transfer, payable to the Illinois Environmental Protection Agency, designated to the Environmental Protection Trust Fund. The case number, case name, and Highlands' social security number or federal employer identification number must be included on the certified check, money order or transfer of electronic funds.
3. The Highlands must send the certified check to:

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

Copies of the check must be sent to:

Jane McBride
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62702

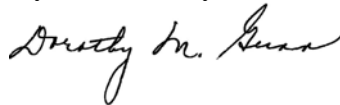
Tom Andryk
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
5. The Highlands must cease and desist from the alleged violations.

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) (2004); *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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 26, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board