

ILLINOIS POLLUTION CONTROL BOARD
May 20, 1999

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 99-66
) (Enforcement - Water)
DALE BENNETT,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by K.M. Hennessey):

On April 7, 1999, the Illinois Attorney General filed a stipulation and proposal for settlement (Settlement Agreement) in this enforcement action. The Board accepts the Settlement Agreement.

Respondent is the owner and operator of a farrow-to-feeder pig facility commonly known as the Dale Bennett Swine Farm, which is located west of Wyoming in Stark County, Illinois. The complaint alleged that respondent violated Sections 12(a), 12(d), and 12(f) of the Environmental Protection Act (Act) (415 ILCS 5/12(a), 12(d), 12(f) (1996)), and 35 Ill. Adm. Code 302.203, 304.141(b), 309.102(a), and 501.404(c)(4)(A) by causing or tending to cause water pollution; causing or allowing offensive conditions in waters of the State; creating a water pollution hazard; failing to provide sufficient waste storage capacity to prevent water pollution; and causing, allowing, or threatening the discharge of contaminants to waters of the State without a National Pollutant Discharge Elimination System permit. Respondent has ceased swine production.

The Illinois Attorney General filed a motion requesting relief from the hearing requirement on April 12, 1999. Pursuant to Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (1996)), the Board caused publication of the required newspaper notice of the Settlement Agreement and request for relief from the hearing requirement. The Board did not receive any request for hearing. Accordingly, the Board waives the hearing requirement.

The Settlement Agreement sets forth facts relating to the nature of, and operations and circumstances surrounding, the allegations in the complaint. Respondent admits the alleged violations and agrees to pay a civil penalty of \$5,000. The Board notes that Section VIII(B) of the Settlement Agreement requires respondent to pay the \$5,000 civil penalty in two installments of \$2,500. Under that provision, the first installment is due on May 1, 1999, and the second installment is due on August 1, 1999.

Section 31(c)(2) of the Act requires the Board to provide (1) notice of the Settlement Agreement and request for relief from the hearing requirement and (2) a 21-day period for

persons to request a hearing. As noted above, the Board provided this notice and received no request for hearing. Because of the amount of time necessary to fulfill these statutory requirements, today's Board meeting is the first regularly scheduled meeting at which the Board could vote on the Settlement Agreement. In setting the May 1, 1999 due date for the first \$2,500 installment, the parties did not take into account the amount of time needed to comply with the notice requirements of the Act. Accordingly, the Board will order respondent to pay the first installment by June 1, 1999.

Respondent must continue to comply with any federal, State, or local regulations, including, but not limited to, the Act and the Board's regulations. The Board also notes under Section V of the Settlement Agreement, respondent must complete various actions by June 1, 1999, including cleaning the swine waste lagoon, applying livestock waste to cropland, and removing or permanently sealing the swine waste lagoon's discharge pipe.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. The Board accepts the stipulation and proposal for settlement (Settlement Agreement) executed by the People of the State of Illinois and respondent, concerning respondent's facility located west of Wyoming in Stark County, Illinois. The Settlement Agreement is incorporated by reference as though fully set forth herein.
2. Respondent must pay a civil penalty of \$5,000 in two installments of \$2,500 as follows:
 - a. Respondent must pay the first installment by June 1, 1999.
 - b. Respondent must pay the second installment by August 1, 1999.

Such payments must be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund. The case number, case name, and respondent's social security number also must be included on each certified check or money order.

3. Each certified check or money order must be sent by first class mail to:

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

A copy of each certified check or money order must be sent simultaneously by first class mail to:

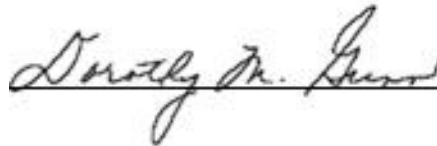
Office of the Attorney General
c/o Donna Lutes
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

4. Any such penalty not paid within the time prescribed will accrue interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003(a) (1996)), as now or hereafter amended, from the date payment is due until the date payment is received. If the time for payment is stayed during the pendency of an appeal, interest will not accrue during such stay.
5. Respondent must cease and desist from the alleged violations.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 20th day of May 1999 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board