

ILLINOIS POLLUTION CONTROL BOARD

August 17, 2017

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 17-79  
) (Enforcement - Water)  
J.B. TIMMERMAN FARMS, LTD., an Illinois )  
corporation, )  
)  
Respondent. )

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On June 9, 2017, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against J.B. Timmerman Farms, Ltd. (Timmerman Farms). The complaint concerns Timmerman Farms' dairy operation located at 11601 South Germantown Road in Breese, Clinton 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 (2016)), 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 (2016); 35 Ill. Adm. Code 103. In this case, the People allege that Timmerman Farms violated the Environmental Protection Act, Board water regulations, and Timmerman Farms' National Pollutant Discharge Elimination System (NPDES) permit (Permit No. ILA010007) in five ways:

- 1) by causing or allowing livestock waste runoff to discharge from the dairy operation, violating Section 12(a) of the Act (415 ILCS 5/12(a) (2016));
- 2) by failing to curb or otherwise contain manure solids in certain areas of the dairy operation, violating Section 12(d) of the Act (415 ILCS 5/12(d) (2016));
- 3) by causing or allowing the discharge of contaminants in the form of livestock waste runoff into waters of the State and to waters of the United States, violating Special Condition 3(a) of its NPDES permit, Section 12(f) of the Act (415 ILCS 5/12(f) (2016)), and Section 309.102(a) of the Board regulations (35 Ill. Adm. Code 309.102(a)), by failing to fulfill the monitoring, recordkeeping, and reporting requirements contained in its NPDES permit, violating Special Conditions 4(e)(xi), 7(a), 7(c), 7(e)-(h), 7(j), and 7(k) of its NPDES permit, Section 12(f) of the Act (415 ILCS 5/12(f) (2016)), and Section 309.102(a) of Board regulations (35 Ill Adm.

Code 309.102(a)), and by failing to fulfill the duty to maintain permit coverage contained in its NPDES permit, violating Special Condition 15 of its NPDES permit, Section 12(f) of the Act (415 ILCS 5/12(f) (2016)), and Section 309.102(a) of Board regulations (35 Ill. Adm. Code 309.102(a)).

- 4) by causing or allowing discharges of livestock waste runoff from certain areas at the dairy operation into a nearby ditch, such that the liquid in the ditch was brown in color and had a distinct livestock waste odor, violating Section 302.203 of Board regulations (35 Ill. Adm. Code 302.203) and Section 12(a) of the Act (415 ILCS 5/12(a) (2016)); and
- 5) by failing to ensure that the dairy operation had adequate storage capacity for livestock waste to prevent a discharge of livestock waste into the ditch, violating Section 501.404(c)(4)(a) of Board regulations (35 Ill. Adm. Code 501.404(c)(4)(A)) and Section 12(a) of the Act (415 ILCS 5/12(a) (2016)).

On June 9, 2017, simultaneously with the People's complaint, the People and Timmerman Farms 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) (2016). This filing is authorized by Section 31(c)(2) of the Act, 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. 415 ILCS 5/31(c)(2) (2016); 35 Ill. 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 *The Breese Journal* on June 29, 2017.

On July 13, 2017, the Board received a comment from Mr. Michael Richter (PC 1). Mr. Richter states that the proposed penalty is "too large" in comparison with cases involving intentional discharges. Mr. Richter suggests that the proposed penalty is "insignificant" in comparison with the time Timmerman Farms spent reaching this settlement and the dollars it spent on attorney fees and compliance activities. PC 1. Mr. Richter did not request that the Board hold a hearing on the proposed settlement (*see* PC 1), and no other person filed a timely request for a hearing. The Board grants the parties' request for relief from the hearing requirement. 415 ILCS 5/31(c)(2) (2016); 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 Timmerman Farms' operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act, which bears on the reasonableness of the circumstances surrounding the alleged violations. 415 ILCS 5/33(c) (2016). Timmerman Farms neither admits nor denies the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act, which may mitigate or aggravate the civil penalty amount. 415 ILCS 5/42(h) (2016). Timmerman Farms agrees to pay a civil penalty of \$15,000. The People and Timmerman Farms 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. Timmerman Farms must pay a civil penalty of \$15,000 no later than September 18, 2017, which is the first business day following the 30th day after the date of this order. Timmerman Farms 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 face of the certified check or money order.
3. Timmerman Farms 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

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

Rachel R. Medina, Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
500 South 2nd Street  
Springfield, IL 62706

Roberto Durango, Assistant Counsel  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 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) (2016)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2016)).
5. Timmerman Farms 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.

Board Members C.M. Santos and B.K. Carter abstained.

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) (2016); *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 A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 17, 2017, by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, looped initial "D".

Don A. Brown, Clerk  
Illinois Pollution Control Board