

The People further allege that Behr Aluminum violated these provisions by (1) causing or allowing particulate matter (PM) emissions into the atmosphere in excess of the allowable emission rate; (2) failing to operate within conditions imposed by Behr Aluminum's Lifetime Operating Permit; (3) failing to timely test PM emissions from the rotary dryer and hammermill; (4) operating the hammermill and rotary dryer without the baghouse for purposes other than stack testing and outside of the time period allowed by Behr Aluminum's Lifetime Operating Permit; (5) failing to obtain a construction permit from the Illinois Environmental Protection Agency (Agency) prior to modifying its emissions sources by disconnecting the rotary dryer from the baghouse and causing PM emissions in excess of permitted PM emission limits; (6) failing to maintain records required by Behr Aluminum's Lifetime Operating Permit; (7) failing to submit a site-specific test plan to the Agency and to conduct initial performance by the deadlines established in the NESHAP for secondary aluminum production; (8) failing to timely submit a complete and accurate notification of compliance status report as required by the NESHAP for secondary aluminum production; (9) constructing a major stationary source located within an attainment area having the potential to emit (PTE) PM in excess of 100 tons per year, failing to perform a Best Available Control Technology (BACT) review, failing to apply for and obtain a PSD permit prior to constructing one rotary dryer without a baghouse, and failing to apply BACT to the rotary dryer; and (10) failing to submit to the Agency an application for a Clean Air Act Permit Program (CAAPP) permit within 180 days prior to disconnecting the dryer from the baghouse, and thereafter operating the source, thereby operating a CAAPP source without a CAAPP permit.

Also on September 5, 2008, the People and Behr Aluminum 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) (2006)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2006)), 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 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 *Rockford Register* on September 11, 2008. 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) (2006); 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. *See* 35 Ill. Adm. Code 103.302. These requirements

violation of Section 165 of the CAA or the PSD regulations is also a violation of Section 9.1(d)(1) of the Act. *See* 415 ILCS 5/9.1(d)(1) (2006). Section 9.1(d)(2) provides that no person shall "construct, install, modify or operate any equipment, building, facility, source or installation which is subject to regulation under Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, except in compliance with the requirements of such Sections and federal regulations adopted pursuant thereto, and no such action shall be undertaken without a permit granted by the Agency or in violation of any conditions imposed by such permit." 415 ILCS 5/9.1(d)(2) (2006).

include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of Behr Aluminum'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) (2006)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Behr Aluminum does not admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2006)), which may mitigate or aggravate the civil penalty amount. Behr Aluminum agrees to pay a civil penalty of \$140,000. In addition, Behr Aluminum agrees to fund a Supplemental Environmental Project (SEP) in the amount of \$100,000 to be used for reducing diesel emission pollution in Illinois. The People and Behr Aluminum 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. Behr Aluminum must pay a civil penalty of \$140,000 no later than November 17, 2008, which is the first business day following the 30th day after the date of this order. Behr Aluminum must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency for deposit into the Illinois Environmental Protection Trust Fund. Behr Aluminum must make the SEP payment of \$100,000 no later than November 17, 2008, which is the first business day following the 30th day after the date of this order. Behr Aluminum must make the SEP payment by certified check or money order payable to the Illinois EPA Special State Projects Trust Fund. The case name, case number, and Behr Aluminum's federal tax identification number must appear on the face of the respective certified checks or money orders.
3. Behr Aluminum must submit the respective payments to:

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

Behr Aluminum must send a copy of the respective certified checks or money orders and any transmittal letters to:

L. Nichole Cunningham
Environmental Bureau
Illinois Attorney General's Office
69 West Washington St., Suite 1800
Chicago, Illinois 60602

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).

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) (2006); *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, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 16, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board