

ILLINOIS POLLUTION CONTROL BOARD
August 18, 2011

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 07-13
)	(Enforcement - Air)
RAY F. LANDERS, individually, and)	
EQUIPPING THE SAINTS MINISTRY)	
INTERNATIONAL, INC.,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

The Board previously received a motion for summary judgment in this enforcement action from the Office of the Attorney General, on behalf of the People of the State of Illinois (People), against Ray F. Landers (Landers) and Equipping the Saints Ministry International, Inc. (ESMI) (collectively, Respondents). On November 18, 2010, the Board issued an interim opinion and order granting the People’s motion for summary judgment against ESMI finding that ESMI violated Section 9.1(d)(1) of the Environmental Protection Act (Act)¹ (415 ILCS 5/9.1(d)(1) (2010)) by violating the federal Clean Air Act (CAA) regulations involving the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos (40 C.F.R. Part 61, Subpart M).² However, the Board denied the People’s motion for summary judgment as to Landers. The Board then directed the People and ESMI to brief the issue of penalties when this case is fully disposed. The People filed a request for civil penalty and ESMI filed an answer to the civil penalty request. The Board finds that a civil penalty is warranted and directs ESMI to pay a civil penalty of \$3,000 for violating Section 9.1(d)(1) of the Act and 40 C.F.R. § 61.145(b).

In this opinion and order, the Board first reviews the procedural history of this case. The Board then summarizes the People’s complaint, then the facts derived from the evidence, and the Board’s finding of violation. The Board will then summarize the People’s request for a civil penalty, and ESMI’s answer to the civil penalty request. Next, the Board sets forth the relevant

¹The pleadings in this case refer to the 2004 version of the Illinois Compiled Statutes. As there is no difference between the relevant sections in the 2004 and 2010 statutes, the Board will consistently reference the 2010 statutes.

² Although the Board generally does not have jurisdiction over federal CAA regulations, Section 9(b) of the Act provides that federal NESHAPs “are applicable to the state and enforceable under the Act.” 415 ILCS 5/9(b) (2010). Pursuant to Section 112(b)(1) of the CAA, 42. U.S.C. 7412(b)(1) (2007), the Administrator of the U.S. Environmental Protection Agency lists asbestos as a hazardous air pollutant. Asbestos is a known human carcinogen for which there is no safe level of exposure.

statutory provisions. Finally, the Board will discuss the 33(c) and 42(h) factors of the Act (415 ILCS 5/33(c) and 42(h) (2010)) and whether issuing a penalty is appropriate against ESMI.

PROCEDURAL BACKGROUND

On August 24, 2006, the People filed a one-count complaint (Compl.) against Landers and ESMI. On September 7, 2006, the Board accepted the complaint for hearing. On February 14, 2008, the People served on ESMI the first set of interrogatories and request for admission of fact and genuineness of documents (Req. Adm.). On April 22, 2008, respondents filed a response to the request for admission of fact and genuineness of documents (Resp. Req. Adm.). On August 10, 2010, the People filed a motion for summary judgment (Mot.) and memorandum of law and argument in support of their motion for summary judgment (Mem. Mot.). In response, on August 31, 2010, counsel for the respondents filed an answer to the motion for summary judgment (Ans. Mot.) on behalf of Landers, without including ESMI in the answer.

On November 18, 2010, the Board granted the People's motion for summary judgment against ESMI and asked the parties to brief the issue regarding the appropriate remedy and whether a penalty was warranted against ESMI. On April 21, 2011, the People filed a civil penalty request (Pen. Req.) requesting the Board issue a \$10,000 civil penalty against ESMI. On May 27, 2011, ESMI filed an answer to the civil penalty request (Ans. Pen. Req.) stating that the \$10,000 requested penalty was excessive.

THE PEOPLE'S COMPLAINT

In their one-count complaint, the People allege that ESMI is an Illinois not-for-profit corporation in good standing and that, at the time of the alleged violations, ESMI owned the building formerly known as the "Auburn Bowling Alley," located at 1229 West Jackson Street in Auburn, Sangamon County (building or facility). Compl. at 2 (P3). The People also allege that Landers is affiliated with ESMI. *Id.* According to the complaint, respondents violated Section 9.1(d)(1) of the Act (415 ILCS 5/9.1(d)(1) (2010)) by violating 40 C.F.R. § 61.145(b). *Id.* at 4 (P12). Specifically, the complaint alleges that respondents began "demolition" activities at the building before January 14, 2005, and that ESMI and Landers are each an "owner" or "operator" of a demolition activity under the asbestos NESHAP. *Id.* at 4 (P8-11). Additionally, the People allege that respondents violated the asbestos NESHAP, and in turn Section 9.1(d)(1) of the Act, by failing to provide the Illinois Environmental Protection Agency (Agency) written notification of the demolition at least ten working days before commencing the demolition. *Id.* at 4 (P12). Finally, the People allege that Landers' violations are repeated violations under Section 42(f) of the Act (415 ILCS 5/42(f) (2010)) because Landers has previously violated the Act. *Id.* at 4 (P13). The People ask the Board to order that respondents cease and desist from further violations and pay civil penalties and attorney's fees and costs. *Id.* at 4-5 (P13).

FACTS

ESMI is an Illinois not-for-profit corporation that, at the time of the alleged violations, owned the building formerly known as the Auburn Bowling Alley located at 1229 West Jackson Street in Auburn, Sangamon County, Illinois. Compl. at 1-2 (P3); Ans. at 1 (P3). The registered

agent for ESMI is Billie Landers, 5000 Dickey John Road, Auburn. *Id.* ESMI is currently in good standing, but ESMI was not in good standing for an unspecified three-year period. Resp. Req. Adm. at 1 (P1).

Respondent Ray F. Landers is a person affiliated with ESMI. Compl. at 1-2 (P3); Ans. at 1 (P3); Resp. Req. Adm. at 1-2 (P3). Landers lives at 5000 Dickey John Road, Auburn. Ans. Mot. Aff. (P1); Resp. Req. Adm. at 1-2 (P4). Landers swears that he has never owned the building described in the complaint, was not the operator of any activity alleged in the complaint, did not make any decision or oversee the alleged activities, and did not own or operate the building or the alleged activities. Ans. Mot. Aff. (P1-6).

The Agency inspected the building five times. During the first inspection on June 4, 2004, Grimmert and Youngblut conducted the Agency's initial inspection of the building. Mot. Ex. 2 (P6), Ex. 1 (P7). During that initial inspection, the exterior walls of the building were intact. *Id.* At that time, Grimmert and Youngblut met Landers at the building and Landers informed Grimmert that he intended to renovate the building after cleaning the building. *Id.* at Ex. 2, Att. A. On December 10, 2004, Jansen inspected the building a second time and observed a large hole in the middle of the outer and inner east-facing exterior walls and rain leaking through the roof. *Id.* at Ex. 3 (P5), Att. A (Photos 001, 006). A third inspection occurred a few weeks later on December 30, 2004, and Jansen observed similar conditions to those that he observed on December 10, 2004. *Id.* at Ex. 3 (P6), Att. A.

On January 14, 2005, Jansen conducted a fourth inspection and observed that the exterior walls on the south end and southwest side of the building were missing, in addition to the concrete blocks that once formed the walls. *Id.* at Ex. 3 (P6), Att. A (Photo 002). Respondents admit that on a date before January 20, 2005, respondents removed concrete blocks from the south and west exterior walls of the building. Resp. Req. Adm. at 2 (P7). Respondents also admit that they installed post jacks at the building to prevent the building's roof from falling. *Id.* at 2 (P8).

On January 20, 2005, Youngblut conducted the fifth inspection of the building. Mot. Ex. 1 (P8). The south exterior wall and approximately one third of the west exterior wall were missing, and post jacks were installed to prevent the roof from collapsing. *Id.* at Ex. 1, Att. B (Photo 001, 006, 007). ESMI did not file written NESHAP notification with the Agency. Resp. Req. Adm. at 3 (P11). Respondents also did not pay the required \$300.00 asbestos fee before beginning demolition activities at the building. *Id.* at 3 (P12-13). To date, the Agency has not received a NESHAP notice or \$300.00 NESHAP fee from the respondents or their representatives. *Id.* at 4 (P15-16).

BOARD'S FINDING OF VIOLATION

As indicated above on November 18, 2010, the Board found that there was no genuine issue of material fact and granted the People's unopposed motion for summary judgment as to ESMI. The Board found that ESMI violated Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2010)) and the NESHAP for asbestos, as alleged in the People's one-count complaint. The Board directed the People and ESMI to brief the issue of penalties and the factors of Sections

33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2010)) in final briefs on Landers. The Board indicated that the Board would issue a proper penalty to ESMI when rendering a final decision as to Landers.

PEOPLE'S CIVIL PENALTY REQUEST

On April 21, 2011, the People filed a civil penalty request asking for an imposition of a \$10,000 fine against ESMI, because ESMI did not notify the Agency prior to demolishing part of the Auburn facility. Pen. Req. at 10. The People's request begins by characterizing the Board's prior civil penalty assessments as falling along a "continuum" where penalties have been assessed upon the nature of the violation. Pen Req. at 2. The People assert that "technical and paperwork" violations often fall in the category reserved for lower penalty amounts. *Id.* The People claim that, at the opposite end of this "continuum," the Board reserves larger penalty amounts for instances where the respondent has shown a lack of good faith, where the respondent has received a significant economic benefit from the violation, where there is a need to deter future violations, or where the violation is serious and for an extended period of time. *Id.* at 3.

The People concede that "there is no definitive method for designating an appropriate penalty. People v. Bernice Kershaw and Darwin Dale Kershaw, PCB No. 92-164 (Apr. 20, 1995); People v. ESG Watts, Inc., PCB No. 96-233 (Feb. 5, 1998). Pen. Req. at 3. However, the People assert that this violation is "more serious than a mere 'paperwork' violation." Pen. Req. at 3. The People argue that ESMI has repeatedly violated the Act. *Id.* Further, the People maintain that ESMI had knowledge of the notification requirement prior to conducting the demolition activity at the Auburn facility. The People claim that the notification requirement was "extremely simple," which requires "notification in a timely manner, along with the fee." *Id.* at 3.

The People ask the Board to look to several cases where penalties have been assessed for similar violations of the Act. Pen. Req. at 3. The People point to the case of People v. Atlas Dismantling Corporation and Cary Corners Partnership, PCB 96-267 (Aug. 15, 1996) In that case a violation of Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2010)) was found for failing to properly provide notification of asbestos demolition. A penalty of \$1,500 was assessed against Atlas and a penalty of \$5,200 was assessed against Corners. *Id.* The People also point to People v. R. Frietsch and Company, Inc., PCB 96-262 (May 1, 1997). In that case a violation of Section 9.1 (d)(1) of the Act (415 ILCS 5/9.1(d)(1) (2010)) and 40 CFR 61.145(b) was found for failing to provide notification of asbestos renovation or demolition activity. The penalty assessed was \$8,000. *Id.* In People v. Steve Kulovsek d/b/a WSH Management Group and d/b/a Kulovsek Excavating, PCB 96-136 (June 5, 1997), a violation of Section 9.1 (d) (415 ILCS 5/9.1(d) (2010)) and 40 CFR 61.145(b) was found for also failing to provide notification of asbestos demolition or renovation activity. The Board assessed a penalty of \$5,000. Finally, the People note that in People of the State of Illinois v. Frank Levato, PCB 97-237 (Oct. 2, 1997) a violation of Section 9.1 (d) of the Act (415 ILCS 5/9.1(d) (2010)) and 40 CFR 61.145 resulted in a penalty of \$4,000. *Id.*

Accompanying the People's characterization of ESMI's violation, the People offer a brief history about how Public Act 86-1014, Section 1, and how the public law's enactment has changed what constitutes an appropriate penalty according to the Act. The People claim, prior to Public Act 86-1014 being enacted, the Board could issue maximum penalties for \$10,000 per violation and \$1,000 for every day that the violation continued. The People then point out that Public Act 86-1014 increased the amount which the Board could impose on a respondent for violating the Act. The People argue that the law's increase in the penalty amounts to \$50,000 per violation and \$10,000 for every day that the violation continues supports the legislature's "expressed" intent that "civil penalties are to be imposed for violations of the Act." The People additionally argue that any case law prior to the enactment of Public Act 86-1014 has "little value in determining penalty amounts today." *Id.*

The People next identify several factors that should be taken into consideration for imposing a penalty against ESMI according to Section 33(c) of the Act, (415 ILCS 5/33(c) (2010)). Pen. Req. at 5-6. First, the People state that, when ESMI failed to notify the Agency, ESMI impeded the Agency's ability to protect the environment. *Id.* at 6. Second, the People claim that demolition is "not suitable" when the notification requirements are ignored. *Id.* Third, the People claim that the notification requirements are both technically feasible and economically reasonable. *Id.*

The People then offer several reasons for issuing ESMI an aggravated penalty. Pen. Req. at 6-8. First, the People allege that ESMI never returned the site to compliance. *Id.* at 7. Second, the People state that ESMI received \$300 in economic benefit for not paying the affiliated fee with the NESHAP asbestos notification permit. *Id.* Third, the People claim that \$10,000 will serve as a deterrent for ESMI and others similarly situated to the Act. *Id.* Fourth, the People identify that ESMI has previously violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2010). *Id.* at 7; *See also IEPA v. Equipping the Saints Ministry, Inc.*, AC 04-031 (Feb. 17, 2005). Fifth, the People state that ESMI did not self-disclose the violation. *Id.* at 8.

The People's final argument for issuing an aggravated penalty is that ESMI when demolishing the Auburn facility was "recklessly derelict at best, intentionally derelict at worst, in failing to file the notification," despite the Agency informing ESMI about the notification procedure. Pen. Req. at 9. Additionally, the People point out that ESMI conducted a demolition activity in a "populated area" without filing the notification permit according to NESHAP. *Id.* at 9-10. The People, therefore, argue that imposing a substantial civil penalty against ESMI is proper. *Id.* at 10.

ESMI'S ANSWER TO CIVIL PENALTY REQUEST

ESMI's answer to the civil penalty request argues that imposing a \$10,000 civil penalty against ESMI would be "excessive". Ans. Pen. Req. at 2. ESMI states that the only economic benefit that ESMI received was a \$300 filing fee associated with the notification permit. *Id.* at 1. ESMI also claims that upon receiving the notification of the violation that ESMI ceased demolition activities and "sold the property for a loss." *Id.* Further, ESMI claims that ESMI "did not proceed any further with their project because of the determination that they were in violation of law." *Id.*

LEGAL BACKGROUND

Section 33(c) of the Act provides in its entirety that:

- (c) In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:
- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
 - (ii) the social and economic value of the pollution source;
 - (iii) the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
 - (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
 - (v) any subsequent compliance. 415 ILCS 5/33(c) (2010).

Section 42(h) of the Act provides that:

In determining the appropriate penalty to be imposed . . . the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

- (i) the duration and gravity of the violation;
- (ii) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
- (iii) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
- (iv) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
- (v) the number, proximity in time, and gravity of previously adjudicated violations of the Act by the respondent;
- (vi) whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to; and

- (vii) whether the respondent has agreed to undertake a “supplemental environmental project,” which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement brought under this Act, but which the respondent is not otherwise legally required to perform. 415 ILCS 5/42(h) (2010).

DISCUSSION

Before beginning the discussion, the Board notes when the Board ruled on the motion for summary judgment the Board indicated that the appropriate penalty would be decided at the conclusion of the case against Landers. *See People v. Ray F. Landers and Equipping the Saints Ministry International, Inc.*, PCB 07-13 slip op. at 11 (Nov. 18, 2010). However, the Board will grant the People’s request to consider a civil penalty against ESMI rather than at the completion of the case.

The following discussion will begin with general comments on remedies issued in Board cases. Then, the Board will discuss the factors from Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c), 42(h) (2010)) which are considered when determining the appropriate remedy and penalty before the Board. Finally, the Board will assess the appropriate penalty and explain the Board's reasons for the penalty amount.

Penalties in General

Having found that ESMI violated Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2010)) by violating 40 C.F.R. § 61.145(b), the Board must now determine the appropriate remedy. In determining the appropriate remedy, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act. *People v. Gilmer*, PCB 99-27 (Aug. 24, 2000). The Board must take into account factors outlined in Section 33(c) of the Act in determining the unreasonableness of any alleged pollution. *See Wells Manufacturing Co. v. Pollution Control Board*, 73 Ill. 2d 226, 383 N.E.2d 148 (1978). The Board is expressly authorized by statute to consider the factors in Section 42(h) of the Act in determining an appropriate penalty. In addition, the Board must bear in mind that no formula exists, and all facts and circumstances must be reviewed. *Gilmer* PCB 99-27, slip op. at 8.

When issuing a penalty, the Board has stated that the statutory maximum penalty “is a natural or logical benchmark from which to begin considering factors in aggravation and mitigation of the penalty amounts.” *Gilmer*, PCB 99-27, slip op. at 8, (quoting *IEPA v. Allen Barry, individually and d/b/a Allen Barry Livestock*, PCB 88-71 slip op. at 72 (May 10, 1990)). The basis for calculating the maximum penalty is contained in Section 42(a) and (b) of the Act (415 ILCS 5/42(a) and (b) (2010)). Section 42(a) provides for a civil penalty not to exceed \$50,000 for violating a provision of the Act and an additional civil penalty not to exceed \$10,000 for each day during which the violation continues. By multiplying the number of sections of the Act that respondents are alleged to have violated (one) a potential civil penalty of \$50,000 is reached. Next you would add to that sum, a civil penalty of \$10,000 a day for each day of noncompliance of that section. The record is not clear as to exactly when demolition began or when ESMI sold the building. However, ESMI was clearly out of compliance for numerous

days. Thus, the total maximum penalty that could be assessed against respondents is well over \$50,000. The People have requested an order assessing a civil penalty of \$10,000 against ESMI. Pen. Req. at 1. ESMI suggests that “under the circumstances the request for a \$10,000 penalty is excessive.” Ans. Pen. Req. at 2.

Section 33(c) Factors

The People believe that Sections 33(c)(i) through 33(c)(v) strongly support an assessment of a civil penalty against ESMI. 415 ILCS 5/33(c)(i)-(v) (2010). The Board will consider each of the factors below.

The character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people (415 ILCS 5/33(c)(i) (2010))

The People claim that failing to notify the Agency prior to demolishing a building impedes the Agency’s ability to protect the environment. Pen. Req. at 5-6. The Board has previously stated that “higher penalties are for violations of the procedures for asbestos emission control found at 40 C.F.R. 61.145(c), while violations of the notification requirements in 40 C.F.R. 61.145(b) are slightly more than \$1,000.” People of the State of Illinois v. Environmental Abatement Control, Inc., PCB 95-170, slip op. at 13 (Nov. 2, 2000); *See also* People v. Allen Rose Cement & Construction Co., PCB 97-223 (June 17, 1998); People v. James Tull and CEPCA, Inc., PCB 96-229 (Dec. 18, 1997); People v. Robinette Demolition Inc., PCB 96-170 (Jan. 8, 1998). The Board has traditionally issued penalties for violating even the notification requirements of 40 C.F.R. § 61.145. Therefore, the Board finds that this factor weighs against ESMI and in favor of imposing a penalty.

The social and economic value of the pollution source (415 ILCS 5/33(c)(ii) (2010))

The People claim that there was “no measurable social or economic benefit to the [ESMI]’s activities at th[e] site.” Pen. Req. at 6. ESMI has not answered this claim in its response to the penalty request. Additionally, the complaint and the facts deemed admitted do not indicate any social and economic value from ESMI’s demolition activities at the Auburn facility. Therefore, the Board finds that this factor weighs against ESMI and in favor of imposing a penalty.

The suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved (415 ILCS 5/33(c)(iii) (2010))

The People’s civil penalty request argues that demolition at this facility is “not suitable when the law is ignored.” Pen. Req. at 6. The notification requirement of asbestos NESHAP according to 40 C.F.R. § 61.145 are applicable at all demolition sites. 40 C.F.R. §61.245(a)(2) (2010). When ESMI conducted demolition activities without notifying the Agency, asbestos could have been released into the environment. The Board agrees with the People that demolition, and possible pollution, is not suitable when the notification requirement is ignored.

Therefore, the Board finds that this factor weighs against ESMI and in favor of imposing a penalty.

The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges, or deposits resulting from such pollution source (415 ILCS 5/33(c)(iv) (2010))

The People argue that filing a notification with the Agency prior to commencement is practicable and economically reasonable. Pen. Req. at 6. The Board acknowledges that the notification and filing fee of \$300 helps prevent future asbestos releases into the air. More importantly, the Board has stated that exposure to even small quantities of asbestos can cause serious health risks. *See People of the State of Illinois v. Spirco Envtl.*, PCB 97-203, slip op. at 5 (Apr. 15, 1999). Furthermore, violations of the notification requirements of 40 C.F.R. § 61.145 have traditionally resulted in a penalty. The Board finds that this factor weighs against ESMI and in favor of imposing a penalty.

Any subsequent compliance (415 ILCS 5/33(c)(v) (2010))

Both the People and ESMI have stated that ESMI no longer owns the site. Because the issue is moot, the Board finds that this factor neither weighs for nor against ESMI.

Finding on Section 33(c) factors

The Board finds that factors in Sections 33(c)(ii) and 33(c)(iii) justify requiring ESMI to pay a civil penalty.

Section 42(h) Factors as to ESMI

Section 42(h) of the Act sets forth factors that may mitigate or aggravate the amount of a civil penalty. 415 ILCS 5/42(h) (2010). Those factors include the duration and gravity of the violation, whether the respondent showed due diligence in attempting to comply, whether there was any economic benefit received by the respondent, whether a penalty can serve as a deterrent for other entities that are similarly situated to ESMI, and whether the respondent has received any previously adjudicated violations. The Board will examine each of the factors below.

Duration and Gravity (415 ILCS 5/42(h)(1) (2010))

The People argue that ESMI began the demolition some time after June 4, 2004 and before January 14, 2005. Pen. Req. at 7. Meanwhile, ESMI argues that it terminated any further demolition activity when ESMI received notice of violating the Act. Ans. Pen. Req. at 1. The Board finds that this factor neither weighs for nor against ESMI.

Due Diligence (415 ILCS 5/42(h)(2) (2010))

The People argue that ESMI did not act diligently, because the site was never returned to compliance. Pen. Req. at 7. ESMI argues that the reason why ESMI never submitted a

notification form is due to the impending sale of the property. Ans. Pen. Req. at 1. ESMI also claims that it did not conduct any more demolition activities at the Auburn facility. *Id.* Consequently, the new site owners submitted a notification form for the Auburn site. Pen. Req. at 7. The Board finds that this factor neither weighs for nor against ESMI.

Economic Benefits Accrued (415 ILCS 5/42(h)(3) (2010))

Both the People and ESMI acknowledge that ESMI realized a \$300 benefit by not filing a notification with the applicable fee. This factor weighs against ESMI.

Deterrence of Future Violations (415 ILCS 5/42(h)(4) (2010))

The People have asked for \$10,000 to deter ESMI and similar situated subjects from violating the Act. As discussed below, violations of the notification requirement of 40 C.F.R. § 61.145(b) have resulted in a little over \$1,000 per violation. *See People of the State of Illinois v. Env'tl. Abatement Control, Inc.*, PCB 95-170, slip op. at 13 (Nov. 2, 2000). The Board, however, recognizes the importance of how the notification requirements of 40 C.F.R. § 61.145(b) work in conjunction with the remaining provisions of asbestos NESHAP provisions to prevent releases of asbestos into the environment. Without triggering the Agency's ability to enforce the NESHAP provisions, asbestos releases can occur resulting in more substantial fines. Therefore, the Board finds that this factor weighs against ESMI.

Previously Adjudicated Violations (415 ILCS 5/42(h)(5) (2010))

At the time of filing the complaint, the respondent had previously violated Section 21(a) of the Act (415 ILCS 5/21(a) (2010)). The People argue that the Illinois Circuit Court's decision finding that ESMI violated 40 C.F.R. § 61.145(c) as incorporated by Section 9.1(b) of the Act (415 ILCS 5/9.1(b) (2010)) should be included as an aggravating factor against ESMI. Subsection 42(h)(5) plainly states that prior violations of the Act must be "previously adjudicated" when determining the appropriate penalty. 415 ILCS 5/42(h)(5) (2010). The Board cannot include the Circuit Court's decision as an aggravating factor, because the violation was not finally adjudicated until December 3, 2008, almost three years after the violation in this case. Pen. Req., Att. A., para. 6. However, the Board finds that ESMI's prior violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2010)) weighs against ESMI. *See IEPA v. Equipping the Saints Ministry, Inc.*, AC 04-031 (Feb. 17, 2005).

Self-Disclosure (415 ILCS 5/42(h)(6) (2010))

The People claim that ESMI did not self-disclose the violation. The Board finds that this factor weighs against ESMI.

Supplemental Environmental Projects (415 ILCS 5/42(h)(7) (2010))

The People and ESMI have not briefed any facts regarding this factor.

Finding on Section 42(h) factors

After reviewing the Section 42(h) factors, the Board finds that imposition of a civil penalty upon ESMI is justified. Several Section 42(h) factors weigh against ESMI, including economic benefits of noncompliance, previously adjudicated violations, and no self-disclosure. Therefore, a penalty is justified to aid in future compliance. The Board recognizes that the People have presented evidence for aggravating ESMI's civil penalty. Further, the Board has consistently held that a past violation according to Section 42(h)(5) of the Act (415 ILCS 5/42(h)(5) (2010)) is an aggravating factor.

Board Finding on Penalty

Having considered the Section 33(c) and 42(h) factors the Board finds that a civil penalty is appropriate to offset the economic benefit accrued by ESMI and to deter future violations. The Board is authorized by the Act (415 ILCS 5/42 (2010)) to levy financial penalties to aid in enforcement of the Act. In the past, the Board has levied fines as low \$1,000 and as high as \$8,000 in similar cases based on a review of the Section 33(c) and 42(h) factors as they apply to the specific circumstances of each case. In this instance ESMI received an economic benefit and failed to disclose the violation. ESMI also has previously adjudicated violations and an increased penalty is necessary to deter future violations. The People argued that a penalty of \$10,000 is necessary. However, after reviewing the record, the Board finds that a \$3,000 penalty for violating the notice requirements of Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2010)) and 40 C.F.R. § 61.145(b) is reasonable in this case.

CONCLUSION

The Board finds that a civil penalty of \$3,000 against ESMI is reasonable based on the record in this case and a review of the Section 33(c) and 42(h) factors. Furthermore, the penalty is consistent with previous Board opinions and will serve as a deterrent for future violations of the notification requirements of Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2010)) and 40 C.F.R. § 61.145(b).

This opinion constitutes the Board's findings of fact and conclusions of law as to ESMI.

ORDER

1. The Board grants the motion for summary judgment filed by the Office of the Attorney General, on behalf of the People of the State of Illinois (People), and finds that Equipping the Saints Ministry International, Inc. (ESMI) violated Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2010)) and 40 C.F.R. § 61.145(b).
2. ESMI must pay a civil penalty of \$3,000 no later than September 19, 2011, which is the first business day following the 30th day after the date of this order. Such payment must be made by certified check, money order, or the electronic transfer of funds, payable to the Environmental Protection Trust Fund. The case number,

case name, and ESMI' federal employer identification number must be included on the face of the certified check or money order.

3. ESMI must send the certified check, money order, or confirmation of electronic funds transfer by first class mail to:

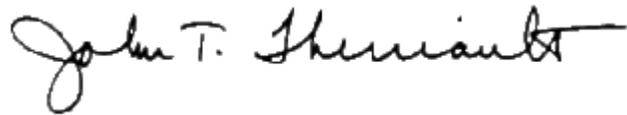
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).

IT IS SO ORDERED.

Section 41(a) of the 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) (2010); *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 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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 18, 2011, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board