

ILLINOIS POLLUTION CONTROL BOARD
December 20, 2012

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 13-18
) (Enforcement - Air)
TWO RIVERS FS, INC., an Illinois)
agricultural co-operative,)
)
Respondent.)

ORDER OF THE BOARD (by T.A. Hollbrook):

On October 30, 2012, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against Two Rivers FS, Inc. (Two Rivers). The complaint concerns Two Rivers' fertilizer storage building located in Two Rivers' multi-building commercial complex located at or near State Highway 96, Kinderhook, Pike County. The parties now seek to settle the complaint 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 (2010)), the Attorney General and the State's Attorneys may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2010); 35 Ill. Adm. Code 103. In this case, the People allege that Two Rivers violated Sections 9(a), 9.1(d), and 9.13(a) and (b) of the Act (415 ILCS 5/9(a), 9.1(d), 9.13(a),(b) (2010)); Section 201.141 of the Board's Air Pollution Regulations (35 Ill. Adm. Code 201.141); and Sections 61.145(a), 61.145(b), 61.145(c)(1), 61.145(c)(2)(i) and (ii), 61.145(c)(4), (c)(6), (c)(8), and 61.50(a)(1)(iii), (iv), (v), and 61.150(b) of the National Emissions Standards for Hazardous Air Pollutants (NESHAP)¹ for asbestos (40 C.F.R. 61.145(a), (b), (c)(1), (c)(2)(i), (c)(2)(ii), (c)(4),(c)(6), (c)(8), 61.150(a)(1)(iii), (a)(1)(iv), (a)(1)(v), 61.150(b)). The People allege that Two Rivers violated these provisions by causing or tending to cause air pollution in Illinois; by failing to thoroughly inspect the facility for the presence and location of Asbestos Containing Material (ACM) prior to commencing asbestos removal and disposal; by failing to notify the Illinois Environmental Protection Agency of scheduled asbestos removal activities at least 10 working days prior to commencing such activities; by failing to remove all Regulated Asbestos Containing Material (RACM) prior to commencing demolition activities, including Category 1 non-friable ACM, and then rendering transite material friable; by failing to adequately wet all RACM and prevent damage or disturbance to the RACM exposed during cutting or disjoining operations at the fertilizer storage building; by failing to adequately wet and contain all RACM

¹ Although the Board generally does not have jurisdiction over federal Clean Air Act regulations, Section 9(d) of the Act provides that "no person shall violate any provisions of Sections 111, 112, 165, or 173 of the clean Air Act . . . or federal regulations adopted pursuant thereto."

during the removal of Category 1 asbestos-containing transite siding panels; by failing to adequately wet and maintain wet all RACM and regulated asbestos-containing waste material until collected and contained in preparation for disposal at a permitted site; by failing to have at least one representative trained in the provisions of the NESHAP for asbestos and compliance methods prescribed therein on-site during asbestos removal activities; by failing to adequately wet, keep wet, and containerize all regulated asbestos containing waste material, thereby causing or allowing the discharge of visible emissions to the outside air; by failing to transport all asbestos-containing waste materials generated during asbestos removal at the site to a waste disposal site as soon as practical; and by failing to timely submit a notice and pay the 10-day Notice Fee.

On October 30, 2012, simultaneously with the People's complaint, the People and Two Rivers 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) (2010)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2010)), 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 *Pike Press* on November 21, 2012. The Board did not receive any request to hold a hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2010); 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 include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of Two Rivers' 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) (2010)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Two Rivers does not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2010)), which may mitigate or aggravate the amount of a civil penalty. Two Rivers agrees to pay a civil penalty of \$25,000.00. The People and Two Rivers 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. Two Rivers must pay a civil penalty of \$25,000.00 no later than Tuesday, January 22, 2013, which is the first business day following the 30th day after the date of

this order.² Two Rivers must pay the civil penalty by certified check, money order payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name, case number, and Two Rivers' federal tax identification number must appear on the face of the certified check or money order.

3. Two Rivers 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

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

Environmental Bureau
Illinois Attorney General's Office
500 S. 2nd St.
Springfield, IL 62706.

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)).
5. Two Rivers 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.

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) (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 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.

² Monday, January 21, 2013 is a state holiday in observation of Martin Luther King Day. *See* 35 Ill. Adm. Code 101.300(a) (Computation of Time).

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 20, 2012 by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board