

ILLINOIS POLLUTION CONTROL BOARD
December 19, 2019

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 16-61
)	(Enforcement - Air)
AMSTED RAIL COMPANY, INC., a)	
Delaware corporation,)	
)	
Respondent.)	

ORDER OF THE BOARD (by B.K. Carter):

On November 16, 2015, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a thirteen-count complaint against Amsted Rail Company, Inc. (Amsted). The complaint concerns Amsted's steel foundry at 1700 Walnut Street in Granite City, Madison 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 (2018)), 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 (2018); 35 Ill. Adm. Code 103. In this case, the People allege that Amsted violated:

1. Section 9(a) of the Act (415 ILCS 5/9(a) (2014)) and Section 212.324(f)(1)-(f)(3) of the Board air pollution regulations (35 Ill. Adm. Code 212.324(f)(1)-(f)(3)) by failing to inspect and maintain process emission units;
2. Section 9(a) of the Act (415 ILCS 5/9(a) (2014)) and Section 212.324(g)(1) of the Board air pollution regulations (35 Ill. Adm. Code 212.324(g)(1)) by failing to maintain air pollution emission control records;
3. Section 9(a) of the Act (415 ILCS 5/9(a) (2014)) and Sections 212.316(g)(1), 212.316(g)(2)(C), and 212.324(g)(1) of the Board air pollution regulations (35 Ill. Adm. Code 212.316(g)(1), 212.316(g)(2)(C), 212.324(g)(1)) by failing to maintain emission unit records;
4. Section 9(a) of the Act (415 ILCS 5/9(a) (2014)) and Sections 212.309(a) and 212.312 of the Board air pollution regulations (35 Ill. Adm. Code 212.309(a), 212.312) by violating the Fugitive Particulate Matter Operating Program;

5. Section 9(b) of the Act (415 ILCS 5/9(b) (2014)) and Section 201.142 of the Board air pollution regulations (35 Ill. Adm. Code 201.142) by constructing an emission source without a permit;
6. Section 9.12(a) of the Act (415 ILCS 5/9.12(a) (2014)) by failing to submit a construction permit fee;
7. Section 9(b) of the Act (415 ILCS 5/9(b) (2014)) by violating conditions in Construction Permit 06060046, including conditions 1.8, 1.9(d), 1.1.9(d), 1.9(e)(1), and 1.9(e)(ii);
8. Section 9(b) of the Act (415 ILCS 5/9(b) (2014)) by violating conditions in Construction Permit 08060024, including condition 9(b)(i);
9. Section 9(b) of the Act (415 ILCS 5/9(b) (2014)) by violating conditions in Construction Permit 09060002, including conditions 1.3, 1.7(a), 1.7(b)(ii), and 1.7(c);
10. Section 39.5(6)(a) of the Act (415 ILCS 5/39.5(6)(a) (2014)) by violating Clean Air Act Permit Program (CAAPP) permit emissions limitations, including conditions 7.2.6(a) and 7.4.6(a);
11. Section 39.5(6)(a) of the Act (415 ILCS 5/39.5(6)(a) (2014)) by violating conditions in the CAAPP permit, including conditions 5.2.3(a), 5.2.3(c), 5.2.6(a), 5.4.1(a)-(c), 5.6.2(a), 5.6.2(d), 5.6.3(b), 5.6.5(a), 5.7.3(c), 5.7.4, 7.1.9(d), 7.2.9(d), 7.3.9(c), 7.4.9(c), 7.5.7(a), 9.6.3(b), and 9.8(a);
12. Section 39.5(6)(b) of the Act (415 ILCS 5/39.5(6)(b) (2014)) by operating a major source without a CAAPP permit; and
13. Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2014)) by violating National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Iron and Steel Foundries Area Sources requirements.

On October 31, 2019, the People and Amsted 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) (2018)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2018)), 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 *Edwardsville Intelligencer* on November 9, 2019. 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) (2018); 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 Amsted'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) (2018)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Amsted 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) (2018)), which may mitigate or aggravate the civil penalty amount. Under the proposed settlement, Amsted agrees to pay a civil penalty of \$100,000 within 30 days after the date of this order. The People and Amsted have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

Finally, the parties have agreed to language allowing them to modify the stipulation and proposed settlement. See Stipulation and Proposed Settlement at 5. The Board notes, however, that any modification made by the parties and not accepted by the Board in a subsequent Board order is not enforceable under the Act. See, e.g., People v. Reliable Materials Lyons, LLC, PCB 12-52, slip op. at 2 (Aug. 21, 2014).

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, which include future compliance testing requirements. Any modification of the stipulation and proposed settlement made by the parties will not be incorporated into this Board order and will not be enforceable under the Environmental Protection Act (415 ILCS 5 (2018)) unless accepted by the Board in a subsequent order.
2. Amsted must pay a civil penalty of \$100,000 by January 21, 2020, which is the first business day following the 30th day after the date of this order. Monday, January 20, 2020, is the State holiday Martin Luther King, Jr. Day. Amsted 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 number and case name must appear on the face of the certified check or money order.
3. Amsted 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

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

Jamie D. Getz
 Assistant Attorney General
 Environmental Bureau
 Illinois Attorney General's Office
 69 W. Washington Street, 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) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
5. Amsted 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) (2018); *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. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board
Office of the Attorney General Jamie D. Getz 69 W. Washington St, Suite 1800 Chicago, Illinois 60602 jgetz@atg.state.il.us	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601
Amsted Rail Company, Inc Attn: Michael J. Maher, Elizabeth Harvey	

Swanson, Martin & Bell One IBM Plaza, 330 N. Wabash, Suite 3300 Chicago, Illinois 60611 mmaher@smbtrials.com eharvey@smbtrials.com	
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I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 19, 2019 by a vote of 4-0.



Don A. Brown
Don A. Brown, Clerk
Illinois Pollution Control Board