ILLINOIS POLLUTION CONTROL BOARD
November 2, 2000

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 95-170
	)	(Enforcement - Air)
ENVIRONMENTAL CONTROL AND ABATEMENT, INC.,	)	
	)	
	)	
Respondent.	)	

ELIZABETH ANN PITROLO, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE PEOPLE OF THE STATE OF ILLINOIS; and

MUSETTE H. VOGEL OF THE STOLAR PARTNERSHIP APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on a complaint filed by the Illinois Attorney General's Office on behalf of the People of the State of Illinois (People) on June 13, 1995. The People filed an amended complaint (complaint) on November 8, 1995. The complaint consists of three counts alleging violations of federal regulations governing asbestos removal, Section 112 of the federal Clean Air Act (Clean Air Act), 42 U.S.C. 7412, and the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq*. (1998)). The complaint bundled alleged violations from five asbestos removal projects into the three counts. The projects are identified by location: Alton, Centralia, Highland, Quincy, and Urbana. The alleged violations of federal provisions are within the Board's jurisdiction because Section 9.1(d) of the Act prohibits the violation of Section 112 of the Clean Air Act, 42 U.S.C. 7412, or any regulation adopted pursuant to it (415 ILCS 5/9.1(d) (1998)).

In count I of the complaint, the People allege that respondent Environmental Control and Abatement, Inc. (ECA) violated Section 61.145(b)(3) of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) (40 C.F.R. 61.145(b)(3)), Section 112(c)(1)(B) of the Clean Air Act, and Section 9.1(d) of the Act, by failing to give timely notice of asbestos removal projects at the Centralia, Highland, and Quincy projects.

In count II of the complaint, the People allege that the notices ECA provided for each of the projects were incomplete, in violation of Section 61.145(b)(4) of the asbestos NESHAP (40 C.F.R. 61.145(b)(4)), Section 112(c)(1)(B) of the Clean Air Act, and Section 9.1(d) of the Act.

In count III of the complaint, the People allege that ECA violated Section 61.145(b)(3) of the asbestos NESHAP (40 C.F.R. 61.145(b)(3)), Section 112(c)(1)(B) of the Clean Air Act, and Section 9.1(d) of the Act, by failing to give timely notice of a change in the start date for the asbestos removal project at the Centralia project.

In sum, the Board finds ECA violated Section 9.1(d) of the Act and the asbestos NESHAP at Section 61.145(b)(3) in connection with the Highland and Quincy projects, and at Section 61.145(b)(4) in connection with the Alton, Highland and Urbana projects. The Board finds no violation in connection with the Centralia project. The Board imposes a total penalty of $3,000 for the five violations involved with the remaining four projects.

In this opinion and order, the Board will first discuss the procedural history and the burden of proof in this case. Then the Board will examine the violations alleged in connection with the Highland project. These are the only outstanding allegations because the Board resolved the other violations alleged in the complaint in the context of the parties' motions for summary judgement. See People v. Environmental Control and Abatement, Inc. (February 17, 2000), and (May 4, 2000), PCB 95-170. Finally, the Board will consider the factors from Section 33(c) of the Act and the penalty factors from Section 42(h) of the Act, and then make its findings of violations and order an appropriate remedy based upon that analysis.

PROCEDURAL HISTORY

Motions for Summary Judgment

On February 17, 2000, the Board issued an order ruling on both parties' motions for summary judgment regarding all five projects. In that order, the Board granted the People's motion for summary judgment to the following extent: the Board found that ECA violated 40 C.F.R. 61.145(b)(4)(i), (x), (xi), and (xvi), and consequently Section 9.1(d) of the Act, with respect to the Alton project. The Board further found that ECA violated 40 C.F.R. 61.145(b)(3)(i) and, consequently, Section 9.1(d) of the Act with respect to the Quincy project. ECA's motion for summary judgment was granted with respect to all alleged violations of Section 112(c)(1)(B) of the Clean Air Act, the violations of 40 C.F.R. 61.145(b)(4)(vi) alleged in connection with the Alton and Quincy projects,[1] and all violations alleged in connection with the Centralia project. Both motions were denied with respect to the other violations alleged in the complaint, *i.e*. the violations alleged concerning the Highland and Urbana projects. The Board also reserved ruling on an appropriate remedy for the violations pending a hearing on (or other resolution of) the violations not resolved by that order. Environmental Control and Abatement, Inc. (February 17, 2000), PCB 95-170.

[1] The provision in question, Section 61.61.145(b)(vi), states in part, "[a]lso, estimate the approximate amount of Category I and Category II nonfriable ACM in the affected part of the facility that will not be removed before demolition." 40 C.F.R. 61.145(b)(vi). By its terms, the Board determined that this part of this subsection does not apply to renovation actions. Environmental Control & Abatement (February 17, 2000), PCB 95-170.

On May 4, 2000, the Board ruled on a motion for reconsideration filed by the People. In this motion, the People asked the Board to reconsider its February 17, 2000 ruling as it related to the Urbana project. The Board vacated that portion of the Board's February 17, 2000 order denying the People's motion for summary judgment with respect to alleged violations of Section 61.145(b)(4)(v) and (vi) and Section 9.1(d) of the Act in connection with the Urbana project, and granted the People's motion for summary judgment on those alleged violations.[2] The violations alleged concerning the Highland project were not the subject of or affected by the Board's order upon the People's motion for reconsideration. The Board again reserved ruling on the issue of an appropriate remedy pending a hearing on the remaining alleged violations. Environmental Control and Abatement (May 4, 2000), PCB 95-170.

Hearing

The hearing in this matter was held on July 11, 2000, before Board Hearing Officer Steven Langhoff.[3] Elizabeth Ann Pitrolo appeared for the People, and Musette H. Vogel appeared for ECA. The People presented three witnesses: William A. Lemire, the president of ECA, Tr. at 13 and 19; Alan Grimmett, an inspector with the Illinois Environmental Protection Agency (Agency). Tr. at 20, 29, 43, and 45; and Dale Halford, Bureau of Air, Asbestos Unit Manager, for the Agency. Tr. at 47, 50, 57. ECA did not call any additional witnesses, but did recall two of the People's witnesses: Lemire, Tr. at 58, 92, 106, 109, and 117; and Halford, Tr. at 120. Neither party called any witnesses with first-hand knowledge of any of the removal activities. Based upon the decisions in the Board's February 17, and May 4, 2000 orders, the parties only addressed the issue of whether regulated asbestos containing material (RACM) was removed during the Highland project, and what remedy is appropriate for the violations.

The hearing officer filed the hearing report, which included an exhibit list, on August 2, 2000. The People's and respondent's posthearing briefs were both filed on August 22, 2000.

BURDEN OF PROOF

The complainant's burden of proof in this matter is set forth in Section 31(e) of the Act, which in pertinent part provides:

> e. In hearings before the Board under this Title the burden shall be on the Agency or other complainant to show either that the respondent has caused or threatened to cause air or water pollution or that the respondent has violated or threatens to violate any provision of this Act or any rule or regulation of the Board or permit or term or condition thereof. If such proof has been made, the burden shall be

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[2] While the order does not explicitly state, it is clear from reading both orders together that the Board's decision to vacate portions of the February 17, 2000 order did not include those allegations regarding ECA's failure to indicate the approximate amount of ACM not to be removed from the site.

[3] The transcript of the hearing is cited as "Tr. at _."

> on the respondent to show that compliance with the Board's regulations would impose an arbitrary or unreasonable hardship. 415 ILCS 5/31(e).

REMAINING VIOLATION

The issues of liability remaining in this case after the Board's rulings on the parties' motions for summary judgment concern the Highland project. In its February 17, 2000 order, the Board determined that the notice submitted by ECA was postmarked less than 10 working days prior to the scheduled start date of the project, and that the notice was faulty because it failed to: (1) indicate the type of notice being submitted; (2) indicate the number of floors in the facility or the facility's age; (3) indicate the procedure to be used to detect asbestos containing material (ACM); and (4) indicate the amount of ACM not to be removed from pipes during the project. Environmental Control and Abatement (February 17, 2000), PCB 95-170. However, the Board found that an issue of material fact existed as to whether the notification requirements of the asbestos NESHAP had been triggered for the Highland project. If not, then ECA could not have violated 40 C.F.R. 61.145(b)(3) and (4). If the notification requirements were triggered, then both requirements would have been violated based upon fact finding made in the Board's February 17, 2000 order. Environmental Control and Abatement (February 17, 2000), PCB 95-170, slip op. at 7.

Regulatory Framework

Section 61.145(a) of the asbestos NESHAP lists when the requirements of that section apply to demolition and renovation activities. This section provides in pertinent part:

> (4) In a facility being renovated * * * all the requirements of paragraphs (b) and (c) of this section apply if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is
>
> (i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components . . . . 40 C.F.R. 61.145(a)(4).

RACM is defined as:

> Regulated asbestos-containing material (RACM) means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading . . . . 40 C.F.R. 61.141.

Category I nonfriable ACM is defined as:

> Category I nonfriable asbestos-containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos . . . . 40 C.F.R. 61.141.

Section 61.145(b)(3) of the asbestos NESHAP requires the owner or operator of a renovation activity to provide the Illinois Environmental Protection Agency (Agency) with written notice of the intent to renovate at least 10 working days before the renovation begins. 40 C.F.R. 61.145(b)(3). Section 61.145(b)(4) of the asbestos NESHAP lists the information that must be included in the notice. 40 C.F.R. 61.145(b)(4). See also Environmental Control and Abatement (February 17, 2000), PCB 95-170, slip op. appendix.

Facts

At the hearing, the People opened with direct examination of William Lemire. In answering questions regarding his familiarity with the asbestos NESHAP, Lemire stated that he had written articles that encompassed asbestos abatement. Tr. at 16. Lemire was questioned about ECA's notification form for the Highland project, entered in the record as People's Exhibit No. 1. Lemire could not be certain that he had personally signed the notification form for the Highland project. Tr. at 17. However, he stated that Janie Geiger, an administrative assistant for ECA at the time the alleged violations occurred, was signing in her capacity as an employee of ECA. Tr. at 18-19. Lemire said that the notification indicated that 2,000 square feet of RACM would be removed during the Highland project. Tr. at 18. On cross examination, Lemire said that ECA currently does not conduct business in the State of Illinois. Tr. at 20.

The People next presented the testimony of Alan Grimmett. Grimmet also answered questions regarding ECA's notification form for the Highland project. He stated that the notification for the Highland project: did not indicate whether the notification was an original or revised notification; indicated that the project would be a removal; did not identify the procedure or analytical method as defined in the asbestos NESHAP; indicated that floor tile and mastic was to be removed as a regulated asbestos containing material; indicated that the project would use containment, a procedure consistent with removing RACM; indicated that the project would use wet removal, negative pressure work practices, also consistent with removal of RACM; and was not submitted ten working days prior to the scheduled start date of the project. Tr. at 25-26. Grimmett said that the techniques identified in the Highland notification were consistent with a RACM removal project. Tr. at 27. He said that the Agency's files did not contain a revised notification form for the Highland project. Tr. at 28.

In response to questions regarding when floor tile and mastic would be considered a regulated ACM, Grimmett stated that category I nonfriable ACM, such as floor tile and mastic, would not be regulated if it were in good condition and removed intact, and that the removal technique used determines if the material is rendered friable. Tr. at 27-28.

Grimmett also testified about the impact a late or incomplete notification form has on the Agency. Grimmett stated that the Agency's ability to inspect a facility is severely impacted if the notification is not timely or properly submitted. Tr. at 28-29. Grimmett said that it takes six to

seven days before the Agency receives and processes the notification, and that the Agency could arrive to inspect the project after it has been completed, wasting the State's money. Tr. at 29.

On cross-examination, Grimmett stated that he had never inspected a site where ECA performed a removal, and that the only information Grimmett had of the Highland project was that contained in the Highland notification. Tr. at 30. He said that the asbestos NEHSAP regulations were adopted in November of 1990, only six months before the Highland project was scheduled to begin. Tr. at 30-31. He said that the notification form does not contain a box to indicate the amount of non-regulated ACM to be removed. Tr. at 32. Grimmett stated that not all floor tile and mastic is friable, that it would become friable if it were in poor condition and subjected to sanding, grinding, cutting, or abrading, and that he had no personal knowledge as to whether any sanding, grinding, cutting, or abrading occurred during the Highland project. Tr. at 32.

Grimmett also testified as to the issue of a "courtesy notification." He stated that the Agency does receive notifications where a project involves the removal of category I nonfriable ACM which is being removed in such a way as to not render it friable, and that the Agency calls these notifications "courtesy notifications". Tr. at 35-38.

Grimmett testified about the use of the wet removal method as it applied to floor tile and mastic. He stated that if the floor tile and mastic were in good condition, and not subjected to sanding, grinding, cutting or abrading, then it would not be regulated. Tr. at 38-42.

On redirect, Grimmett testified that full containment, wet removal, negative air pressure techniques are expensive methods to use for asbestos abatement. Tr. at 43. He also stated that ECA had written on the Highland notification in section 7 the words "floor tile and mastic, 2,000 square feet." Tr. at 44. People's Exhibit No. 1.

The People's last witness was Dale Halford. In response to questions regarding why the Agency relies on accurate notifications, Halford stated that the Agency uses the information contained in notifications to prioritize which jobs to inspect. Tr. at 48. Halford said that a notification received late could prevent the Agency from arranging an inspection before the project is completed. Tr. at 57.

ECA opened its case by recalling Lemire to testify. Lemire first addressed questions regarding a revised notification for the Highland project, Respondent's Exhibit No. 1. Lemire said that the actual start date of the Highland project was changed from May 28, 1991, to June 14, 1991. Tr. at 64-65, Respondent's Exhibit No. 1.[4]

[4] During the People's direct examination of Grimmett, he stated that the Agency's files on ECA did not contain a revised notification form. Tr. at 28. At hearing, the People challenged the authenticity of Respondent's Exhibit No. 1. Tr. at 61-64. ECA responded by stating that the original was sent to the Agency, and ECA only had copies. Tr. at 63. The hearing officer admitted Respondent's Exhibit No. 1. Tr. at 64.

Lemire also answered questions regarding circumstances in which ACM might not become regulated. He stated that, if appropriate methods are used to avoid grinding, cutting, or abrading, and that correct wetting agents are used in the case of floor tile and mastic, friability could not occur. Tr. at 65-68. Lemire said that ECA used the wet removal technique in every asbestos removal project, whether the ACM is friable or not. Tr. at 68. He also said that ECA did not own the equipment required for sanding, abrading, or cutting ACM, and did not rent any such equipment for the Highland project. When asked why ECA indicated in the column in Block VII of the notification form that 2,000 square feet of RACM was to be removed, Lemire responded that the notification form did not contain any other column in which to list the information. Tr. at 78. People's Exh. No. 1.

When questioned about ECA's use of courtesy notifications, Lemire stated that, due to short amount of time the asbestos NESHAP had been in effect at the time, ECA sent in courtesy notifications until the company had a clear definition of what the regulations required. Tr. at 78.

Lemire answered questions regarding the compliance inquiry letters (CIL) received by ECA for the violations alleged in the complaint. He stated that ECA received a CIL for each of the five projects in question, and that in each case, after receipt of such a letter, Lemire contacted Otto Kline of the Agency, Halford's predecessor. Tr. at 79. Lemire stated that he asked Kline if a meeting with the Agency was advisable, and was informed that such a meeting was not necessary. Tr. at 81. Lemire said that his understanding of the situation was that the matters were not serious and only required ECA to send a follow-up letter to the Agency. Tr. at 82. Lemire stated that, other than the CILs, phone calls to Kline, and follow-up letters to the Agency, ECA did not hear about these alleged violations again until the compliant was filed, more than four years after the Highland project. Tr. at 83.

Lemire answered questions regarding ECA's response to receiving the complaint. He stated that, after the complaint was filed, he again contacted Kline. Tr. at 85. Lemire said that Kline informed him that an attorney for the Agency had taken ECA's file, against Kline's objections, and that Kline had thought the matter "had been dropped." Tr. at 86. Finally, Lemire stated that, since 1995, ECA has performed about 50 to 75 asbestos removal projects in the State of Illinois, and has not received any further CILs or been found to be in violation of Illinois law. Tr. at 90-91.

The People's cross-examination began with questions about ECA's revised notification form. Lemire stated that he did not recognize his signature on the revised notification for the Highland project. Tr. at 92, Respondent's Exhibit No. 1. Lemire stated that it would have been possible for ECA to write onto the notification form "category I ACM to be removed," as it did write in "floor tile and mastic." Tr. at 93.

Lemire also answered questions regarding ECA's response to the CIL issued for the Highland project. He stated that ECA did not claim that only category I nonfriable ACM, and not RACM, was removed during the project. Tr. at 100, People's Exhibit No. 2.

On redirect, Lemire answered more questions about ECA's use of courtesy notifications. He stated that Kline had informed him that if a project involves tile and mastic, and is not going

to be rendered friable, Kline did not "want to hear about it." Tr. at 107. Lemire said that after Kline informed him of this, ECA discontinued its practice of using courtesy notifications.

In response to questions about ECA's response to the CIL issued for the Highland project, Lemire stated that ECA's response was limited only to the issue of timeliness because the CIL only raised the issue of timeliness.

Finally, ECA recalled Halford to testify, but did not ask him any questions on the record.

Discussion

The Board has previously discussed the threat that asbestos present to human health. See People v. Spirco Environmental, Inc. (April 15, 1999) PCB 97-203, slip op. at 5. The alleged violation at the Highland project involves a violation of the notification requirements of the asbestos NESHAP, not the regulations governing asbestos emission control. The sole issue on liability facing the Board at the Highland project is whether the asbestos NESHAP notification requirements were triggered. In Spirco, the Board found that:

> In order for the requirements in Sections 61.145(b) and 61.145(c) of the asbestos NESHAP to apply, the amount of RACM in the Pabst structure must be "at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or . . . [a]t least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously." 40 C.F.R. § 61.145(a) (1997). On the notification forms that it submitted to the Agency, Spirco reported that there was 2,000 linear feet of RACM to be removed from pipes at the Pabst structure and 5,000 square feet of RACM to be removed from the Pabst structure. Exh. 3, 4. Even though the numbers for RACM are not completely accurate . . . it is the only evidence that the Board is able to rely on with respect to the amount of RACM at the Pabst facility. Furthermore, Spirco should have known that the RACM numbers that it reported would place it within the realm of having to comply with the asbestos NESHAP (emphasis added). Therefore, Spirco is clearly subject to the requirements of Sections 61.145(b) and 61.145(c) of the asbestos NESHAP. Sprico (April 15, 1999), PCB 97-203.

The notification for the Highland project clearly indicates that 2,000 square feet of RACM was to be removed during the project. People's Exhibit No. 1. ECA's revised notification likewise indicates that 2,000 square feet of RACM was to be removed during the project. Respondent's Exhibit No. 1. As in Spirco, the amount of RACM ECA listed on the Highland notification was more than enough to trigger the asbestos NESHAP notification requirements, and ECA should have known that the amount of RACM indicated on the notification would place it subject to the NESHAP notification requirements.[5]

[5] The Board notes that neither party presented any direct evidence as to whether the floor tile and mastic was removed in such as way as to become friable. However, the violations alleged in the

The People allege that ECA violated the Act and the asbestos NESHAP by failing to timely and completely submit the notification form for the Highland asbestos removal project to the Agency. The Board notes that ECA did not present any direct evidence or testimony to contradict the information contained in the notification form for the Highland project.[6] The uncontested evidence indicates that the Highland notification was not submitted ten working days prior to the schedule state date of the project, and did not indicate the number of floors in the facility or the facility's age. People's Exhibit No. 1. The Board finds that ECA failed to timely submit a complete notification form for the Highland project to the Agency as required by 40 C.F.R. 61.145(b)(3) and (4).

ANALYSIS OF VIOLATIONS AND PENALTY

Summary of Violations

The Board has previously issued two dispositive orders in the case. In its February 17, 2000 order, the Board found that ECA: submitted an incomplete notification for the Alton project, in violation of 40 C.F.R. 61.145(b)(4), and submitted an untimely notification for the Quincy project, in violation of 40 C.F.R. 61.145(b)(1). Environmental Control & Abatement (February 17, 2000), PCB 95-170, slip. op. at 11. In its May 4, 2000 order, the Board found that ECA submitted an incomplete notification for the Urbana project, in violation of 40 C.F.R. 61.145(b). Environmental Control & Abatement (May 4, 2000), PCB 95-170, slip. op. at 5.

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complaint are not of the procedures for asbestos emission control of the asbestos NESHAP found in 40 C.F.R. 61.145(c), but only the notification requirements of 40 C.F.R. 61.145(b). As such, this opinion only applies to those notification requirements, and the Board does not address whether the information contained in a notification form is sufficient to prove a violation of the procedures for asbestos emission control found at 40 C.F.R. 61.145(c).

[6] An affidavit by Lemire dated October 10, 1995, was attached to ECA's motion for summary judgment of September 28, 1999, and later attached by the People to their brief of August 22, 2000. The affidavit was cited in the Board's February 17, 2000 order as a reason why issues of fact remained outstanding in connection with the Highland project. Neither party submitted the affidavit into evidence at hearing.

Section 33(c) Factors

The Act states that the Board must consider all facts and circumstances involved in an enforcement order including, but not limited to, the factors in Section 33(c). 415 ILCS 5/33(c) (1998). These factors include:

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.

Other factors, such as good faith, may also be considered. IEPA v. Allen Barry d/b/a Allen Barry Livestock (May 10, 1990), PCB 88-71, slip op. at 35.

Section 33(c)(i) - Injury to Health, Welfare, and Property

All of the violations alleged in this matter are violations of the notification requirements of the asbestos NESHAP. The Board notes that it is undisputed that RACM was involved with regard to the Alton, Quincy, and Urbana projects. As the Board has previously stated, exposure to even small quantities of asbestos can cause serious health risks. See Spirco (April 15, 1999), PCB 97-203, slip op. at 5. No evidence or testimony has been presented to indicate that any injury to health, welfare and property occurred as a result of these violations. For the projects involved in this case, and in the absence of any other evidence, the Board cannot weigh these factors against ECA.

Sections 33(c)(ii) and 33(c)(iii) - Social / Economic Value and Suitability to the Area

The record does not address any facts that might impact upon this consideration. The Board cannot weigh these factors against ECA.

Section 33(c)(iv) - Economic Reasonableness of Reducing Emissions

No testimony was presented regarding emissions of any kind from any of the four sites involved. However, the Board notes that compliance with the notification requirements would not have imposed a significant economic burden on ECA. Thus, the Board weighs this factor against ECA.

Section 33(c)(v) - Subsequent Compliance

Upon receipt of a CIL for each of the projects involved in the complaint, ECA promptly responded in writing. By project, ECA's response time was:

Alton, 45 days[7]
Highland, 6 days
Urbana, 15 days
Quincy, 13 days

See People's motion for summary judgment, Exh. B, C, E, F, H, I, K, and L. In reviewing the violations alleged for each project, the only violation which is common to more than one project is the failure to indicate the amount of non-friable ACM not to be removed during the project. 40 C.F.R. 61.145(c)(vi). As the Board determined in its February 17, 2000 order, this requirement does not apply to renovation activities, and thus was not required on any of the notifications submitted by ECA. Environmental Control and Abatement (February 17, 2000), PCB 95-170, slip op. at 5. Finally, since the last of the violations in this matter occurred, ECA has been in compliance with the asbestos NESHAP notification requirements. Tr. at 90-91. The Board weighs this factor in favor of ECA.

Good Faith

At the hearing, Lemire testified that he made inquiries of the Agency to determine if a meeting was advisable, and had been informed that a meeting was not necessary. Tr. at 81. As the violations at the four sites in question do not indicate a repetitive pattern, ECA appears to have been acting in a good faith attempt to correct its earlier mistakes, and comply with newly applicable regulations. The Board weighs this factor in favor of ECA.

Findings of Violation

Considering the Section 33(c) factors, the Board finds that ECA failed to submit timely and complete notification forms for the Highland and Quincy projects, and failed to submit complete notification forms for the Alton, Highland and Urbana projects. ECA thereby violated the notification requirements of the asbestos NESHAP found at 40 C.F.R. 61.145(b). Each

[7] The Board notes that the CIL regarding the Alton project was received shortly before the Thanksgiving holiday, and ECA's response was received after the New Year Holiday.

failure to comply with the asbestos NESHAP is a violation of Section 9.1(d) of the Act. 415 ILCS 5/9.1(d) (1998).

Section 42(h) Factors

The People seek to impose a total penalty of $12,000, or $3,000 per site. Reply Br. at 17. In determining a penalty, Section 33(c) lists general factors for the Board to consider when issuing final orders and determinations, while Section 42(h) specifically governs penalty amounts. 415 ILCS 5/42(h) (1998); People v. Kershaw (April 20, 1995), PCB 92-164, slip op. at 3 quoting IEPA v. Barry (May 10, 1990), PCB 88-71, slip op. at 42. Section 42(h) states, in pertinent part:

> In determining the appropriate civil 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:
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> 1. the duration and gravity of the violation;
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> 2. the presence or absence of due diligence on the part of the violator in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
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> 3. any economic benefits accrued by the violator because of delay in compliance with requirements;
>
> 4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
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> 5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.
> 415 ILCS 5/42(h) (1998).

Section 42(h)(1) - Duration and Gravity

Information in the record indicates that ECA's violations of the notification requirements of the asbestos NESHAP do not constitute a repetitive pattern of violations. In fact, the violations support ECA's contention that it was attempting to determine how to comply with the new regulations. The People did present testimony as to the impact a late or incomplete notification has on the Agency's ability to perform inspections of removal activities. Tr. at 48 and 57.

Section 42(h)(2) - Due Diligence

As discussed above, ECA responded in a relatively short amount of time to each CIL issued. Also, the violations for each project do not indicate a pattern of similar violations, and in fact suggest that ECA was attempting to determine how to comply with the new notification regulations.

Section 42(h)(3) - Economic Benefits

The Board finds that the record is silent as to any economic benefit accrued by ECA's untimely and incomplete notifications. Lemire testified that the notification for the Highland project was completed based upon information from a site inspection conducted by an ECA employee. Tr. at 103. While the record contains no testimony relevant to the other projects, the Board infers that the notifications for the other projects used a similar inspection process. Given that the notifications for the Alton and Urbana projects did not indicate such required information as the work methods to be used, work practices and engineering controls to prevent asbestos emissions, and the procedural and analytical methods used to detect the presence of ACM at the project, it is possible that ECA could have accrued an economic benefit by failing to conduct a thorough inspection to generate this information. Absent any facts related to this matter, the Board is unable to determine if any economic benefit was actually accrued by ECA.

Section 42(h)(4) - Deterring Further Violations

Lemire testified that ECA currently does not operate in the State of Illinois. Tr. at 20. Lemire also testified that, since the last violation in this matter, ECA has not violated any of the asbestos NESHAP requirements. Tr. at. 91. Lemire also testified that ECA no longer submits "courtesy notifications." Tr. at 108. Based upon the record, there appears to be little chance that similar violations will occur in the future.

Section 42(h)(5) - Previous Violations of the Act

Aside from the five projects addressed by the complaint, nothing in the record indicates that ECA has previously violated the Act.

Penalty

Penalties in similar cases before the Board range from a few thousand dollars to $14,000. People's. Br. at 17-20. The Board notes that the 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. See People v. Allen Rose Cement & Construction Co. (June 17, 1998), PCB 97-223, People v. James Tull and CEPCA, Inc. (December 18, 1997), PCB 96-229, and People v. Robinette Demolition Inc. (January 8, 1998), PCB 96-170.

ECA points out that the People sought a penalty of $11,000, or $2,200 for each of the five projects originally addressed in the complaint. Resp. Br. at 12. The People provide no explanation or rationale for now increasing its request to $3,000 for each of the four remaining projects.

Regarding the Highland project, the Board finds that the information contained in the notification form regarding the amount of RACM to be removed did trigger the applicable notification requirements found at 40 C.F.R 61.145(b). However, due to the period of time that passed between the violations at this project and the filing of the complaint, and the lack of actual evidence that RACM was released during the project, the Board imposes no penalty for the violation at the Highland project.

Regarding the remaining three projects, and considering the above factors, the Board finds it appropriate to order ECA to pay a penalty of $3,000.

CONCLUSION

The Board finds that ECA has violated Section 9.1(d) of the Act by failure to comply with Section 61.145(b) of the asbestos NESHAP. The Board finds that a civil penalty of $3,000 is warranted in this case.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. The Board finds that Environmental Control and Abatement, Inc. (ECA), violated Section 9.1(d) of the Illinois Environmental Protection Act (415 ILCS 5/9.1(d) (1998)) by failing to comply with Section 61.145(b) of the asbestos NESHAP. 40 C.F.R. § 61.145(b) (1997). Specifically, the Board finds the following violations by project location:

    a. Alton: failure to submit a complete notification as required by 40 C.F.R. 61.145(b)(4)(i), (x), (xi), and (xvi);

    b. Highland: failure to timely submit a complete notification as required by 40 C.F.R. 61.145(b)(3) and (b)(4)(iv) and (v);

    c. Quincy: failure to timely submit a notification as required by 40 C.F.R. 61.145(b)(3); and

    d. Urbana: failure to submit a complete notification as required by 40 C.F.R. 61.145(b)(4)(v) and (vi).

2. The Board orders ECA to pay a civil penalty in the amount of $3,000 by certified check or money order made payable to the Environmental Protection Trust Fund. ECA shall write the case name and number and its federal employer identification number on the certified check or money order.

3. ECA shall send the payment no later than December 19, 2000, at 4:30 p.m. by first class mail to:

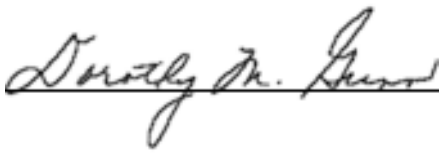
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

4. If the penalty is not paid within the time prescribed, it shall incur interest at the rate set forth in Subsection (a) of Section 1003 of the Illinois Income Tax Act (35 ILCS 5/1003 (1996)) as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 2nd day of November 2000 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board