ILLINOIS POLLUTION CONTROL BOARD June 20, 2002

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
V.)	PCB 02-120
ENTLER EXCAVATING COMPANY, an)	(Enforcement – Air)
Illinois corporation,)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by N.J. Melas)

On March 6, 2002, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Entler Excavating Company (Entler). *See* 415 ILCS 5/31(c)(1) (2000); 35 Ill. Adm. Code 103.204. The People allege that Entler violated Sections 9(a) and 9.1(d) of the Environmental Protection Act (Act) (415 ILCS 5/9(a) and 5/9.1(d) (2000)), Section 201.141 of the Board's regulations (35 Ill. Adm. Code 201.141), and Sections 61.145(c), 61.150(a), and 61.150(b) of the National Emissions Standards for Hazardous Air Pollutants for asbestos (40 C.F.R. 61.145(c), 61.150(a), 61.150(b)). The People further allege that Entler violated these provisions by causing air pollution, failing to properly contain asbestos-containing material (ACM) in uncovered trucks, failing to properly mark trucks hauling away ACM, failing to keep temperature records, and failing to have an on-site representative during demolition. The complaint concerns Entler's demolition project at 540 Cerro Gordo, Decatur, Macon County.

On May 14, 2002, the People and Entler 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) (2000)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2000)). See 35 III. 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 *Herald & Review* on May 19, 2002. 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) (2000); 35 III. 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 Entler'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) (2000)). The People and Entler have

satisfied Section 103.302. Entler agrees to pay a civil penalty of \$15,000. 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. Entler must pay a civil penalty of \$15,000 no later than July 20, 2002, which is the 30th day after the date of this order. Entler must pay the civil penalty by certified check payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case number, case name, and Entler's federal employer identification number must be included on the certified check or money order.
- 3. Entler must send the certified check or money order to:

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

A copy of the check and payment transmittal shall be simultaneously submitted to:

Donna Lutes Illinois Attorney General's Office Environmental Bureau 500 South Second Street Springfield, Illinois 62706

- 4. If Entler fails to make any payment specified in paragraph 2, Entler will be in default and the remaining unpaid balance of the penalty, plus accrued interest, shall be due and owing immediately.
- 5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2000)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2000)).
- 6. Entler must cease and desist from the alleged violations.

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) (2000); 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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 20, 2002, by a vote of 7-0.

Dorothy M. Gunn, Clerk Illinois Pollution Control Board

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