

ILLINOIS POLLUTION CONTROL BOARD

July 22, 2004

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	
)	PCB 04-100
MARC REALTY, INC., an Illinois)	(Enforcement - Air)
corporation, 11 EAST ADAMS, L.L.C., an)	
Illinois limited liability company, and)	
ROBERTS ENVIRONMENTAL CONTROL,)	
INC., an Illinois corporation,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by J.P. Novak):

On December 22, 2003, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Marc Realty, Inc. (Marc Realty), 11 East Adams, L.L.C. (11 East Adams), and Roberts Environmental Control, Inc. (respondents). See 415 ILCS 5/31(c)(1) (2002); 35 Ill. Adm. Code 103.204. The complaint concerns the 16 floor office building at 11 East Adams Street, Chicago, Cook County. Two of the parties now seek to settle. For the reasons below, the Board accepts the parties' stipulation and proposed settlement as to Marc Realty and 11 East Adams. The case continues as to the remaining respondent, Roberts Environmental Control, Inc.

Under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)), the Attorney General and the State's Attorneys may bring actions before the Board on behalf of the People to enforce Illinois' environmental requirements. See 415 ILCS 5/31 (2002); 35 Ill. Adm. Code 103. In this case, the People allege that the respondents violated Section 9(a) and 9.1(d) of the Act (415 ILCS 5/9(a) and 9.1(d) (2002)) (Act); 35 Ill. Adm. Code 201.141; and 40 C.F.R. 61.145(a), (b), (c)(1), (c)(6), and (c)(8), as enforceable under Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2002)). The People further allege that the respondents violated these provisions by failure to comply with standards applicable to removal of asbestos-containing materials and the emission of asbestos during the course of building renovations.

On May 25, 2004, the People and the respondents Marc Realty and 11 East Adams 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) (2002)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2002)). See 35 Ill. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief from hearing. The Board published newspaper notice in the *Chicago Sun-Times* on June 17, 2004. 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) (2002); 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 Marc Realty's and 11 East Adams' 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) (2002)), which bears on the reasonableness of the circumstances surrounding the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2002), *as amended by* P.A. 93-575, (eff. Jan. 1, 2004), which may mitigate or aggravate the civil penalty amount.

The People and Marc Realty and 11 East Adams have satisfied Section 103.302. Marc Realty and 11 East Adams neither admit nor deny the alleged violations but agree to pay a civil penalty of \$55,000, which the parties stipulate is greater than any economic benefit that from delayed compliance. The Board accepts the stipulation and proposed settlement as to these two parties.

The respondent Roberts Environmental Control, Inc. did not enter into the settlement agreement. The docket remains open for further proceedings by the People against this remaining respondent. The caption in any future order in this case will show Roberts as the sole respondent.

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. Marc Realty and 11 East Adams must pay a civil penalty of \$55,000 no later than August 23, 2004. Marc Realty and 11 East Adams must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and Marc Realty's and 11 East Adams' federal employer identification number must be included on the certified check or money order.
3. Marc Realty and 11 East Adams 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
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate

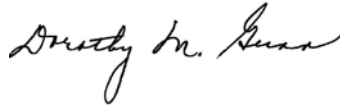
set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).

5. Marc Realty and 11 East Adams 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. 415ILCS5/41(a)(2202); *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. 172Ill.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 order on July 22, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board