ILLINOIS POLLUTION CONTROL BOARD October 6, 2005

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 05-149
)	(Enforcement - Air)
TRUSERV CORPORATION, a Delaware)	
corporation d/b/a TRUE VALUE)	
MANUFACTURING COMPANY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

On February 8, 2005, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against Truserv Corporation d/b/a True Value Manufacturing Company (Truserv). Truserv owns and operates a paint manufacturing facility located at 823 West Blackhawk, in Chicago, Cook County. The People's complaint concerns alleged air emissions from Truserv's facility. The parties now seek to settle without a public hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2004)), 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 (2004); 35 Ill. Adm. Code 103. In this case, the People allege that Truserv violated Sections 9(a) and (b) of the Act (415 ILCS 5/9(a) and (b) (2004)); 35 Ill. Adm. Code 201.302(a), 218.624, 218.625(a) and (b), 218.628, and 218.630(a); and Sections 9, 10(a) and (b), 12, and 13(a) of Truserv's Federally Enforceable State Operating Permit (FESOP). According to the complaint, Truserv caused or allowed these violations by (1) failing to cover paint mixing and thinning tanks; (2) failing to cover grinding mills; (3) failing to maintain records about equipment leaks and failing to repair leaks within 15 days; (4) failing to enclose equipment during cleaning; and (5) failing to submit accurate annual emissions reports.

On July 29, 2005, the People and Truserv 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) (2004)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2004)), 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 *Chicago Sun-Times* on August 31, 2005. 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) (2004); 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 Truserv'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) (2004)), which bears on the reasonableness of the circumstances surrounding the alleged violations. The People and Truserv have satisfied Section 103.302.

The stipulation and proposed settlement also address the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2004)), which may mitigate or aggravate the civil penalty amount. Under the proposed stipulation, Truserv neither admits nor denies the alleged violations and agrees to pay a civil penalty of \$30,000, which the parties agree is "as great or greater than the economic benefit that [Truserv] achieved during the period of noncompliance." Stipulation at 8. The Board accepts the stipulation and proposed settlement.

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

- 1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
- 2. Truserv must pay a civil penalty of \$30,000 by November 7, 2005, which is the first business day following the 30th day after the date of this order. Truserv must pay the civil penalty by certified check, money order, or electronic funds transfer payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund.
- 3. Trusery 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

Truserv must send a copy of each certified check, money order, or record of electronic funds transfer and any transmittal letter to:

George Theophilos Assistant Attorney General Environmental Bureau 188 W. Randolph St., 20th Floor Chicago, Illinois 60601 Maureen Wozniak Assistant Counsel Illinois Environmental Protection Agency 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 Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
- 5. Truserv must cease and desist from future violations of the 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) (2004); *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 October 6, 2005, by a vote of 4-0.

Dorothy M. Gunn, Clerk

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Illinois Pollution Control Board