ILLINOIS POLLUTION CONTROL BOARD October 16, 2008

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
v.)	PCB 09-13
BEHR IRON & STEEL, INC., an Illinois corporation,)	(Enforcement - Air)
Respondent.)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On September 5, 2008, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against Behr Iron & Steel, Inc. (Behr Iron). The complaint concerns Behr Iron's scrap metal processing facility located at 208 Quaker Road in Rockford, Winnebago 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 (2006)), 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 (2006); 35 Ill. Adm. Code 103. In this case, the People allege that Behr Iron violated Sections 9(a), 9(b), and 9.1(d)(1) of the Act (415 ILCS 5/9(a), 9(b), 9.1(d)(1) (2006)), Sections 201.142, 201.143, and 201.302 of the Board's air pollution regulations (35 Ill. Adm. Code 201.142, 201.143, 201.302), and Sections 63.1501(b), 63.1511(a), 63.1511(b), and 63.1515(b) of the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) for secondary aluminum production (40 C.F.R. §§ 63.1501(a), 63.1511(a), 63.1511(b), 63.1515(b)). The People further allege that Behr Iron violated these provisions by (1) failing to obtain a construction permit from the Illinois Environmental Protection Agency (Agency) prior to constructing emission sources and air pollution control equipment; (2) failing to obtain an operating permit from the Agency prior to operating emission sources and air pollution control equipment; (3) failing to timely submit complete and accurate annual emission reports (AERs) to the Agency; (4) failing to submit a site-specific test plan and conduct performance testing by the deadlines established in the NESHAP for secondary aluminum production; and (5) failing to submit a notification of compliance status report to the Agency.

of the Act. See 415 ILCS 5/9.1(d) (2006).

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¹ The NESHAP for secondary aluminum production (40 C.F.R. Part 63, Subpart RRR) was promulgated by the United States Environmental Protection Agency under Section 112 of the federal Clean Air Act (CAA) (42 U.S.C. § 7412). Section 9.1(d)(1) of the Act prohibits anyone from violating any federal regulation adopted under Section 112 of the CAA. Consequently, any violation of the secondary aluminum production NESHAP is also a violation of Section 9.1(d)(1)

Also on September 5, 2008, the People and Behr Iron 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) (2006)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2006)), 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 *Rockford Register* on September 11, 2008. 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) (2006); 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 Behr Iron'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) (2006)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Behr Iron does not admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2006)), which may mitigate or aggravate the civil penalty amount. Behr Iron agrees to pay a civil penalty of \$10,000. The People and Behr Iron have satisfied Section 103.302. 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. Behr Iron must pay a civil penalty of \$10,000 no later than November 17, 2008, which is the first business day following the 30th day after the date of this order. Behr Iron must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund. The case name, case number, and Behr Iron's federal tax identification number must appear on the face of the certified check or the money order.
- 3. Behr Iron 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

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

L. Nichole Cunningham Environmental Bureau Illinois Attorney General's Office 69 West Washington St., 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) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
- 5. Behr Iron must cease and desist from future violations of the Act and Board regulations that were the subject matter 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) (2006); *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, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 16, 2008, by a vote of 4-0.

John Therriault, Assistant Clerk

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