

to cause air pollution (Count XIV³). The People allege that Vertellus Industries violated Section 9(b) of the Act (415 ILCS 5/9(b) (2006)) by failing to comply with Condition 2(d) of its construction permit (Count II).

The People further allege that Vertellus Industries violated Sections 12(d) and 21(e) of the Act (415 ILCS 5/12(d) and 21(e) (2006)) by allowing releases at various times in the year 2000 of electro binder pitch, crude coal tar and creosote, upon the land so as to create a water pollution hazard (Count X), and by allowing hazardous waste to leak upon the ground at a disposal site that did not meet the requirements of the Act and associated regulations (Count IV). The People also allege that Vertellus Industries violated Section 21(f) of the Act in conjunction with several Board Rules: Section 703.121(a) by operating a hazardous waste facility without a permit issued by the Illinois EPA (Count V); Section 725.131 by failing to maintain and operate said facility in a manner to minimize the possibility of a sudden release of hazardous waste to the soil or air (Count VI); Sections 725.151(b) and 725.156(j) by failing to report the release of a hazardous waste in June and July 2000 to the proper authorities, and failing to submit a written report to the Illinois EPA 15 days after the implementation of the facility contingency plan (Count VII); Section 725.273(a) by failing to manage hazardous waste in a closed container during storage (Count VIII); Section 722.123(a) by failing to timely send a copy of a June 2000 manifest to the Illinois EPA (Count IX); and, Section 725.131 by allowing the release of crude coal tar in July 2003, thereby failing to maintain and operate a facility in a manner to minimize the release of hazardous waste to the soil or air (Count XIII⁴).

On January 13, 2009, the People and Vertellus filed a stipulation and proposal for 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 *Granite City Press Record Journal*, on January 28, 2009. 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 Vertellus' 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. Vertellus neither admits nor denies 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.

³ In the Stipulation and Proposal for Settlement, received by the Pollution Control Board on January 13, 2009, Count XIV is a scrivener's error listed as the second Count XIII.

⁴ Count XIII referenced here is the first Count XIII listed in the Stipulation and Proposal for Settlement. *See also*, footnote 2, page 1.

Vertellus agrees to pay a civil penalty of \$140,000.00. The People and Vertellus 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. Vertellus Specialties, Inc., must pay a civil penalty of \$140,000.00 no later than April 6, 2009, which is first business day following the 30th day after the date of this order. Vertellus must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Trust Fund. The case name, case number, and Vertellus' Federal Employer Identification Number must appear on the face of the certified check or money order.
3. Vertellus 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

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

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

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. Vertellus 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) (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 March 5, 2009, by a vote of 5-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John Therriault, Assistant Clerk
Illinois Pollution Control Board