ILLINOIS POLLUTION CONTROL BOARD March 19, 2009

PEOPI	LE OF THE STATE OF ILLINOIS,)	
)	
	Complainant,)	
	-)	
	V.	Ĵ	PCB 07-144
		Ĵ	(Enforcement - Air)
MICK	MORFEY, individually,)	````
	-)	
	Respondent.)	

OPINION AND ORDER OF THE BOARD (by S.D. Lin):

On June 15, 2007, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Mick Morfey (Morfey) and William Knauer (Knauer). The five-count complaint concerned asbestos removal, handling, and disposal during renovation activities in January 2006 at barracks buildings 266 and 267 situated within the former Savanna Army Depot, Savanna, Carroll County. The People and the sole remaining respondent, Mick Morfey, now seek to settle without a hearing.¹ 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 respondent Morfey violated various provisions of the Act, the National Emissions Standards for asbestos adopted by the United States Environmental Protection Agency (USEPA)², and a Board rule. The People further allege that respondent violated Sections 9(a), 9.1(d), 9.13(a), and 9(c) of the Act, 415 ILCS 5/9(a), 9.1(d), 9.13(a), and 9(c) (2006). Complainant also alleged that respondent Morfey violated Sections 61.145(a) and (b), 61.145(c)(i), (c)(2), (c)(6), and (c)(8) of the National Emissions Standards for Hazardous Air Pollutants (NESHAPs), for asbestos, 40 C.F.R. 61.145(a) and (b), 61.145(c)(i), (c)(2), (c)(6), and

¹ As to respondent Knauer, as of March 31, 2008, the Board granted the People's motions to deem facts admitted and for summary judgment. The Board found that Knauer committed the alleged violations and assessed a civil penalty of \$100,000.00. <u>People v. Mick Morfey and</u> <u>William Knauer</u>, PCB 07-144 (March 31, 2008)

² While the Board generally does not have jurisdiction over USEPA rules, Section 9(b) of the Act provides that federal NESHAPs "are applicable to the state and enforceable under the Act." 415 ILCS 5/9(b) (2006). Pursuant to Section 112(b)(1) of the Clean Air Act, 42 U.S.C. 7412(b)(1) (2007), the Administrator of the U.S. Environmental Protection Agency lists asbestos as a hazardous air pollutant. Asbestos is a known human carcinogen for which there is no known safe level of exposure. Comp. para. 18-19.

(c)(8) by failure to provide timely advance notification of renovation; failure to properly wet, collect, and deposit renovation; failure to properly wet, collect, and deposit "asbestos-containing material" (RACM); improper disposal of RACM; failure to pay asbestos fee; open burning of refuse; and, by threatening the emission of contaminants so as to tend to cause air pollution.

On February 11, 2009, the People and respondent Morfey 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, proposal for settlement, and request for relief. The newspaper notice was published in the *Savanna-Times Journal* on February 19, 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 respondent Morfey'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. Respondent Morfey admits to the alleged violations in this matter. 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. Respondent Morfey agrees to pay a civil penalty of \$1,000.00. The People and respondent Morfrey 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 proposal for settlement.
- 2. Respondent Morfrey must pay a civil penalty of \$1,000.00 no later than April 20, 2009, which is the first business day following the 30th day after the date of this order. Mick Morfey 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 respondent Morfrey's Social Security Number must appear on the face of the certified check or money order.

3. Respondent Morfey 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

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

Stephen J. Sylvester Environmental Bureau Illinois Attorney General's Office 69 W. Washington St., Ste. 1800 Chicago, IL 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. Respondent Morfey 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 19, 2009, by a vote of 5-0.

phu T. Therrian

John Therriault, Assistant Clerk Illinois Pollution Control Board