## ILLINOIS POLLUTION CONTROL BOARD April 2, 2009

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
V.	)	PCB 07-131
	)	(Enforcement - Air)
VITHALBHAI PATEL.,	)	
	)	
Respondents.	)	

## OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On June 8, 2007, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against Vithalbhai Patel (respondent). *See* 415 ILCS 5/31(c)(1) (2006); 35 Ill. Adm. Code 103.204. The complaint concerns demolition and renovation activities at respondent's Howard Johnson Express Inn located at 301 North Bluff Road in Collinsville, Madison County. The People and respondent now seek to settle without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposal for 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 violated Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2006) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) concerning asbestos at 40 C.F.R. §§ 61.145(a), (b)(1), (c)(6), and 40 C.F.R. § 61.150(b)(1). The complaint alleges that respondent violated these provisions by (1) failing to properly inspect the facility for the presence of asbestos before commencing demolition and renovation; (2) failing to provide the Illinois Environmental Protection Agency with notice of renovation and demolition activities at least 10 working days before commencing those activities; and (3) failing to properly handle regulated asbestos-containing material (RACM) and asbestos-containing waste materials.

On December 24, 2008, the People and respondent 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,

<sup>&</sup>lt;sup>1</sup> Section 9.1(d)(1) of the Act prohibits persons from violating any provisions of Section 111, 112, 165, or 173 of the federal Clean Air Act (CAA) or federal regulations adopted thereunder. 415 ILCS 5/9.1(d)(1) (2006). Under Section 112 of the CAA (42 U.S.C. §7412), the United States Environmental Protection Agency adopted NESHAP regulations for asbestos.

proposed settlement, and request for relief. The newspaper notice was published in the *Collinsville Herald Journal* on March 1, 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 proposals for settlement. *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'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 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. Respondent agrees to pay a civil penalty of \$30,000. The People and respondent have satisfied Section 103.302. The Board accepts the stipulation and proposal for 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. Respondent must pay a civil penalty of \$30,000 no later than May 4, 2009, which is first business day following the 30th day after the date of this order. Respondent must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Agency, designated to the Environmental Protection Trust Fund. The case name, case number, and respondent's federal tax identification number must appear on the face of the certified check or money order.
- 3. Respondent 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 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)).

## 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 April 2, 2009, by a vote of 5-0.

John Therriault, Assistant Clerk Illinois Pollution Control Board

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