## ILLINOIS POLLUTION CONTROL BOARD September 17, 2009

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
V.	)	PCB 09-27
	)	(Enforcement - Air)
RICHARD KING, KAY KING, and ISAAC	)	
KING,	)	
	)	
Respondents.	)	

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

On October 22, 2008, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against Richard King, Kay King, and Isaac King (respondents). The complaint concerns a vacant three-story building formerly known as the "Buck's Building," located at 527 East Washington Street in Springfield, Sangamon 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 (2008)),<sup>1</sup> 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 (2008); 35 Ill. Adm. Code 103. In this case, the People allege that respondents violated Sections 9(a) and 9.1(d) of the Act (415 ILCS 5/9(a), 9.1(d) (2008)), Sections 61.145(a), (b), (c)(1), (2), (6), (8), and 61.150(a)(1)(iii), (iv), (v), (b) of the federal regulations on National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos (40 C.F.R. §§61.145(a), (b), (c)(1), (2), (6), (8), 61.150(a)(1)(iii), (iv), (v), (b)),<sup>2</sup> and Section 201.141 of the Board's air pollution regulations (35 Ill. Adm. Code 201.141).

According to the complaint, respondents violated these provisions by (1) causing or tending to cause air pollution; (2) failing to thoroughly inspect the Buck's Building for the presence and location of asbestos-containing material (ACM) prior to commencing asbestos removal and disposal activities; (3) failing to notify the Illinois Environmental Protection Agency (Agency) of scheduled asbestos removal activities at the Buck's Building at least 10

<sup>&</sup>lt;sup>1</sup> All citations to the Act will be to the 2008 compiled statutes, unless the provision at issue has been substantively amended in the 2008 compiled statutes.

<sup>&</sup>lt;sup>2</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) (2008). Under Section 112 of the CAA (42 U.S.C. §7412), the United States Environmental Protection Agency adopted NESHAP regulations for asbestos.

working days prior to commencing such activities; (4) failing to properly remove all regulated ACM (RACM) from the Buck's Building before commencing planned renovation activities, which broke up, dislodged, and similarly disturbed the RACM; (5) failing to adequately wet all RACM and prevent damage or disturbance to the RACM during cutting or disjoining operations at the Buck's Building; (6) failing to adequately wet and maintain wet all RACM and regulated asbestos-containing waste material at the Buck's Building until collected and contained in preparation for disposal at a site permitted to accept such waste; (7) failing to have at least one representative at the Buck's Building trained in the provisions of the NESHAP for asbestos and the means of complying with them; (8) failing to adequately wet and keep wet, containerize, and label all asbestos-containing waste material at the Buck's Building, thereby causing or allowing the discharge of visible emissions to the outside air; and (9) failing to transport to a waste disposal site, or Agency-approved site that converts RACM and asbestos-containing waste material, and deposit as soon as practical all asbestos-containing waste material generated during asbestos removal activities at the Buck's Building.

On July 20, 2009, the People and respondents 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) (2008)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2008)), 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 State Journal Register* on August 10, 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) (2008); 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 respondents' 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) (2008)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondents do not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2008)), which may mitigate or aggravate the civil penalty amount. Respondents agree to pay a civil penalty of \$70,000. The People and respondents 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.

## <u>ORDER</u>

- 1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
- 2. Respondents must pay a civil penalty of \$70,000 as follows:

- a. \$30,000 by October 19, 2009, which is the first business day following the 30th day after the date of this order;
- b. \$20,000 by December 16, 2009, which is the 90th day after the date of this order; and
- c. \$20,000 by January 15, 2010, which is the 120th day after the date of this order.
- 3. Respondents must pay the civil penalty by certified checks or money orders payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name, case number, and respondents' federal tax identification number must appear on the face of each certified check or money order.
- 4. King must submit payments 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

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

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

- 5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).
- 6. Respondents must cease and desist from future violations of the Environmental Protection Act, Board regulations, and the NESHAP for asbestos 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) (2008); *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 September 17, 2009, by a vote of 5-0.

In T. Theriant

John Therriault, Assistant Clerk Illinois Pollution Control Board