ILLINOIS POLLUTION CONTROL BOARD
January 23, 2014

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| PEOPLE OF THE STATE OF ILLINOIS, | ) | |
| | ) | |
| Complainant, | ) | |
| | ) | |
| v. | ) | PCB 05-199 |
| | ) | (Enforcement - Air) |
| CHAMPION ENVIRONMENTAL SERVICES, INC., | ) | |
| | ) | |
| Respondent. | ) | |

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

On May 23, 2005, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint (Comp.) against Champion Environmental Services, Inc. (Champion). *See* 415 ILCS 5/31(c)(1) (2012); 35 Ill. Adm. Code 103.204. On November 8, 2013, the People filed a motion for summary judgment. No response has been filed to that motion. The People argue that no genuine issues of material fact remain, and that they are entitled to judgment as a matter of law. For the reasons discussed below, the Board grants the People's motion for summary judgment, finding that Champion violated Sections 9(a) and 9.1(d) of the Environmental Protection Act (Act) (415 ILCS 5/9(a) and 9.1(d) (2012) [1]), and Section 201.141 of the Board's air rules (35 Ill. Adm. Code 201.141). The Board also finds that Champion violated Sections 61.145(c)(1), 61.145(c)(6), and 61.150(b)(1) of the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS)[2] (40 C.F.R. §61.145(c)(1), §61.145(c)(6), and §61.150(b)(1)).

After reviewing the factors in Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2012)), the Board finds that a civil penalty of $34,000 will aid in the enforcement of the Act and deter future violations.

In this opinion and order, the Board first reviews the procedural history of this case. The Board next summarizes the People's complaint and the uncontested facts derived from the evidence obtained by the Illinois Environmental Protection Agency (Agency). The Board then sets forth the relevant statutory and regulatory provisions. After summarizing the People's motion for summary judgment, the Board provides a discussion and ruling on the People's motion for summary judgment. The Board then addresses the penalty factors in determining the appropriate civil penalty.

[1] All citations to the Act will be to the 2012 compiled statutes, unless the provision at issue has been substantively amended in the 2012 compiled statutes.

[2] Although the Board generally does not have jurisdiction over federal Clean Air Act regulations, Section 9.1(d) of the Act provides that "no person shall violate any provisions of Sections 111, 112, 165, or 173 of the clean Air Act . . . or federal regulations adopted pursuant thereto."

## BACKGROUND

On May 23, 2005, the People filed a two-count complaint against Champion alleging that Champion violated Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2012)), and Section 201.141 of the Board's air rules (35 Ill. Adm. Code 201.141). The People also allege that Champion violated Sections 61.145(c)(1), 61.145(c)(6), and 61.150(b)(1) of the federal NESHAPS. Comp. at 1-7. The People further allege that Champion violated these provisions by contracting with CNH America, LLC, in East Moline, Rock Island County to remove asbestos containing materials from CNH America's facility. *Id*.

### 2008 Motion

After the filing of the complaint, Champion disputed the allegations but entered into settlement discussion with the People in November 2006. People v. Champion Environmental Services, PCB 05-199, slip op. at 1 (Oct. 16, 2008). Those negotiations continued, and on December 5, 2007, a revised stipulation was sent to Champion by the People along with a request that Champion execute the stipulation as soon as possible. *Id*. Champion executed the stipulation. *Id*. During negotiations on December 13, 2007, the People requested that references to the the Illinois Environmental Protection Agency (Agency) be removed from the stipulation, but later the Agency was retained in the stipulation. *Id* at 1-2.

In a status conference on March 10, 2008, both Champion and the People indicated to the hearing officer that the Agency was seeking changes to the stipulation. *Id*. Neither the Agency nor the People signed the stipulation executed by Champion. *Id*. On May 20, 2008, the People sent a revised settlement agreement to Champion that removed several provisions from the December 5, 2007 document. *Id*.

On September 2, 2008, Champion filed a motion "to Finalize Settlement Agreement" and a memorandum in support of the motion, claiming that a settlement agreement had been entered into, and the People were refusing to sign the agreement. On September 18, 2008, the People filed a response in opposition to the motion arguing that no settlement agreement had been reached.

On October 16, 2008, the Board denied Champion's motion finding that a proper settlement had not been reached or filed with the Board. *Id*. at 6.

### Procedural Background Since 2008

After the Board order of October 16, 2008, the parties continued to discuss outstanding issues including a potential supplemental environmental project. *See generally* Hearing Officer Orders (Jan. 6, 2009), (Apr. 6, 2009), (Dec. 14, 2009), and (June 15, 2010). On June 16, 2011, Champion's attorneys withdrew from the case. Since that time, Champion has not participated in status calls. *See generally* Hearing Officer Orders (Oct. 17, 2011) (Feb. 21, 2012), (Jan 7, 2013).

On September 6, 2013, the People filed a request to admit facts and genuineness of documents. Champion has not responded to that filing.

On November 8, 2013, the People filed a motion for summary judgment including the request to admit facts (Exh. 1) and an affidavit by the inspector (Exh. 2). Champion has not responded to the motion.

## COMPLAINT

On May 23, 2005, the People filed a three-count complaint against Champion. Count I of the complaint alleges that Champion failed to properly remove the Category II nonfriable asbestos containing material (ACM) from the facility and failed to adequately wet and keep wet regulated asbestos containing material (RACM) in violation of Section 9.1(d) or the Act (415 ILCS 5/9.1(d) (2012)) and 40 CFR §61.145(c)(1) and (6). Comp. at 6. Furthermore, Champion failed to deposit all RACM and ACM at a site permitted to accept such waste and to collect, contain and deposit said waste as soon as practicable at a site authorized to accept the waste in violation of Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2012)) and 40 CFR §61.145(c) (6) and §61.150(b)(1). *Id.*

Count II asserts that Champion's improper work practices in both removal and collection of RACM and ACM allowed visible emissions to occur, which is a violation of Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2012)) and 40 CFR §61.150(a). Comp. at 10. The complaint alleges that Champion caused, threatened, or allowed the emission of dry friable asbestos, causing air pollution, and thus violations of Section 9(a) of the Act (415 ILCS 5/9(a) (2012)) and Section 201.141 of the Board's rules (35 Ill. Adm. Code 201.141). *Id.*

Count III of the complaint alleges that since May 4, 2005, Champion has caused of allowed open dumping of ACM and other refuse at the site resulting in litter and as a result violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2012)). Comp. at 12-13. Furthermore, Champion's site does not meet the requirements of the Act or Board regulations and therefore, Champion violated Sections 21(a) and (e) of the Act (415 ILCS 5/21(a) and (e) (2012)). Comp. at 13.

## REQUEST TO ADMIT

The People state that a request to admit was mailed on September 6, 2013, and Champion has not responded. Therefore, the People maintain that the requests are deemed admitted. Mot. at 4.

The Board's rules require respondents to respond to a request to admit within 28 days after receipt of the People's request. 35 Ill. Adm. Code 101.618(f). Respondents are to file a response denying or explaining the matters of which admission was requested. *Id.* In the absence of any denial or explanation, these matters are deemed to be admitted. *Id.* Because Champion did not respond to the request to admit facts, the facts are deemed admitted.

## FACTS

On May 5, 2005, Dennis Hancock an inspector for the Agency's Bureau of Air, inspected the facility. Mot. Exh. 2 at ¶4. Mr. Hancock is an asbestos supervisor and inspector, and his

duties include inspection of asbestos removal sites. *Id*. at ¶2 and 3. Champion notified Agency on February 14, 2005, of an asbestos abatement and demolition project in East Moline, Rock Island County. Mot. Exh. 1, Attach A. The project began on or after February 24, 2005. *Id*. An anonymous complaint was lodged and the Agency subsequently inspected the facility. Mot. at Exh. 1, Attach B.

Champion was contracted to remove approximately 15,000 linear feet of RACM, 10,000 square feet of Category I non-friable ACM and 2,010,000 square feet of Category II non-friable ACM prior to the demolition of the facility owned by CNH. Mot. Exh. 2 at ¶4.; Exh. 1 at 1.

On May 5, 2005, Champion was removing transite panels. Mot. Exh. 2 at ¶5. The manner in which Champion was removing transite panels resulted in transforming the formerly non-friable material into RACM. *Id*. Champion's employees struck the transite panels with crowbars and hammers and pried transite panels from the structure. Mot. Exh. 1 at 1. Employees also dropped the transite panels from varying heights and ran over the panels with machinery. *Id.* As a result, the transite became crumbled, pulverized, or reduced to powder. Mot. Exh. 2 at ¶5.

Champion allowed ACM waste to be dumped on the ground at the site. Mot. Exh. 1 at 2. Champion is not permitted to operate a sanitary landfill at the site. *Id*.

Mr. Hancock observed large amounts of dry, friable ACM on the floor of the facility and scattered around the site, with no water used to suppress or control emissions. Mot. Exh. 2 at ¶6; *see also* Mot. Exh. 1 at 1-2 and Attach B at 3. Mr. Hancock noted eight open bins and three partially covered containers with ACM in them at the site. Mr. Hancock collected samples from those bins, and the testing of those samples found 30% to 35% asbestos in the materials. *Id*. Mr. Hancock witnessed visible air emissions at the site. Mr. Hancock took pictures documenting his observations (*see* Mot. Exh. 1, Attach B).

On September 28, 2005, Mr. Hancock re-inspected the site. Mot. Exh. 2 at ¶7. Mr. Hancock observed the removal process from a distance and witnessed workers using hammers to break transite loose and witnessed at least one panel break when hit with the hammer. *Id*.; *see also* Mot. Exh. 1, Attach C at 2. Mr. Hancock saw a 30-yard dumpster filled with broken transite and debris as he walked through the site. *Id*.; *see also* Mot. Exh. 1 at 2. There was no debris on the floor except paint. Mot. Exh. 1, Attach C at 3. Mr. Hancock took pictures documenting his observations (*see* Mot. Exh. 1, Attach C).

On March 1, 2006, an inspection revealed that RACM and ACM had been adequately wetted. Mot. Exh. 1 at 2. However, pry bars were still being used to remove transite and several pieces of broken transite were being picked up to be placed in dumpsters. Mot. Exh. 2 at ¶9; Mot. Exh. 1, Attach D at 2. Photographs were taken to document the observations. *Id*.

During a November 3, 2005 inspection, Mr. Hancock observed that work practices changed, and transite panels were being placed rather than dropped. Mot. Exh. 2 at ¶8. Although the floor was dry upon his arrival, workers were using hoses to wet the material. *Id*.

Mr. Hancock states that Champion did not properly remove non-friable ACM and caused or allowed the materials to become crumbled, pulverized, or reduced to powder during renovation activities. Mot. Exh. 2 ¶10. Furthermore, Champion did not adequately wet and keep RACM wet during removal and did not properly dispose of all RACM and waste ACM during renovations. *Id*. at ¶11-13.

Champion has admitted to allowing ACM to be dumped on open ground, not properly wetting RACM; and that it does not have a permit to operate a landfill at the site. Mot. Exh. 1 at 2.

## STATUTORY AND REGULATORY BACKGROUND

Section 9(a) of the Act provides that no person shall:

> Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act. 415 ILCS 5/9(a) (2012).

Section 9.1(d) of the Act provides:

> (d) No person shall:
>
> (1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto; or
>
> (2) construct, install, modify or operate any equipment, building, facility, source or installation which is subject to regulation under Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, except in compliance with the requirements of such Sections and federal regulations adopted pursuant thereto, and no such action shall be undertaken (A) without a permit granted by the Agency whenever a permit is required pursuant to (i) this Act or Board regulations or (ii) Section 111, 112, 165, or 173 of the Clean Air Act or federal regulations adopted pursuant thereto or (B) in violation of any conditions imposed by such permit. Any denial of such a permit or any conditions imposed in such a permit shall be reviewable by the Board in accordance with Section 40 of this Act. 415 ILCS 5/9.1(d) (2012).

Section 21 of the Act provides in pertinent part that no person shall:

> (a) Cause or allow the open dumping of any waste. 415 ILCS 5/21(a) (2012).

* * *

(e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder. 415 ILCS 5/21(e) (2012).

* * *

p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

(1) litter. 415 ILCS 5/21(p)(1) (2012).

Section 201.141 of the Board's rules provides:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard. 35 Ill. Adm. Code 201-141

40 CFR §61.145(c)(1) and (6) provide:

(c) *Procedures for asbestos emission control.* Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

(1) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. RACM need not be removed before demolition if:

(i) It is Category I nonfriable ACM that is not in poor condition and is not friable.

(ii) It is on a facility component that is encased in concrete or other similarly hard material and is adequately wet whenever exposed during demolition; or

(iii) It was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed. If

not removed for safety reasons, the exposed RACM and any asbestos-contaminated debris must be treated as asbestos-containing waste material and adequately wet at all times until disposed of.

(iv) They are Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.

* * *

(6) For all RACM, including material that has been removed or stripped:

(i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with § 61.150; and

(ii) Carefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.

(iii) Transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections.

(iv) RACM contained in leak-tight wrapping that has been removed in accordance with paragraphs (c)(4) and (c)(3)(i)(B)(*3*) of this section need not be wetted.

40 CFR §61.150 (a) and (b) provide:

Each owner or operator of any source covered under the provisions of §§ 61.144, 61.145, 61.146, and 61.147 shall comply with the following provisions:

(a) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos- containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in paragraphs (a) (1) through (4) of this section.

(1) Adequately wet asbestos-containing waste material as follows:

(i) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and

(ii) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and

(iii) After wetting, seal all asbestos containing waste material in leak tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and

(iv) Label the containers or wrapped materials specified in paragraph (a)(1)(iii) of this section using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(j)(4) or 1926.1101(k)(8). The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.

(v) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(2) Process asbestos-containing waste material into nonfriable forms as follows:

(i) Form all asbestos-containing waste material into nonfriable pellets or other shapes;

(ii) Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) For facilities demolished where the RACM is not removed prior to demolition according to §§ 61.145(c)(1) (i), (ii), (iii), and (iv) or for facilities demolished according to § 61.145(c)(9), adequately wet asbestos-containing waste material at all times after demolition and keep wet during handling and loading for transport to a

disposal site. Asbestos- containing waste materials covered by this paragraph do not have to be sealed in leak-tight containers or wrapping but may be transported and disposed of in bulk.

(4) Use an alternative emission control and waste treatment method that has received prior approval by the Administrator according to the procedure described in § 61.149(c)(2).

(5) As applied to demolition and renovation, the requirements of paragraph (a) of this section do not apply to Category I nonfriable ACM waste and Category II nonfriable ACM waste that did not become crumbled, pulverized, or reduced to powder.

(b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

(1) A waste disposal site operated in accordance with the provisions of § 61.154, or

(2) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos- free) material according to the provisions of § 61.155.

(3) The requirements of paragraph (b) of this section do not apply to Category I nonfriable ACM that is not RACM.

**MOTION FOR SUMMARY JUDGMENT**

The People argue that Champion has admitted to operating asbestos renovation and demolition at the facility, and that Champion allowed ACM waste to be dumped on the ground at the site. *Id*. Furthermore, Champion has admitted to having RACM on the site that was not properly wetted and to causing visible emissions at the site. *Id*. at 5.

Based on Mr. Hancock's affidavit and inspection reports, the People assert that Champion mishandled RACM and ACM waste by striking transite with hammers, dropping it from heights and prying it from the structure. Mot. at 5. Mr. Hancock also observed the open dumping of waste including RACM and ACM waste. *Id*.

The People assert that based upon the affidavit and inspection reports, there are no genuine issues of fact, and the People are entitled to judgment as a matter of law. Mot. at 11. The People maintain that Champion did not properly remove Category II nonfriable ACM and caused or allowed these materials to become crumbled, pulverized, or reduced to powder during demolition at the site. *Id*. Furthermore, the People argue that the facts establish that Champion did not adequately wet and keep wet RACM removed during renovation and that the RACM was not contained in leak-tight wrapping in preparation for disposal. *Id*.

The People opine that the facts establish that Champion failed to deposit as soon as practicable all RACM and asbestos containing waste at a permitted waste site. Mot. at 11. The People argue that Champion caused or allowed open dumping at the site as well as visible emissions of asbestos.

As a result of these actions, the People maintain that Champion violated the Act and NESHAP as alleged in the complaint. Mot. at 11.

## DISCUSSION ON MOTION FOR SUMMARY JUDGMENT

The Board will first set forth the standard of review for summary judgment and then the burden of proof in an enforcement action. The Board will then discuss its findings.

### Standard of Review for Summary Judgment

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). In ruling on a motion for summary judgment, the Board "must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party." *Id.* Summary judgment "is a drastic means of disposing of litigation," and therefore it should be granted only when the movant's right to relief "is clear and free from doubt." Dowd & Dowd, Ltd., 181 Ill. 2d at 483, 693 N.E. 2d at 370, citing Purtill v. Hess, 111 Ill. 2d 299, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on the pleadings, but must "present a factual basis which would arguably entitle [it] to judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

Champion has failed to respond to the request to admit facts as well as the motion for summary judgment. Pursuant to the Board's rules, Champion is deemed to have admitted the facts alleged in the request to admit and to have waived objection to the Board granting the motion for summary judgment. *See* 35 Ill. Adm. Code 101.500(d) and 101.618. Because Champion has admitted the material facts alleged by the People, there are no genuine issues of fact and summary judgment is appropriate.

### Burden of Proof

In an enforcement proceeding before the Board, the burden of proof is by a preponderance of the evidence. Lefton Iron & Metal Company, Inc. v. City of East St. Louis, PCB 89-53 at 3, (Apr. 12, 1990); Bachert v. Village of Toledo Illinois, *et al.*, PCB 85-80 at 3, (Nov. 7, 1985); Industrial Salvage Inc. v. County of Marion, PCB 83-173 at 3-4, (Aug. 2, 1984), *citing* Arrington v. Water E. Heller International Corp., 30 Ill. App. 3d 631, 333 N.E.2d 50,58, (1st Dist. 1975). A proposition is proved by a preponderance of the evidence when it is more probably true than not. Industrial Salvage at 4, *citing* Estate of Ragen, 79 Ill. App. 3d 8, 198 N.E.2d 198, 203, (1st Dist. 1979). A complainant in an enforcement proceeding has the burden of proving violations of the Act by a preponderance of the evidence. Lake County Forest

Preserve District v. Neil Ostro, PCB 92-80, (Mar. 31, 1994). Once the complainant presents sufficient evidence to make a prima facie case, the burden of going forward shifts to the respondent to disprove the propositions. Illinois Environmental Protection Agency v. Bliss, PCB 83-17, (Aug. 2, 1984); *see also* Nelson v. Kane County Forest Preserve, *et. al.*, PCB 94-244 (July 18, 1996); People v. Chalmers, PCB 96-111 (Jan. 6, 2000).

**Findings**

In Count I, the People allege that the practices of Champion in removing the transite panels resulted in improper removal of ACM and that the failure to adequately wet the materials resulted in a violation of Sections 9.1(d) of the Act (415 ILCS 5/9.1(d) (2012)) and 40 CFR §61.145(c)(1) and (6). Count I continues alleging that Champion failed to properly dispose of the RACM and ACM waste in violation of Section 9.1(d) (415 ILCS 5/9.1(d) (2012)) and 40 CFR §61.145(c)(6) and §61.150(b)(1).

The record includes admissions by Champion that its employees struck transite panels with hammers and crowbars, as well as dropping transite panels from varying heights. Mot. Exh. 1 at 1. Mr. Hancock observed these same activities and provided pictures, which document his observations.

The provisions of NESHAP require removal of all RACM before any activity begins that would break up or disturb the material. NESAHP also requires that once the material is removed, that it be wet and lowered carefully to the ground floor and properly transported. The facts as admitted, as testified to, and as documented in the pictures and inspection reports establish that Champion violated Sections 9.1(d) of the Act and 40 CFR §61.145(c)(1), (6) and §61.150(b)(1).

In Count II, the People allege that the improper work practices allowed visual emissions to occur and resulted in air pollution. These activities resulted in violations of Sections 9(a) and 9.1(d) of the Act (415 ILCS 5/9(a) and 9.1(d) (2012)), 40 CFR §61.150(a) and the Board's rules at Section 201.141 (35 Ill. Adm. Code 201.141).

Mr. Hancock specifically stated in his affidavit that there were visible emissions at the site when he inspected the site on May 5, 2005. His inspection report also notes that Champion's employees were told to wet down materials to "knock the dust down". Mot. Exh. 1, Attach B at 3. Champion admits that the inspection report truly and accurately portrays the conditions at the site when Mr. Hancock inspected the site. Mot. Exh. 1 at 2.

NESHAPS requires that there be no visible emissions to the outside during the collection and processing of ACM. NESHAPS specifies how the material is to be transported and the material must be wet. The Act and Board rules prohibit causing or allowing release of contaminants to cause or tend to cause air pollution. Applying the Act, Board regulations, and NESHAPS to the facts in the record, the Board finds that Champion violated Sections 9(a) and 9.1(d) of the Act (415 ILCS 5/9(a) and 9.1(d) (2012)), 40 CFR §61.150(a) and the Board's rules at Section 201.141 (35 Ill. Adm. Code 201.141).

In Count III, the People allege that Champion open dumped materials and that the site does not meet the requirements in the Act and Board regulations as a sanitary landfill. As a result of these actions, the People claim that Champion violated Section 21(a), (e) and (p)(1) of the Act (415 ILCS 5/21(a), (e), and (p)(1) (2012)).

Champion has admitted that it is not permitted to operate a landfill at the site and that debris was placed on the ground. Section 21(a) of the Act prohibits causing or allowing of open dumping, and Section 21(e) prohibits disposal at facilities that do not meet the requirements of the Act or Board rules. Section 21(p)(1) prohibits open dumping that leads to litter.

Based on Champion's admissions and the photographs that further support those admissions, the Board finds that Champion violated Section 21(a), (e) and (p)(1) of the Act (415 ILCS 5/21(a), (e), and (p)(1) (2012))

## REMEDY

The Board found that Champion violated Sections 9(a) and 9.1(d) of the Act (415 ILCS 5/9(a) and 9.1(d) (2012)), and Section 201.141 of the Board's air rules (35 Ill. Adm. Code 201.141) and Sections 61.145(c)(1), 61.145(c)(6), and 61.150(b)(1) of NESHAPS (40 C.F.R. §61.145(c)(1), §61.145(c)(6), and §61.150(b)(1)). The Board must now determine appropriate penalties in this case. In evaluating the record to determine the appropriate penalty, the Board considers the factors of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2012)).

### Statutory Provisions Relating To Penalties

Section 33(c) of the Act provides as follows:

> In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:
>
> (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
>
> (ii) the social and economic value of the pollution source;
>
> (iii) the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
>
> (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges, or deposits resulting from such pollution source; and
>
> (v) any subsequent compliance. 415 ILCS 5/33(c) (2012).

Section 42(h) of the Act provides as follows:

h) In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

(1) the duration and gravity of the violation;

(2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

(3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

(4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;

(5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;

(6) whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency;

(7) whether the respondent has agreed to undertake a ‘supplemental environmental project,’ which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and

(8) whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In determining the appropriate civil penalty to be imposed under subsection (a) or paragraph (1), (2), (3), or (5) of subsection (b) of this Section, the Board shall ensure, in all cases, that the penalty is at least as great as the economic benefits, if

> any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship. However, such civil penalty may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent. 415 ILCS 5/42(h) (2012).

## People's Argument

In addressing the factors included in Section 33(c) of the Act (415 ILCS 5/33(c) (2012)), the People argue that human health and the environment were threated by Champion's violations and the asbestos emissions. Mot. at 8. The People concede that there was social and economic benefit to the demolition of the facility and removal was suitable for the area, but only if the abatement activities were done properly. Mot. at 9. The People opine that reducing or eliminating the emissions and deposits was both technically practicable and economically reasonable. *Id*. The People state that Champion's violations diminished over time, and the completion of the demolition eliminated opportunity for further violations. *Id*.

As to the factors in Section 42(h) of the Act (415 ILCS 5/42(h) (2012)), the People argue that the duration of the violations was from around May 5, 2005, until May 11, 2005, and there are no ongoing violations. Mot. at 10. The People opine that while Champion has stated that it diligently sought to comply, the lack of participation in this proceeding shows a lack of due diligence. *Id*. The People maintain that there was a nominal economic benefit, and the civil penalty sought exceeds such benefit. *Id*. The People argue that a civil penalty of $34,000 will deter further violations and aid in future compliance. *Id*. The People noted that Champion has committed prior violations and that self-disclosure is not an issue. Mot. at 11.

## Discussion on Remedy

The Board will discuss each of the Section 33(c) and 42(h) factors below. The Board will then explain the reasoning for the civil penalty being assessed.

## Section 33(c) Factors

### The Character and Degree of Injury to, or Interference With the Protection of the Health, General Welfare and Physical Property of the People

The Board has found that Champion mishandled ACM and RACM, including improper disposal of the materials. Such actions endanger the health, general welfare, and physical property of the people. Therefore, The Board finds that this factor weighs against Champion.

### The Social and Economic Value of the Pollution Source

The Board agrees with the People that the demolition of the facility by Champion has a social and economic value. However, Champion's methods of removal of ACM did endanger the health of the citizens of the State. Therefore, the Board finds that this factor weighs neither for nor against Champion.

**The Suitability or Unsuitability of the Pollution Source to the Area in Which it is Located, Including the Question of Priority of Location in the Area Involved**

The People assert that the removal of ACM and RACM was appropriate only if done properly. The Board agrees and finds that this factor must be weighed against Champion.

**The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions, Discharges or Deposits Resulting from Such Pollution Source**

The People argue that compliance with the Act and Board is technically practical and economically reasonable. The Board agrees that proper handling and disposal of materials is technically practicable and economically reasonable. Therefore, this factor must be weighed against Champion.

**Any Subsequent Compliance**

The People note that the violations diminished over time and as demolitions were completed there are no ongoing violations. The Board finds that his factor weight in favor of Champion.

**Finding on Section 33(c) factors**

The Board finds that factors in Sections 33(c) justify requiring Champion to pay a civil penalty.

**Section 42(h) Factors**

**Duration and Gravity of the Violation**

The violations began on or around May 5, 2005, and while re-inspection of the site indicated that some violations were corrected, other violations were found at later inspections. The Board finds that consideration of this factor aggravates the assessment of a penalty.

**Due Diligence**

The People argue that the Champion's failure to participate in this proceeding demonstrates a lack of due diligence. The Board disagrees with the People's assessment. Section 42(h)(2) of the Act (415 ILCS 5/42(h)(2) (2012)) specifically refers to diligence in complying with the Act or Board regulations, not to participating in enforcement proceedings. The record contains evidence that Champion did attempt to properly comply with the requirements of the Act and Board regulations after the first inspection. The Board finds that consideration of this factor mitigates the assessment of a penalty.

**Economic Benefits Accrued**

The People stated that there was a nominal economic benefit, and that the requested penalty of $34,000 exceeds any economic benefit. The Board will factor the economic benefit against Champion.

**Penalty Which Will Serve To Deter Further Violations**

The People argue that a total civil penalty of $34,000 will help to deter future violations. The Board finds that that consideration of this factor neither mitigates nor aggravates assessment of a substantial penalty.

**The Number, Proximity In Time, And Gravity Of Previously Adjudicated Violations Of This Act By The Violator**

The record contains evidence of two prior adjudicated violations. The Board finds that that consideration of this factor weighs in aggravation of any penalty.

**Self Disclosure**

The People indicate that self-disclosure is not at issue in this matter; however the Board notes that an anonymous complaint resulted in the inspections that uncovered the violations. The Board finds that consideration of this factor aggravates the assessment of a penalty.

**Supplemental Environmental Project**

A supplemental environmental project is not at issue in this proceeding, so this factor neither aggravates nor mitigates the assessment of a penalty.

**Compliance Commitment Agreement**

A compliance commitment agreement has not been signed, so this factor neither aggravates nor mitigates the assessment of a penalty.

## Appropriate Civil Penalty

In determining the appropriate civil penalty, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2010)). People v. Gilmer, PCB 99-27 (Aug. 24, 2000). The Board must take into account factors outlined in Section 33(c) of the Act in determining the unreasonableness of the alleged pollution. Wells Manufacturing Company v. Pollution Control Board, 73 Ill. 2d 226, 383 N.E.2d 148 (1978). The Board is expressly authorized by statute to consider the factors in Section 42(h) of the Act in determining an appropriate penalty. In addition, the Board must bear in mind that no formula exists, and all facts and circumstances must be reviewed. Gilmer, PCB 99-27, slip. op. at 8.

The Board has stated that the statutory maximum penalty "is a natural or logical benchmark from which to begin considering factors in aggravation and mitigation of the penalty amounts." Gilmer, PCB 99-27, slip. op. at 8, citing IEPA v. Allen Barry, individually and d/b/a

Allen Barry Livestock, PCB 88-71 (May 10, 1990), slip. op. at 72. The basis for calculating the maximum penalty is contained in Section 42(a) and (b) of the Act. *See* 415 ILCS 5/42(a) and (b) (2008). Section 42(a) provides for a civil penalty not to exceed $50,000 for violating a provision of the Act or Board regulations and an additional civil penalty not to exceed $10,000 for each day during which the violation continues. However, the civil penalty for a violation of Section 21(p)(1) of the Act is $1,500 (*see* 415 ILCS 5/42(b)(4-5) (2012)). In this case the statutory maximum for a single violation for each regulation and statute violated by Champion is $601,500. The People ask for a civil penalty of $34,000.

The record contains no evidence of an economic benefit for Champion so the Board cannot determine what economic benefit might have accrued; however, the People claim that the civil penalty of $34,000 will recoup any economic benefit. The violations are of a grave nature, but Champion did act to correct the violations shortly after the first inspection. The People believe that a $34,000 penalty is sufficient to deter future violations and ensure future compliance. The Board also must consider the fact that Champion has two previously adjudicated violations. Based on the evidence, an analysis of the Section 33(c) and 42(h) factors illustrates that there are some mitigating factors against the statutory maximum penalty as well as aggravating factors. Therefore, the Board finds that a $34,000 civil penalty, which will recoup any economic benefit and serve to deter future violations of the Act and Board regulations, is appropriate.

## CONCLUSION

The Board grants the People's motion for summary judgment, finding that Champion violated Sections 9(a) and 9.1(d) of the Act (415 ILCS 5/9(a) and 9.1(d) (2012)), and Section 201.141 of the Board's air rules (35 Ill. Adm. Code 201.141). The Board also finds that Champion violated Sections 61.145(c)(1), 61.145(c)(6), and 61.150(b)(1) of the federal NESHAPS (40 C.F.R. §61.145(c)(1), §61.145(c)(6), and §61.150(b)(1)).

After reviewing the factors in Section 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2012)), the Board finds that a civil penalty of $34,000 will aid in the enforcement of the Act and deter future violations.

This opinion constitutes the Board's findings of fact and conclusions of law.

## ORDER

1. The Board finds that Champion Environmental Services, Inc. (Champion) violated Sections 9(a) and 9.1(d) of the Environmental Protection Act (Act) (415 ILCS 5/9(a) and 9.1(d) (2012)), and Section 201.141 of the Board's air rules (35 Ill. Adm. Code 201.141). The Board also finds that Champion violated Sections 61.145(c)(1), 61.145(c)(6), and 61.150(b)(1) of the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS) (40 C.F.R. §61.145(c)(1), §61.145(c)(6), and §61.150(b)(1)).

2. Champion must pay a civil penalty of $34,000 no later than February 24, 2014, which is the first business day following the 30th day after the date of this order Champion must pay the civil penalty by certified check, money order, or electronic funds transfer, payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name, case number, Champion's federal employer identification number or federal tax identification number must appear on certified check, money order, or electronic funds transfer.

3. Champion 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

Champion must send a copy of the certified check, money order, or record of electronic funds transfer and any transmittal letter to:

Javonna Homan
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706

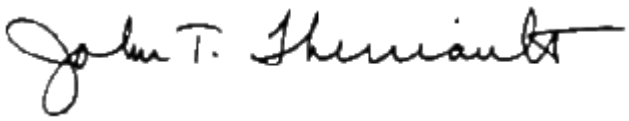
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).

5. Champion must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject 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) (2010); *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 T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 23, 2014 by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board