

ILLINOIS POLLUTION CONTROL BOARD
July 24, 2014

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 15-7
)	(Enforcement – Air)
ERNEST BENNETT, an individual)	
d/b/a BENNET EXCAVATING,)	
)	
Respondent.)	

ORDER OF THE BOARD (by D. Glosser):

On July 11, 2014, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a nine-count complaint against Ernest Bennett (respondent). The complaint concerns respondent’s activities pursuant to his contract with Miller Fertilizer & Feeder, Inc. to demolish a commercial agricultural and chemical building that had stored fertilizer, located at Route 128, Cowden, Shelby County. Accompanying the complaint was a stipulation, proposal for settlement, and request for relief from the hearing requirement. The parties therefore seek to settle the complaint without a hearing. For the reasons below, the Board directs the Clerk to provide public notice of the parties’ stipulation, proposed settlement, and request for relief from the hearing requirement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2012)), 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 (2012); 35 Ill. Adm. Code 103. In this case, the People allege that respondent violated the following provisions by demolishing and then burning the Fertilizer Building:

- Count I Air Pollution, in violation of Section 9(a) of the Act (415 ILCS 5/9(a) (2012));
- Count II Open Burning, in violation of Section 9(c) of the Act (415 ILCS 5/9(c) (2012));
- Count III Failure to Conduct an Inspection Prior to Demolition and Burning, in violation of Section 9.1(d) of the Act (415 ILCS 5/9(d) (2012)) and 40 CFR §61.145(a)¹;

¹ Although the Board generally does not have jurisdiction over federal Clean Air Act (CAA) regulations, 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) (2012). Pursuant to Section 112(b)(1) of the CAA, 42 U.S.C. 7412(b)(1)) the Administrator of the United States Environmental Protection

- Count IV Failure to Provide Written Notice of Demolition, in violation of Sections 9.1(d) and 9.13(b) of the Act (415 ILCS 5/9.1(d) and 9.13(b) (2012)) and 40 CFR §61.145(b);
- Count V Open Dumping, in violation of Section 21(a) of the Act (415 ILCS 5/21(a) (2012));
- Count VI Waste Disposal at a Site That Does Not Meet the Requirements of the Act, in violation of Section 21(e) of the Act (415 ILCS 5/21(e) (2012));
- Count VII Open Dumping of Waste Resulting in Litter, in violation of Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1) (2012));
- Count VIII Open Dumping of Waste Resulting in Open Burning, in violation of Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2012)); and
- Count IX Open Dumping Resulting in the Deposition of General Construction or Demolition Debris, in violation of Section 21(p)(7)(i) of the Act (415 ILCS 5/21(p)(7)(i) (2012)).

On July 11, 2014, the People and respondent, simultaneously with the People's complaint, 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) (2012)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2012)), 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). Under the proposed stipulation, respondent admits to the alleged violations and agrees to pay a civil penalty of \$2,000.

Unless the Board determines that a hearing is needed, the Board must cause notice of the stipulation, proposed settlement, and request for relief from the hearing requirement. Any person may file a written demand for hearing within 21 days after receiving the notice. If anyone timely files a written demand for hearing, the Board will deny the parties' request for relief and hold a hearing. *See* 415 ILCS 5/31(c)(2) (2012); 35 Ill. Adm. Code 103.300(b), (c). The Board directs the Clerk to provide the required notice.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 24, 2014 by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board

Agency lists asbestos as a hazardous air pollutant. Asbestos is a known human carcinogen for which there is no safe level of exposure.