ILLINOIS POLLUTION CONTROL BOARD September 3, 2015

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
1 /)	
V.)	PCB 14-127
)	(Enforcement - Air)
REMEDIATION AND MANAGEMENT)	
SERVICES CORPORATION, an Illinois)	
Corporation,)	
)	
Respondent.)	

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

On April 24, 2014, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a five-count complaint against Remediation and Management Services Corporation (respondent). The complaint concerns respondent's asbestos removal service, employed to perform asbestos removal at several buildings, within the Upper Mississippi River National Fish and Wildlife Refuge located in Savanna, Carroll 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 (2014)), 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 (2014); 35 Ill. Adm. Code 103. In this case, the People allege that respondent violated Sections 9(a), and 9.1(d)(1) of the Act (415 ILCS 5/9(a) and 9.1(d)(1) (2014)), and Sections 61.45(c)(2)(i), (c)(2)(ii), 61.145(c)(6)(i), (c)(6)(ii), 61.150(a)(1), and 61.150(b) of the Asbestos National Emission Standards for Hazardous Air Pollution, (40 C.F.R. §§ 61.145(c)(2)(i), (c)(2)(ii), (c)(6)(i), (c)(6)(ii), 61.150(a)(1), (b) (2013))¹, and Section 201.141 of the Board Air Pollution Regulations (35 Ill. Adm. Code 201.141). The complaint alleges that the respondent violated these provisions by causing, threatening, or allowing the discharge or emission of asbestos, failing to adequately wet asbestos during removal, failing to prevent damage to asbestos during removal, failing to properly contain asbestos, and failing to timely dispose of asbestos.

On July 9, 2015, the People and the respondent filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(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) (2014). Pursuant to Section 112(b)(1) of the CAA, 42 U.S.C. 7412(b)(1)) the Administrator of the United States Environmental Protection Agency lists asbestos as a hazardous air pollutant. Asbestos is a known human carcinogen for which there is no safe level of exposure.

of the Act (415 ILCS 5/31(c)(1) (2014)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2014)), 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 newspaper notice was published in the *Savanna Times Journal* on July 30, 2015. 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) (2014); 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'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) (2014)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondent does not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2010)), which may mitigate or aggravate the civil penalty amount. Respondent agrees to pay a civil penalty of \$12,000. The People and respondent 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. Remediation and Management Services Corporation (respondent) must pay a civil penalty of \$12,000 no later than October 5, 2015, which is the the first business day following 30 days from the date of this order. Respondent must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name, case number, and respondent's federal employer identification must appear on 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:

Nancy J. Tikalsky Assistant Attorney General Environmental Bureau Illinois Attorney General's Office 69 W. Washington Street, Suite 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) (2014)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2014)).
- 5. Respondent shall cease and desist from future violations of the Act, Asbestos NESHAP, and Board Air Pollution Regulations 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) (2014); *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, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 3, 2015, by a vote of 5-0.

1) on a.

Don A. Brown, Assistant Clerk Illinois Pollution Control Board