ILLINOIS POLLUTION CONTROL BOARD January 19, 2017

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)	PCB 13-43
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OPINION AND ORDER OF THE BOARD (by C.M. Santos):

On February 8, 2013, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against Blick's Construction Co., Inc. (Blick's) and Ron Bricker (collectively, respondents). The complaint concerns alleged asbestos abatement violations in connection with a building demolition and renovation project located at 1201 Broadway in Quincy, Adams 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 on behalf of the People 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 respondents violated Sections 9(a) and 9.1(d)(1) of the Act (415 ILCS 5/9(a), 9.1(d)(1) (2014)); Section 201.141 of the Board's regulations (35 Ill. Adm. Code 201.141), and Sections 61.145(c)(1) and (c)(6) and 61.150(a) and (b) of the National Emission Standards for Hazardous Air Pollutants (NESHAP)¹ for asbestos (40 CFR §§ 61.145(c)(1), (c)(6), 61.150(a), (b)).²

On December 2, 2016, 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)

¹ Although the Board generally does not have jurisdiction over federal Clean Air Act regulations, Section 9(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."

² On May 16, 2013, the Board granted Blick's motion to dismiss Count II of the complaint, which had alleged violations of Sections 9.1(d)(1) and 9.13(b) of the Act and Sections 61.145(b)(1) and (b)(3) of the NESHAP for asbestos. Although the Board granted the motion without prejudice and stated that the People "are not precluded from seeking leave to file an amended complaint," the People have not sought leave to do so. <u>People v. Blick's Construction</u> <u>Co. and Ron Bricker</u>, PCB 13-43, slip op. at 11 (May 16, 2013).

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 III. 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 Quincy <u>Herald-Whig</u> on December 19, 2016. 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 III. 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) (2014)), 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) (2014)), which may mitigate or aggravate the civil penalty amount. Blick's agrees to pay a civil penalty of \$15,000, and Bricker agrees to pay a civil penalty of \$500. 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. Blick's Construction Company, Inc. must pay a civil penalty of \$15,000 and Ron Bricker must pay a civil penalty of \$500 no later than Tuesday, February 21, 2017, which is the first business day following the 30th day after the date of this order. Respondents 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 and case number must appear on the face of the certified check or money order.
- 3. Blick's Construction Company, Inc. and Ron Bricker must submit payment of the civil penalty by first-class mail to:

Illinois Environmental Protection Agency Fiscal Services Division 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276 Blick's Construction Company, Inc. and Ron Bricker 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 St., Suite 1800 Chicago, Illinois 60602 ntikalsky@atg.state.il.us

- 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. Blick's Construction Company, Inc. and Ron Bricker must cease and desist from future violations of the Environmental Protection Act, Board regulations, and 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) (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 order on January 19, 2017, by a vote of 5-0.

) on a. Brown

Don A. Brown, Assistant Clerk Illinois Pollution Control Board