

ILLINOIS POLLUTION CONTROL BOARD

June 3, 2010

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Complainant,)
)
v.) PCB 09-39
) (Enforcement - Air)
AL-ALGONQUIN APARTMENTS, LLC,)
an Indiana limited liability company;)
ALGONQUIN APARTMENTS, LLC, an)
Indiana limited liability company; and)
ALGONQUIN MANAGEMENT, LLC, a)
Delaware limited liability company,)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by G.L. Blankenship):

On December 15, 2009, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a six-count complaint against Al-Algonquin Apartments, LLC, Algonquin Apartments, LLC and Algonquin Management, LLC (Respondents). The complaint concerns Respondents' residential apartment building at 1605 East 50th Street in Chicago, Cook 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)),¹ the Attorney General and the State's Attorneys may bring actions before the Board on behalf of the People to enforce Illinois' environmental requirements. *See* 415 ILCS 5/31 (2008); 35 Ill. Adm. Code 103. In this case, the People allege that Respondents violated 9(a) and 9.1(d)(1) of the Act (415 ILCS 9(a), 9.1(d)(1) (2008)), Sections 61.145(b), (c)(3), (c)(6)(i), and (c)(8), and 61.150(b) of the federal regulations on National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos (40 C.F.R. §§61.145(b), (c)(3), (c)(6)(i), (c)(8), 61.150(b)), and Section 201.141 of the Board's air pollution regulations (35 Ill. Adm. Code 201.141)². The People further allege that

¹ 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.

² While the Board generally does not have jurisdiction over USEPA rules, 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) (2008). Pursuant to Section 112(b)(1) of the Clean Air Act, 42 U.S.C. 7412(b)(1) (2007), the Administrator of the U.S. Environmental Protection Agency lists asbestos

Respondents violated these provisions by: (1) failing to adequately wet and keep wet all regulated asbestos-containing material (RACM) removed during renovation operations until such asbestos-containing waste materials were collected and contained in leak-tight wrapping in preparation for disposal, (2) failing to provide notice of a renovation activity, (3) failing to have a trained foreman or representative present during the disturbance of regulated asbestos containing materials, (4) failing to maintain adequate containment of RACM, thereby causing and allowing the release of asbestos fibers into the environment, and (5) failing to deposit all asbestos-containing waste material within a site permitted to accept such waste as soon as practicable.

On April 2, 2010, 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 *Chicago Sun-Times* on April 19, 2010. 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, jointly and severally, a civil penalty of \$43,000. 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.

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. Al-Algonquin Apartments, LLC, Algonquin Apartments, LLC and Algonquin Management, LLC (Respondents), must pay, jointly and severally, a civil penalty of \$43,000 no later than July 6, 2010, which is the next business day after the 30th

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

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, case number, and Respondents' federal tax identification numbers must appear on the face of the certified check or money order.

3. Respondents must submit payment of the civil penalty to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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

Andrew Armstrong
Environmental Bureau
Illinois Attorney General's Office
69 West Washington Street, 18th Floor
Chicago, Illinois 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) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).
5. Respondents must cease and desist from future violation 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) (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 June 3, 2010, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John Therriault, Assistant Clerk
Illinois Pollution Control Board