

the People's motion for summary judgment and Landers' response, the Board provides a discussion and ruling on the People's motion before issuing a final order.

PROCEDURAL BACKGROUND

On August 24, 2006, the People filed a one-count complaint (Compl.) against Landers and ESMI. On September 7, 2006, the Board accepted the complaint for hearing. On February 14, 2008, the People served on ESMI the first set of interrogatories and request for admission of fact and genuineness of documents (Req. Adm.). On April 22, 2008, respondents filed a response to the request for admission of fact and genuineness of documents (Resp. Req. Adm.). On August 10, 2010, the People filed a motion for summary judgment (Mot.) and memorandum of law and argument in support of their motion for summary judgment (Mem. Mot.). In response, on August 31, 2010, counsel for the respondents filed an answer to the motion for summary judgment (Ans. Mot.) on behalf of Landers, without including ESMI in the answer.

THE PEOPLE'S COMPLAINT

In their one-count complaint, the People allege that ESMI is an Illinois not-for-profit corporation in good standing and that, at the time of the alleged violations, ESMI owned the building formerly known as the "Auburn Bowling Alley," located at 1229 West Jackson Street in Auburn, Sangamon County (building or facility). Compl. at 2 (P3). The People also allege that Landers is affiliated with ESMI. *Id.* According to the complaint, respondents violated Section 9.1(d)(1) of the Act (415 ILCS 5/9.1(d)(1) (2008)) by violating 40 C.F.R. § 61.145(b). *Id.* at 4 (P12). Specifically, the complaint alleges that respondents began "demolition" activities at the building before January 14, 2005, and that ESMI and Landers are each an "owner" or "operator" of a demolition activity under the asbestos NESHAP. *Id.* at 4 (P8-11). Additionally, the People allege that respondents violated the asbestos NESHAP, and in turn Section 9.1(d)(1) of the Act, by failing to provide the Illinois Environmental Protection Agency (Agency) written notification of the demolition at least ten working days before commencing the demolition. *Id.* at 4 (P12). Finally, the People allege that Landers' violations are repeated violations under Section 42(f) of the Act (415 ILCS 5/42(f) (2008)) because Landers has previously violated the Act. *Id.* at 4 (P13). The People ask the Board to order that respondents cease and desist from further violations and pay civil penalties and attorney's fees and costs. *Id.* at 4-5 (P13).

RESPONDENTS' ANSWER TO THE COMPLAINT

Respondents admit that ESMI owned the building at the time of the alleged violations and that Landers is affiliated with ESMI. Ans. at 1 (P3). However, respondents deny the following: 1) that ESMI is in good standing; 2) that respondents began "demolition" activities at the building before January 14, 2005; 3) that the building is a "facility" under 40 C.F.R. § 61.141; 4) that ESMI and Landers are each an "owner" or "operator" of a demolition activity under the asbestos NESHAP; 5) that respondents violated Section 9.1(d)(1) of the Act (415 ILCS 5/9.1(d)(1) (2008)) and 40 C.F.R. § 61.145(b); and 6) that Landers' violations are repeated violations under Section 42(f) of the Act (415 ILCS 5/42(f) (2008)). *Id.* at 1-2 (P3-13).

FACTS

In support of their motion for summary judgment and memorandum of law, the People have submitted the affidavits, inspection reports, and photos of Stephen Youngblut (Youngblut), the acting section manager for the Agency's Bureau of Air Field Operations Section, Alan Grimmatt (Grimmett), a field inspector in the asbestos unit of the Agency's Bureau of Air Field Operations Section, and David Jansen (Jansen), the Springfield Region Manager in the Field Operations Section of the Bureau of Land. Mem. Mot. Ex. 1-3. The People use these affidavits, inspection reports, and photos, in addition to ESMI's responses to the People's request for admission of facts, to support their motion. Mot. at 1-3.

In response, Landers has submitted an affidavit (Ans. Mot. Aff.) to support his response to the People's motion. Therefore, the Board will consider this evidence in addition to the complaint and answer filed in this matter. The Board's findings of fact described below are based on these sources.

ESMI is an Illinois not-for-profit corporation that, at the time of the alleged violations, owned the building formerly known as the Auburn Bowling Alley located at 1229 West Jackson Street in Auburn, Sangamon County, Illinois. Compl. at 1-2 (P3); Ans. at 1 (P3). The registered agent for ESMI is Billie Landers, 5000 Dickey John Road, Auburn. *Id.* ESMI is currently in good standing, but ESMI was not in good standing for an unspecified three-year period. Resp. Req. Adm. at 1 (P1).

Defendant Ray F. Landers is a person affiliated with ESMI. Compl. at 1-2 (P3); Ans. at 1 (P3); Resp. Req. Adm. at 1-2 (P3). Landers lives at 5000 Dickey John Road, Auburn. Ans. Mot. Aff. (P1); Resp. Req. Adm. at 1-2 (P4). Landers swears that he has never owned the building described in the complaint, was not the operator of any activity alleged in the complaint, did not make any decision or oversee the alleged activities, and did not own or operate the building or the alleged activities. Ans. Mot. Aff. (P1-6).

The Agency inspected the building five times. During the first inspection on June 4, 2004, Grimmatt and Youngblut conducted the Agency's initial inspection of the building. Mot. Ex. 2 (P6), Ex. 1 (P7). During that initial inspection, the exterior walls of the building were intact. *Id.* At that time, Grimmatt and Youngblut met Landers at the building and Landers informed Grimmatt that he intended to renovate the building after cleaning the building. *Id.* at Ex. 2, Att. A. on December 10, 2004, Jansen inspected the building a second time and observed a large hole in the middle of the outer and inner east-facing exterior walls and rain leaking through the roof. *Id.* at Ex. 3 (P5), Att. A (Photos 001, 006). A third inspection occurred a few weeks later on December 30, 2004, and Jansen observed similar conditions to those that he observed on December 10, 2004. *Id.* at Ex. 3 (P6), Att. A.

On January 14, 2005, Jansen conducted a fourth inspection and observed that the exterior walls on the south end and southwest side of the building were missing, in addition to the concrete blocks that once formed the walls. *Id.* at Ex. 3 (P6), Att. A (Photo 002). Respondents admit that on a date before January 20, 2005, respondents removed concrete blocks from the south and west exterior walls of the building. Resp. Req. Adm. at 2 (P7). Respondents also admit that they installed post jacks at the building to prevent the building's roof from falling. *Id.* at 2 (P8).

On January 20, 2005, Youngblut conducted the fifth inspection of the building. Mot. Ex. 1 (P8). The south exterior wall and approximately one third of the west exterior wall were missing, and post jacks were installed to prevent the roof from collapsing. *Id.* at Ex. 1, Att. B (Photo 001, 006, 007). ESMI did not file written NESHAP notification with the Agency. Resp. Req. Adm. at 3 (P11). Neither did respondents pay the required \$300.00 asbestos fee before beginning demolition activities at the building. *Id.* at 3 (P12-13). To date, the Agency has not received a NESHAP notice or \$300.00 NESHAP fee from the respondents or their representatives. *Id.* at 4 (P15-16).

LEGAL BACKGROUND

Statutory Authorities

Section 3.315 of the Act provides that a “[p]erson’ is an individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.” 415 ILCS 5/3.315 (2008).

Section 9.1(d)(1) of the Act provides that no person shall “[v]iolate any provisions of Sections 111, 112, 165, or 173 of the [CAA], as now amended or hereafter amended, or federal regulations adopted pursuant thereto.” 415 ILCS 5/9.1(d)(1) (2008).

Section 112 of the CAA provides that asbestos is a “hazardous air pollutant.” 42 U.S.C. § 7412(b)(1) (2008); 40 C.F.R. § 61.01(a).

Federal Regulations

The Code of Federal Regulations provides the following relevant definitions at 40 C.F.R. § 61.141:

Asbestos means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthrophyllite and actinolite-tremolite.

Facility means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or few dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

Owner or operator of a demolition or renovation activity means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any

person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

Demolition means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or any intentional burning of any facility.

Structural member means any load-supporting member of a facility, such as beams and load supporting walls; or any nonload-supporting member, such as ceilings and nonload-supporting walls.

The Code of Federal Regulations provides at 40 C.F.R. § 61.145:

- (a) **Applicability.** To determine which requirements of paragraph (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraph (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

* * *

- (2) In a Facility being demolished, only the notification requirements of paragraphs (b)(1), (2), (3)(i) and (iv), and (4)(i) through (vii) and (4)(ix) and (xvi) of this section apply, if the combined amount of RACM is
- (i) Less than 80 linear meters (260 linear feet) on pipes and less than 15 square meters (160 square feet) on other facility components, and
 - (ii) Less than one cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously or there is no asbestos.

* * *

- (b) **Notification Requirements:** Each owner or operator of a demolition or renovation activity to which this section applies shall:

- (1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

* * *

Civil Penalty Provisions

Section 33(c) of the Act provides in its entirety that:

- (c) 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) (2008)

Section 42(h) of the Act provides that:

In determining the appropriate penalty to be imposed . . . the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

- (i) the duration and gravity of the violation;
- (ii) 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;
- (iii) 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;
- (iv) 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;
- (v) the number, proximity in time, and gravity of previously adjudicated violations of the Act by the respondent;
- (vi) whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to; and
- (vii) 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 brought under this Act, but which the respondent is not otherwise legally required to perform. 415 ILCS 5/42(h) (2008).

STANDARD OF REVIEW FOR MOTIONS FOR SUMMARY JUDGMENT

Summary judgment is appropriate where the pleadings, admissions, and affidavits on file show 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 trial court 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 the relief “is clear and free from doubt.” *Id.*, citing Purtill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must “present a factual basis which would arguably entitle [it] to a judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

PEOPLE’S MOTION FOR SUMMARY JUDGMENT

In their motion for summary judgment, the People argue that the complaint, respondents’ response to the request for admission of fact, the People’s motion for summary judgment and memorandum of law in support of their motion, and attachments to their motion establish “all material facts necessary to prove liability on the complaint.” Mot. at 2 (P4). The People further argue that they are entitled to judgment as a matter of law because there is no genuine issue of material fact. *Id.*

In particular, the People describe that the respondents admit certain facts in their response to the request for admission of fact, including that:

- (1) [ESMI] owned the building in question at the time of the violations; (2) that respondents’ activities at the site included removal of concrete blocks from the south and west exterior walls of the building and installation of post jacks to support the roof; and that (3) neither [ESMI nor Landers] filed a written NESHAP notification and attendant fee prior to removal of the concrete blocks. *Id.* at 2 (P6); Resp. Req. Adm. (P5, 7, 8, 9, 11, 12, 13, 14, 15, 16).

ESMI’S ANSWER TO THE MOTION FOR SUMMARY JUDGMENT

ESMI has not responded to the People’s motion. The Board’s procedural rules provide that, “within 14 days after service of a motion, a party may file a response to the motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board . . . in its disposition of the motion.” 35 Ill. Adm. Code 101.500(d); People v. Env’tl Health and Safety Svcs., Inc., PCB 05-51, slip op. at 13 (Jul. 23, 2009). Therefore, ESMI has waived any objection to the Board granting the motion as to ESMI because ESMI has failed to respond to the People’s motion for summary judgment. *See id.*

LANDERS' ANSWER TO THE MOTION FOR SUMMARY JUDGMENT

In his response to the People's motion, Landers argues that there is a question of law regarding whether Landers violated the alleged provisions where Landers did not own the building and where Landers did not oversee or make the decisions for the alleged activities at the building. Ans. Mot. at 2 (P7), Ans. Mot. Aff. (P1-6). In support, Landers attaches an affidavit describing that Landers: 1) never owned the building; 2) "was never the operator of any endeavor that took place [at the building]"; 3) "never made decision [sic] nor oversaw any of the activities [at the building]; and 4) "was never the owner/operator of [the building]." Ans. Mot. Aff. (P2, 4, 5, 6).

DISCUSSION

The Board finds that summary judgment is appropriate as to ESMI, but not as to Landers. The record contains evidence sufficient for the Board to grant the motion as to ESMI. However, there are genuine issues of material fact as to whether Landers was an owner or operator at the building. Therefore, the Board will grant summary judgment as to ESMI and deny summary judgment as to Landers.

The Board will first discuss the People's motion as to ESMI and the evidence and arguments offered in support. The Board will then discuss the People's motion as to Landers and the evidence and arguments offered in support. Finally, the Board will discuss penalties and direct that the People and ESMI brief the issue of penalties when this case is fully disposed.

Motion Granted As to ESMI

The record shows that the ESMI failed to provide a complete Notification of Demolition and Renovation to the Agency, as required by the NESHAP for asbestos. *See* 40 C.F.R. § 61.145(b). First, although respondents deny that the building is a "facility" as defined under 40 C.F.R. § 61.141 (Ans. at 2 (P9)), this section defines "facility" to include buildings like this one, and the Board finds that the building is indeed a facility under 40 C.F.R. § 61.141. Second, respondents admit that ESMI owned the facility during the violations alleged in the complaint (Resp. Req. Adm. at 2 (P5)), and ESMI was therefore an "owner" or "operator" of the facility as defined under 40 C.F.R. § 61.141.

In addition, ESMI's activities were "demolition" activities as defined under 40 C.F.R. § 61.141. "Demolition means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or any intentional burning of any facility." 40 C.F.R. § 61.141. Additionally, "[s]tructural member means any load-supporting member of a facility, such as beams and load-supporting walls; or any nonload-supporting member, such as ceilings and nonload-supporting walls."

Here, the record supports that ESMI's activities at the facility were "demolition" activities. For instance, during the Agency's initial inspection on June 4, 2004, Grimmatt and Youngblut observed that the exterior walls of the facility were intact. Mem. Mot. Ex. 2 (P6), Ex. 1 (P7). However, on January 14, 2005, Jansen inspected the site and observed that the exterior

walls on the south end and southwest side of the facility were missing, and that the concrete blocks that once formed the walls were also missing. *Id.* at Ex. 3 (P6), Att. A (Photo 002). Additionally, ESMI admits that on a date before January 20, 2005, ESMI removed concrete blocks from the south and west exterior walls of the facility. *Resp. Req. Adm.* at 2 (P7). ESMI also admits that ESMI installed post jacks at the facility to prevent the facility's roof from falling. *Id.* at 2 (P8). Further, on January 20, 2005, Youngblut inspected the facility. *Mot. Ex. 1* (P8). Youngblut observed that the south exterior wall and approximately one third of the facility's west exterior wall were missing, and that ESMI installed post jacks to prevent the roof from collapsing. *Id.* at Ex. 1, Att. B (Photo 001, 006, 007). Therefore, the Board finds that ESMI conducted demolition activities at the facility because ESMI removed load-supporting walls at the facility.

Also, the record demonstrates that ESMI did not notify the Agency before beginning the demolition activities at the facility. For instance, ESMI admits that ESMI did not file written NESHAP notification with the Agency. *Resp. Req. Adm.* at 3 (P11). Neither did ESMI pay the required \$300.00 asbestos fee before beginning demolition activities at the facility. *Id.* at 3 (P12-13). To date, the Agency has not received a NESHAP notice or \$300.00 NESHAP fee from ESMI or its representatives. *Id.* at (P15-16). Therefore, the Board finds that ESMI violated 40 C.F.R. § 61.145(b) because it did not provide a complete Notification of Demolition and Renovation to the Agency before beginning demolition activities.

The Board finds that the complaint and answer filed in this matter, ESMI's admissions on file, together with the affidavits supporting the People's motion, are sufficient to prove that there are no genuine issues of material fact and that the People are entitled to judgment as a matter of law against ESMI on the one-count complaint. Consequently, the Board grants the People's motion for summary judgment as to Count I against ESMI and finds that ESMI violated section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2008)) and 40 C.F.R. § 61.145(b).

In the request for relief in their complaint, the People requested that the Board: (1) direct the respondents to cease and desist from further violations; (2) impose on respondents a monetary penalty of not more than the statutory maximum pursuant to Section 42(a) of the Act (415 ILCS 5/42(a) (2008)); and (3) award the People costs in this matter, including reasonable attorney's fees and expert witness costs pursuant to Section 42(f) of the Act (415 ILCS 5/42(f) (2008)). *Compl.* at 4-5 The People did not renew this request in their motion for summary judgment, but rather, requested only an imposition of a monetary penalty. *See Mem. Mot.* at 6 (Relief Sought). To award attorneys' fees under Section 42(f), the People must include an amount for these costs and argue that ESMI's violations are "willful, knowing, or repeated." *See* 415 ILCS 5/42(f) (2008). The Board also notes that the Peoples have not included a discussion of the factors provided in Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2008)). The Board directs the People to brief these issues when in final briefs on Landers and the Board will issue a proper penalty to ESMI when rendering a final decision as to Landers. Further, if the People seek the Section 42(f) penalties described above (415 ILCS 5/42(f) (2008)), the Board directs the People to address these factors in their brief addressing penalties.

Motion Denied As to Landers

Although the record supports that ESMI was an “owner” or “operator” at the facility, there is a genuine issue of material fact as to whether Landers was an owner or operator at the facility. “Owner or operator of a demolition or renovation activity means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.” 40 C.F.R. § 61.141

Here, Landers admits that he is affiliated with ESMI. Compl. at 2 (P3); Ans. at 1 (P3); Resp. Req. Adm. at 1 (P3). Additionally, Landers admits that he lives at 5000 Dickey John Road, Auburn, Illinois 62615. Resp. Req. Adm. at 2 (P4); Ans. Mot. Aff. (P1). The Board notes that this is the same address as the registered agent for ESMI, Billie Landers, but that Landers is not the registered agent for ESMI. Compl. at 2 (P3); Ans. at 1 (P3).

Although the record shows that during the Agency’s initial inspection, on June 4, 2004, Grimmert and Youngblut met Landers at the facility and Landers informed Grimmert that he intended to renovate the facility after cleaning the facility (Mot. Ex. 2 (P6), Ex. 2 Att. A, Ex. 1 (P7)), an issue of fact exists as to whether Landers owned or operated the facility during ESMI’s violations. For instance, Landers’ affidavit describes that Landers has never owned the facility, was not the operator of any activity alleged in the complaint, did not make any decision or oversee the alleged activities, and did not own/operate the facility or the alleged activities. Ans. Mot. Aff. (P1-6). Therefore, the Board finds that Landers has raised a genuine issue of material fact as to whether he owned or operated the facility during ESMI’s violations at the facility, as described above. Accordingly, the Board denies the People’s motion as to Landers.

Penalties

Having found that ESMI violated Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2008)), 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) (2008)). However, the People have neither argued an appropriate penalty amount nor discussed the factors of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2008)). Therefore, the Board reserves ruling on penalties against ESMI until this case is disposed as to both ESMI and Landers. The Board directs the People to brief the factors of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2008)) in final briefs on Landers and the Board will issue a proper penalty to ESMI when rendering a final decision as to Landers. The Board will give ESMI an opportunity to respond to the People’s brief regarding penalties and, after the time periods for these filings have expired, the Board will issue a final opinion and order assessing an appropriate civil penalty. *See id*; 415 ILCS 5/42(a) (2008).

CONCLUSION

The Board finds that there is no genuine issue of material fact and grants the People's unopposed motion for summary judgment as to ESMI and finds that ESMI violated Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2008)) and the NESHAP for asbestos, as alleged in the People's one-count complaint. However, the Board denies the People's motion for summary judgment as to Landers. The Board directs the People and ESMI to brief the issue of penalties and the factors of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2008)) in final briefs on Landers and the Board will issue a proper penalty to ESMI when rendering a final decision as to Landers.

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

ORDER

1. The Board grants the motion for summary judgment filed by the Office of the Attorney General, on behalf of the People of the State of Illinois (People), and finds that Equipping the Saints Ministry International, Inc. (ESMI) violated Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2008)) and 40 C.F.R. § 61.145(b). However, the Board denies the People's motion for summary judgment as to Defendant Ray F. Landers (Landers).
2. The Board directs the People to brief the issue of penalties and the factors of Sections 33(c) and 42(h) of the Act (415 ILCS 5/33(c) and 42(h) (2008)).
3. The Board will give ESMI an opportunity to respond to the People's brief regarding penalties and, after the time periods for these filings have expired, the Board will issue a final opinion and order assessing an appropriate civil penalty under 415 ILCS 5/42(a) (2008).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 18, 2010, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board