ILLINOIS POLLUTION CONTROL BOARD March 15, 2012

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
V.)	PCB 12-85
)	(Enforcement - Air)
CHARLES COWELL,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by T.A. Holbrook):

On November 29, 2011, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against Charles Cowell (Respondent). The complaint concerns Respondent's demolition work at five sites in Sparta, Randolph County: 200 West Broadway, 202 West Broadway, 206 West Broadway, 221 South St. Louis Street, and 205 West Jackson. 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 (2010)), 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 (2010); 35 Ill. Adm. Code 103. In this case, the People allege that Respondent violated 40 C.F.R. §§ 61.145(b), 61.145(c)(1), 61.145(c)(8), and 61.150(b) ¹, and Section 9.1(d)(1) of the Act (415 ILCS 5/9.1(d)(1) (2010)). The complaint claims Respondent committed these violations by failing to perform a thorough inspection for the presence of asbestos; failing to submit notification of demolition to the Illinois Environmental Protection Agency ten working days prior to commencing such demolition activities; failing to properly remove regulated asbestos-containing materials prior to demolition activities; and failing to deposit, as soon as practical, all asbestos-containing waste material generated during renovation and demolition activities at a site permitted to accept such waste.

On January 25, 2012, the People and Respondent 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) (2010)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2010)), 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

¹ Although the Board generally does not have jurisdiction over federal Clean Air Act regulations, Section 9(b) of the Act provides that National Emissions Standards for Hazardous Air Pollutants (NESHAP) "are applicable to the state and enforceable under the Act." 415 ILCS 5/9(b) (2010). Pursuant to Section 112(b)(1) of the CAA, 42. U.S.C. 7412(b)(1) (2007), the Administrator of the U.S. Environmental Protection Agency lists asbestos as a hazardous air pollutant.

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 County Journal* on February 9, 2012. 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) (2010); 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 III. 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) (2010)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondent admits the alleged violation. 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 \$30,000.00. 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.

ORDER

- 1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
- 2. Charles Cowell (Respondent) must pay a civil penalty of \$30,000.00 no later than April 16, 2012, which is the first business day following the 30th day after 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 and case number must appear on the face of the 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:

Environmental Bureau Illinois Attorney General's Office 500 South Second Street Springfield, Illinois 62706

- 4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
- 5. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were subject matter of this 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) (2010); 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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 15, 2012, by a vote of 5-0.

John T. Therriault, Assistant Clerk Illinois Pollution Control Board

John T. Therrian