

(RACM) during asbestos removal and waste disposal activities at the fertilizer storage unit at the site

COUNT II

Sections 61.145(a) and (b) of the NESHAP for asbestos, 40 C.F.R. 61.145(a) and (b), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d). Prior to commencing asbestos removal activities at the fertilizer storage building, respondent failed to thoroughly inspect the facility for the presence of asbestos, including Category I and Category II non-friable asbestos-containing material (ACM) and failed to provide the Illinois EPA a notification of demolition and renovation informing the Illinois EPA of its intent to conduct renovation activities.

COUNT III

Sections 61.145(c)(1); 61.145(c)(2)(i) and (ii); 61.145(c)(4); 61.145(c)(6); 61.145(c)(8); and 61.150(a)(1)(iii), (iv) and (v) of the NESHAP, 40 CFR 61.145(c)(1); 61.145(c)(2)(i) and (ii); 61.145(c)(4); 61.145(c)(6); 61.145(c)(8); and 61.150(a)(1)(iii), (iv) and (v). Respondent failed to remove all RACM prior to commencing demolition activities, including Category I non-friable ACM, that would breakup, dislodge, or similarly disturb the material. Respondent failed to wet all RACM and prevent damage or disturbance to the RACM exposed during cutting or disjoining operations at the fertilizer storage building. Respondent failed to wet and contain all RACM during the removal of Category I asbestos containing transite siding panels. Respondent failed to adequately wet and maintain wet all RACM and regulated asbestos-containing waste material until collected and contained in preparation for disposal at a site permitted to accept such waste. Respondent failed to adequately wet, keep wet, and containerize all regulated asbestos containing waste material thereby causing or allowing the discharge of visible emissions to the outside air.

COUNT IV

Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2012), and Section 61.150(b) of the NESHAP, 40 C.F.R. 61.150(b). Respondent failed to transport to a waste disposal site as soon as practical all asbestos-containing waste material generated during demolition activities.

On September 5, 2013, 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) (2012)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2012)), 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 *Pike Press* on September 25, 2013. 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) (2012); 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) (2012)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondent did not affirmatively admit to the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2012)), which may mitigate or aggravate the civil penalty amount. Respondent agrees to pay a civil penalty of \$17,500. 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. T.S. Banze Construction, Inc. (respondent) must pay a civil penalty of \$17,500 no later than December 9, 2013, 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, case number, and respondent's federal tax identification 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) (2012)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2012)).
5. Respondent must cease and desist from future violations 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) (2012); *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, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 7, 2012, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board