

ILLINOIS POLLUTION CONTROL BOARD

August 13, 2020

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 20-73
) (Enforcement - Air)
BSREP II WEST JACKSON LLC, a Delaware)
corporation,)
)
 Respondent.

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

On April 27, 2020, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a one-count complaint against BSREP II West Jackson LLC (BSREP II). The complaint concerns BSREP II’s office building located at 175 West Jackson Boulevard 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 (2018)), 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 (2018); 35 Ill. Adm. Code 103. In this case, the People allege that BSREP II violated Section 201.302(a) of the Board Air Pollution Regulations (35 Ill. Adm. Code 201.302(a)), Sections 254.132(a) and 254.137(a) of the Illinois EPA Air Pollution Regulations (35 Ill. Adm. Code 254.132(a) and 254.137(a)), and Section 9(a) of the Act (415 ILCS 5/9(a) (2018)) by failing to submit a complete and accurate annual emissions report for calendar year 2018.

On April 27, 2020, the People and BSREP II 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) (2018)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2018)), 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 May 26, 2020. 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) (2018); 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 BSREP II’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) (2018)), which bears on the reasonableness of the circumstances surrounding the alleged violations. BSREP II neither admits nor denies the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2018)), which may mitigate or aggravate the civil penalty amount. Under the proposed settlement, BSREP II agrees to pay a civil penalty of \$5,000 within 30 days after the date of this order. The People and BSREP II 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. BSREP II must pay a civil penalty of \$5,000 no later than September 14, 2020, which is the first business day following the 30th day after the date of this order. BSREP II 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 (EPTF). The case name and case number must appear on the face of the certified check or money order.

3. BSREP II 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

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

Arlene R. Haas
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 West Washington Street, Suite 1800
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) (2018)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2018)).

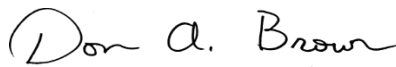
5. BSREP II must cease and desist from future violations of the Act and Board regulations that were the subject matter of the Complaint.

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) (2018); *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. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board
People of the State of Illinois Attn: Arlene R. Haas 69 West Washington Street, Suite 1800 Chicago, Illinois 60602 ahaas@atg.state.il.us	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601
BSREP II West Jackson LLC Attn: Katrina A. Hausfeld 444 West Lake Street, Suite 900 Chicago, Illinois 60601 katrina.hausfeld@us.dlapiper.com	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 13, 2020, by a vote of 4-0.



Don A. Brown, Clerk
 Illinois Pollution Control Board