



failing to provide the Illinois Environmental Protection Agency with written notification of the demolition at least ten working days before commencing the demolition.

On November 18, 2010, the Board issued an interim opinion and order granting the People's motion for summary judgment against ESMI finding that ESMI violated Section 9.1(d)(1) of the Act (415 ILCS 5/9.1(d)(1) (2012)). On August 18, 2011, the Board found that a civil penalty was warranted and directed ESMI to pay a civil penalty of \$3,000.

On November 18, 2013, 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)) was filed in this proceeding. The proposed stipulation, signed by both Landers and ESMI, states:

The respondents shall pay a civil penalty in the sum of five thousand four hundred dollars (\$5,400) within thirty (30) days from the date the Board adopts and accepts this stipulation. The respondent Ray Landers shall pay \$1,500, within 30 days of the date of entry of this stipulation. The remainder of the penalty shall be assessed against the respondent Ministry [ESMI] and is also due within 30 days of the date of the entry of this stipulation. Stip. at 6.

On November 21, 2013, the Board issued an order questioning whether the parties are seeking to modify the Board's August 18, 2011 order assessing a civil penalty of \$3,000 against ESMI, or whether there is another reason for the penalty amounts proposed.

### **MOTION TO ACCEPT STIPULATION AND SETTLEMENT**

On November 27, 2013, the People filed a motion for acceptance of the stipulation (Mot.). In the motion, the People state that ESMI has not paid the civil penalty assessed against it by the Board in 2011. Mot. at 1. The People state:

To resolve all outstanding issues and liability against respondent Landers, as well as to resolve any issues of nonpayment of the outstanding previously ordered penalty against the Ministry [ESMI], and to bring this matter to a complete conclusion, the parties agreed to the Stipulation. *Id.*

The parties request that the Board accept the stipulation. *Id.*

The Board will provide notice of the stipulated settlement as to the respondent Landers. However, while the Board appreciates the parties request to include ESMI in the settlement of this case, the Board lacks jurisdiction over ESMI at this time. The Board reminds that in entering its order assessing the civil penalties against ESMI, the Board did so at the People's request. In that order, the Board noted:

when the Board ruled on the motion for summary judgment the Board indicated that the appropriate penalty would be decided at the conclusion of the case against Landers. See People v. Ray F. Landers and Equipping the Saints Ministry International, Inc., PCB 07-13 slip op. at 11 (Nov. 18, 2010).

However, the Board will grant the People's request to consider a civil penalty against ESMI rather than at the completion of the case. See People v. Ray F. Landers and Equipping the Saints Ministry International, Inc., PCB 07-13 slip op. at 7 (Aug. 18, 2011).

The August 18, 2011 order also included the standard appeal language included in Board final orders referring to Section 41 of the Act (415 ILCS 5/41 (2012)). Pursuant to Section 41 of the Act, appeals of Board decisions must be filed within 35 days from the date that a copy of the final order is served upon the parties. 415 ILCS 5/41(a) (2012). No appeal of the August 18, 2011 order was filed by the People or ESMI.

The Board's procedural rules also provide for relief from final orders at Section 101.902 and 101.904 (35 Ill. Adm. Code 101.902 and 101.904). Section 101.902 allows for motion to reconsider to be filed within 35 days of the receipt of a final decision; no request to reconsider the August 18, 2011 order was filed. Section 101.904 allows for modification of a Board final order to correct clerical errors (Section 101.904(a)) or if there is newly discovered evidence, fraud or a jurisdictional defect (Section 101.904(b)). None of those appear to be true for the August 18, 2011 order.

Based on the Board's procedural rules and the statutory language at Section 41 of the Act, the Board cannot find support for revisiting its August 18, 2011 order. The Board also finds that it lacks authority, absent support from the Board's procedural rules or Section 41 of the Act, to reopen the case against ESMI. Therefore, the Board will not include ESMI in its order on the stipulated settlement.

### **PUBLICATION NOTICE**

On November 18, 2013, the People and Landers 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 public hearing. See 35 Ill. Adm. Code 103.300(a). Under the proposed stipulation, Landers does not affirmatively admit the alleged violations and agrees to pay a civil penalty of \$1,500.

Unless the Board determines that a hearing is needed, the Board must cause notice of the stipulation, proposed settlement, and request for relief from the hearing requirement. Any person may file a written demand for hearing within 21 days after receiving the notice. If anyone timely files a written demand for hearing, the Board will deny the parties' request for relief and hold a hearing. See 415 ILCS 5/31(c)(2) (2010); 35 Ill. Adm. Code 103.300(b), (c). The Board directs the Clerk to provide the required notice.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 19, 2013 by a vote of 4-0.

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

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John T. Therriault, Clerk  
Illinois Pollution Control Board