ILLINOIS POLLUTION CONTROL BOARD July 24, 2003

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
v.)	PCB 04-7
)	(Enforcement - Air)
4832 S. VINCENNES, L.P., an Illinois limited)	
partnership, and BATTEAST)	
CONSTRUCTION COMPANY OF)	
ILLINOIS, INC., an Illinois corporation,)	
)	
Respondents.)	

ORDER OF THE BOARD (by T.E. Johnson):

On July 14, 2003, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against 4832 S. Vincennes, L.P. (Vincennes) and Batteast Construction Company of Illinois, Inc. (Batteast Construction). *See* 415 ILCS 5/31 (2002). According to the complaint, Vincennes and Batteast Construction violated asbestos requirements while renovating Vincennes' four-story, 67-unit, residential apartment building at 4832 S. Vincennes Ave., Chicago, Cook County. For the reasons below, the Board accepts the complaint for hearing.

In count I of the complaint, the People allege that Vincennes, as the property owner, and Batteast Construction, as the renovation manager, caused or tended to cause air pollution in violation of the Environmental Protection Act (Act) (415 ILCS 5/9(a) (2002)) and Board regulation (35 Ill. Adm. Code 201.141) by causing, threatening, or allowing fibers of dry, friable asbestos to be released into the air and exposed to the environment during the renovation. In count II, the People allege that Vincennes and Batteast Construction violated the National Emission Standards for Hazardous Air Pollutants (NESHAPS) under the federal Clean Air Act (42 U.S.C. § 7412; 40 C.F.R. § 61.145) and thus violated the Act (415 ILCS 5/9.1(d)(1) (2002)) by failing to thoroughly inspect the building for asbestos, by failing to remove all regulated asbestos-containing material (RACM) before disturbing or precluding access to the material, and by failing to adequately wet all RACM before disposal. The People ask the Board to order Vincennes and Batteast Construction (1) to cease and desist from further violations; (2) to each pay a civil penalty of \$50,000 for each violation and an additional civil penalty of \$10,000 per day for each day a violation continued; and (3) to pay the People's costs and attorney fees incurred in this enforcement action. The Board finds that complaint meets the content requirements of the Board's procedural rules. See 35 Ill. Adm. Code 103.204(c), (f).

The Board accepts the complaint for hearing. *See* 35 Ill. Adm. Code 103.212(c). A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if a respondent fails within that timeframe to file an

answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider the respondent to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d).

The Board directs the hearing officer to proceed expeditiously to hearing. Among the hearing officer's responsibilities is the "duty . . . to ensure development of a clear, complete, and concise record for timely transmission to the Board." 35 Ill. Adm. Code 101.610. A complete record in an enforcement case thoroughly addresses, among other things, the appropriate remedy, if any, for the alleged violations, including any civil penalty.

If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. See 415 ILCS 5/33(c), 42(h) (2002). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondent to do to correct an on-going violation, if any, and, second, whether to order the respondent to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondent has subsequently eliminated the violation.

If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondent, only then does the Board consider the Act's Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount, such as the duration and gravity of the violation, whether the respondent showed due diligence in attempting to comply, any economic benefit that the respondent accrued from delaying compliance, and the need to deter further violations by the respondent and others similarly situated.

Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any, including whether to impose a civil penalty, and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any, including a specific dollar amount, and supporting its position with facts and arguments that address any or all of the Section 42(h) factors.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 24, 2003, by a vote of 6-0.

Dorothy M. Gunn, Clerk Illinois Pollution Control Board

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