

ILLINOIS POLLUTION CONTROL BOARD
April 15, 1999

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 97-203
) (Enforcement - Air)
SPIRICO ENVIRONMENTAL, INC., a)
Missouri corporation,)
)
Respondent.)

THOMAS DAVIS, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE PEOPLE OF THE STATE OF ILLINOIS

J. ERIC BERRY OF THOMPSON COBURN APPEARED ON BEHALF OF RESPONDENT
INTERIM OPINION AND ORDER OF THE BOARD (by N.J. Melas):

This matter is before the Board on a complaint (Comp.) filed by the Illinois Attorney General's Office on behalf of the People of the State of Illinois (complainant) on May 14, 1997. The complaint was brought pursuant to Section 31 of the Act. 415 ILCS 5/31 (1996).

In count I of the complaint, complainant alleges that respondent Spirco Environmental Inc. (Spirco) violated Section 9(a) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/9(a) (1996)) by causing air pollution during the course of asbestos removal activities at the abandoned Pabst Brewery structure (Pabst structure) in Peoria Heights, Peoria County, Illinois.¹ Comp. at 1-4.

In count II, complainant alleges that Spirco violated Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (1996)) and Section 61.145 of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) (40 C.F.R. § 61.145 (1997)) by failure to completely file notices of demolition and renovation for the Pabst structure with the Illinois Environmental Protection Agency (Agency) and failure to perform an inspection of the Pabst structure prior to renovation. Comp. at 4-8.

In count III, complainant alleges that Spirco violated Section 9.1 (d) of the Act, and Sections 61.145(c) and 61.150 of the asbestos NESHAP (40 C.F.R. §§ 61.145(c), 61.150 (1997)) by failure to adequately wet asbestos at the Pabst structure and label the containers or use a proper alternative method for proper disposal of asbestos. Comp. at 8-11.

¹ Although all of the references in the record state that the Pabst structure is in Peoria, the Board has learned that the structure is in Peoria Heights. The Board takes administrative notice that the Pabst structure is in Peoria Heights.

For the reasons below, the Board finds Spirco in violation of Section 9.1(d) of the Act and Sections 61.145(b) and (c) of the asbestos NESHAP. The Board imposes a civil penalty of \$9,000.

The Board will first discuss the procedural history, the background, and the burden of proof in this case. The Board will then examine count I of the complaint, preliminary matters pertaining to the asbestos NESHAP, count II, and count III. The Board will then consider the factors from Section 33(c) of the Act and the penalty factors from Section 42(h) of the Act before determining the interim order.

PROCEDURAL HISTORY

The hearing in this matter was held on September 29, 1998, before Board Hearing Officer Amy Jackson.² Thomas Davis appeared for complainant, and J. Eric Berry appeared for Spirco. Complainant presented one witness, David Fodor, the acting NESHAP coordinator for the Agency, who inspected the Pabst structure on January 10, 1996. Tr. at 11, 17, 28, and 77. Spirco presented one witness, Jeffrey Scott DeCaney, who was second in command for Spirco's asbestos removal operation at the Pabst structure on January 10, 1996. Tr. at 166. James Bowker, the person in charge of the Spirco operations at the Pabst structure on January 10, 1996, was no longer a Spirco employee at the time of the hearing. Tr. at 167, 173.

The Hearing Report, which included a Stipulation of Facts (Stip.), was filed October 7, 1998. On October 27, 1998, complainant filed Complainant's Motion to Conform Pleadings to Proof. This motion amends the original complaint in order to reflect the Stipulation of Facts. The Board's procedural rules at Section 103.210(a) state that "[p]roof may depart from pleadings and pleadings may be amended to conform to proof, so long as no undue surprise results . . ." 35 Ill. Adm. Code 103.210(a). The Board grants the motion.

The post hearing briefs filed included Complainant's Brief of November 12, 1998 (Comp. Br.), Respondent's Brief of December 10, 1998 (Resp. Br.), and Complainant's Reply Brief (Reply Br.) of December 17, 1998. On December 18, 1998, complainant filed a "Motion to Revise Complainant's Reply Brief" (Mot. Rev.) which the Board granted in an order dated January 7, 1999.

BACKGROUND

The 12-story, 80,000 square foot former Pabst Brewery was located at the corner of Prospect and Seiberling Streets in Peoria Heights, Illinois. Stip. at 1; Tr. at 141; Rsp. Exh. 3 and 4. On November 28, 1995, Spirco submitted to the Agency a NESHAP notification of demolition form for the abandoned Pabst structure, but the second page of the form was inadvertently omitted. Stip at 2; Tr. at 71-72, 78-79. The first page of the form provided information on the presence of asbestos at the structure, that asbestos removal would take place, and the dates between which asbestos removal would occur. Stip. at 2; Tr. at 118; Rsp.

² The transcript of the hearing is cited as "Tr. at __."

Exh. 3 and 4. As a result of the omission, the Agency had no notice with respect to many of Spirco's work practices during the asbestos removal process. Tr. at 25-26. After the omission was brought to Spirco's attention, Spirco submitted the missing information. Stip at 2.

On or about January 2, 1996, Spirco began an asbestos removal project at the Pabst structure. Stip. at 1-2. Prior to January 2, 1996, unknown persons had apparently salvaged parts of the Pabst structure, disturbed asbestos-containing material (ACM), put ACM into bags, and abandoned the bags at the Pabst structure. Stip. at 2; Tr. at 64, 71-72, 153, 176-177, 189, 194-196, 205, 213, 221; Comp. Exh. 2 at Photos 2, 12-14. DeCaney said that unknown persons had removed copper vats from the Pabst structure, and, during the process, left insulation on the floor. Tr. at 176. He also stated that there were piles of debris in the Pabst structure. Tr. at 176.

On January 10, 1996, Fodor visited the site. Stip. at 2; Tr. at 11, 17, and 28. Fodor observed Spirco's employees sweeping the first floor of the Pabst structure and placing the swept product into bags. Stip at 2; Tr. at 33, 39, 47, 54, 98. An estimated 800 bags of debris were at the structure that day. Stip. at 2; Tr. at 42-43. There was ACM in the bags, and the bags lacked tags, labels, and generator information. Stip at 2; Tr. at 43. Fodor collected two samples of floor sweepings and one sample from the bags. Stip. at 2. The debris samples were from the first floor of the Pabst structure, and Fodor took a bag with him. Tr. at 62, 103. Tests on the sample from the bags revealed concentrations of asbestos ranging from 10% to 20% chrysotile asbestos and 20% to 30% amosite asbestos. Stip. at 2; Tr. at 46. The tests revealed that the floor sweepings were only 1% asbestos. Stip. at 2; Tr. at 62.

BURDEN OF PROOF

The complainant's burden of proof in this matter is set forth in Section 31(e) of the Act (415 ILCS 5/31(e)) which provides:

- e. In hearings before the Board under this Title the burden shall be on the Agency or other complainant to show either that the respondent has caused or threatened to cause air or water pollution or that the respondent has violated or threatens to violate any provision of this Act or any rule or regulation of the Board or permit or term or condition thereof.

COUNT I

Statutory Framework

Complainant alleges that Spirco has violated Section 9(a) of the Act by releasing asbestos into the air. Comp. at 1-4. Section 9(a) of the Act (415 ILCS 5/9(a) (1996)) provides:

No person shall:

- a. Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

Air Pollution is defined at Section 3.02 of the Act (415 ILCS 5/3.02 (1996)) as:

The presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

Contaminant is defined as “any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.” 415 ILCS 5/3.06 (1996).

Facts

At the hearing, Fodor stated that when he appeared at the Pabst structure on January 10, 1996, he inspected the outside of the structure. Tr. at 28. He saw a large brick structure with broken windows. Tr. at 28-29. There was also a large hole in the building covered up by polyethylene sheeting (poly). Tr. at 28; Comp. Exh. 2 at Photo 6. Fodor stated that poly is often used in the asbestos industry to create barriers. Tr. at 28.

Fodor said that he could feel air flowing through the Pabst structure during his inspection, and he specifically mentioned the second and third floors where not all of the ACM had yet been removed. Tr. at 56-57, 135; Comp. Exh. 2 at Photo 12. Fodor said that he could see debris kicked up into the air while Spirco employees were sweeping the floor and that he could see debris floating with the air currents in the structure. Tr. at 56-57. Fodor testified that there were no physical barriers between the area of the sweeping operation and the outdoors because the windows on that floor were broken. Tr. at 28-29, 56-57, 105; Comp. Exh. 2 at Photo 6.

DeCaney said that the windows were already broken the first time that he was in the Pabst structure several days before Fodor’s inspection. Tr. at 176. However, DeCaney stated that when cleaning the upper floors of the Pabst structure, Spirco workers covered the broken windows with poly, sealed the floor from the staircase and placed a negative air machine (see explanation below) in the elevator shaft. Tr. at 181, 186. DeCaney said that Spirco cleared asbestos by floor and that while a floor was being cleaned it was under full containment. Tr. at 183-184; Resp. Br. at 9.

The debris on the floor was whitish, powdery, dry, and friable. Tr. at 39, 45-46, 48-50; Comp. Exh. 2 at photos 2, 11, and 15. The asbestos NESHAP definition of friable asbestos material is “any material containing more than 1 percent asbestos . . . , that, when

dry, can be crumbled, pulverized, or reduced to powder by hand pressure.” 40 C.F.R. § 61.141 (1997).

There were also chunks of material covering the floors and falling off tanks which were mixed in with the debris. Tr. at 51, 61; Comp. Exh. 2 at Photos 11, 12, 15. The whitish-grayish insulation covering on the pipes at the Pabst structure was consistent with the material covering the floors of the Pabst structure. Tr. at 49, 52, 84; Comp. Exh. 2 at Photos 2, 12 - 14. Sampling later determined that pipe covering from the Pabst structure was mag block, an ACM that is powdery and pressed into form as pipe insulation. Tr. at 52-53.

Fodor said that a negative air containment system was needed to keep asbestos from migrating outside. Tr. at 67. Negative air filtration lowers air pressure inside a building so that air flows in the building and not out (through, for example, windows or cracks) ensuring that the asbestos remains in the building. Tr. at 69. As proof that there was no negative pressure at the Pabst structure that day, Fodor pointed to a photograph that he took on January 10, 1996. Comp. Exh. 2 at Photo 6. If there was negative pressure, the poly in the photograph would be bulging in, but it is bulging out. Tr. at 68.

Fodor said that he saw negative air machines without filters stored in the lower level of the Pabst structure on January 10, 1996; it appeared that they were not in use that day. Tr. at 68. DeCaney testified that on January 10, 1996, Spirco had negative air containment on at least one or two floors that were in the process of being cleared. Tr. at 208.

Fodor said that some of the 800 bags filled with ACM had holes in them. Tr. at 45. However, DeCaney said that as soon as they squirted water into the bags, they twisted the bags and then sealed them with duct tape. Tr. at 168-169.

Fodor admitted that Spirco had a “decon chamber” at the Pabst structure in order to ensure that Spirco employees did not track asbestos out of the Pabst structure. Tr. at 177.

Discussion

In the early 1970s, the United States Environmental Protection Agency (USEPA) determined that asbestos was a “significant risk to human health” and took the first in a long series of steps to regulate it as a hazardous air pollutant. 55 Fed. Reg. 48,406 (1990); 36 Fed. Reg. 5,931 (1971). Long term exposure to asbestos can cause a debilitating fibrous scarring of the lungs called asbestosis and a form of cancer called mesothelioma. USEPA Office of Air Quality Planning & Standards Unified Air Toxics Website - Asbestos (visited March 26, 1999) < <http://www.epa.gov/ttnuatw1/hlthef/asbestos.html> > . In addition, scientists have determined that exposure to small quantities of asbestos can increase the risk of mesothelioma. Parkes, W. Raymond, Occupational Lung Disorders at 474 (3d ed. 1994). The material that Fodor reported floating around inside the Pabst structure contained either the floor sweepings (which were about 1% asbestos), the material that had escaped from the bags (which ranged from 10% to 30% asbestos) or both. Stip. at 2; Tr. at 46, 62. For purposes of Section 3.06 of the Act, the material is a contaminant.

From the evidence presented, the Board cannot find that Spirco caused or allowed air pollution according to Section 9(a). However, it appears that there were several openings in the Pabst structure where it is possible that asbestos could have escaped outside. In addition, the negative air containment system was not in operation when Fodor arrived at the Pabst structure on January 10, 1996.

The principal draftsman of the Act has written that the mere threat of air or water pollution constitutes a violation of the Act, and an Illinois Appellate Court has found that threats are violations of the Act as well. David Currie, Enforcement Under the Illinois Pollution Law, 70 Northwestern U. L. Rev. 389, 402-403 (1975); Wasteland Inc. v. Illinois Pollution Control Board, 118 Ill. App. 3d 1041, 1048-1049, 456 N.E.2d 964, 971-972 (3d Dist. 1983); Allaert Rendering v. Illinois Pollution Control Board, 91 Ill. App. 3d 153, 155-156, 414 N.E.2d 492, 495 (3d Dist. 1980). The term “threat”, as discussed by Currie and the Appellate Court, is a pollution source that has the potential to cause pollution or allow pollution again. The alleged threat at the Pabst structure cannot occur again because the asbestos removal operation at the Pabst structure has long since ended. Nonetheless, the Board finds that the threat of air pollution existed while Spirco was engaged in removing asbestos at Pabst. In the context of Section 9(a) and Section 3.02 of the Act, Spirco threatened the emission of asbestos. Even a short exposure to a small quantity of asbestos can injure human health by causing mesothelioma.

Considering the evidence and the failure of Spirco to follow certain provisions of the asbestos NESHAP (see below), the Board finds that Spirco caused air pollution by threatening to emit asbestos.

PRELIMINARY MATTERS TO COUNTS II AND III

Board's Authority

In counts II and III, complainant alleges that Spirco violated Section 9.1(d) of the Act by violating the asbestos NESHAP. Comp. at 4-8. Section 9.1(d)(1) of the Act (415 ILCS 5/9.1(d)(1) (1996)) provides that “No person shall . . . [v]iolate any provisions of Sections 111, 112, 165, or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto”. Section 112 of the Clean Air Act lists asbestos as a hazardous air pollutant for purposes of the NESHAP. 42 U.S.C. § 7412(b)(1) (1997). As a result, the Board can hold parties liable for violating the Act if they fail to comply with the asbestos NESHAP.

Regulated Asbestos Containing Material (RACM)

The notification form which Spirco submitted to the Agency revealed that pipe covering at the Pabst structure was regulated ACM (RACM). Tr. at 52; Rsp. Exh. 3 and 4. RACM is an asbestos NESHAP term defined at 40 C.F.R. § 61.141 (1997) as

(a) Friable asbestos material; (b) Category I nonfriable ACM that has become friable; (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart. 40 C.F.R. § 61.141 (1997).

Terms used in the definition of RACM, also defined at 40 C.F.R. § 61.141 (1997), include:

Category I nonfriable asbestos-containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos . . .

Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos . . . that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

In order for the requirements in Sections 61.145(b) and 61.145(c) of the asbestos NESHAP to apply, the amount of RACM in the Pabst structure must be “at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or . . . [a]t least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.” 40 C.F.R. § 61.145(a) (1997). On the notification forms that it submitted to the Agency, Spirco reported that there was 2,000 linear feet of RACM to be removed from pipes at the Pabst structure and 5,000 square feet of RACM to be removed from the Pabst structure. Exh. 3, 4. Even though the numbers for RACM are not completely accurate (see below) it is the only evidence that the Board is able to rely on with respect to the amount of RACM at the Pabst facility. Furthermore, Spirco should have known that the RACM numbers that it reported would place it within the realm of having to comply with the asbestos NESHAP. Therefore, Spirco is clearly subject to the requirements of Sections 61.145(b) and 61.145(c) of the asbestos NESHAP.

Demolition or Renovation

The alleged violations of the NESHAP in this matter only occur, by definition, within the context of demolition or renovation activities. Demolition is defined as

the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility. 40 C.F.R. § 61.141 (1997).

Fodor's testimony regarding demolition is inconsistent: during direct examination, he testifies that the hole on the outside wall of the second floor of the Pabst structure covered with a sheet of poly demonstrated that a demolition was taking place. Tr. at 29-30. On cross examination, Fodor states that there were no demolition activities at the Pabst structure. Tr. at 100. On redirect examination, Fodor states that demolition had occurred prior to January 10, 1996, as evidenced by the hole in the facade of the Pabst structure. Tr. at 137; Comp. Exh. 2 at Photo 6. DeCaney maintained that Spirco did not put the hole in the wall. Tr. at 177.

During the hearing, Fodor stated that once demolition or renovation begins, the occurrence triggers NESHAP regulation even if there is a temporary halt in the demolition or renovation. Tr. at 137-138. No such language is in the asbestos NESHAP. The Board will not consider alleged violations of the asbestos NESHAP against Spirco based on demolition activities. Complainant failed to meet its burden to prove that Spirco created the hole on the second floor of the Pabst structure. The Board cannot find that Spirco engaged in any demolition activities at the Pabst structure.

Renovation, as defined by the asbestos NESHAP, is "altering a facility or one or more facility components in any way, including stripping or removal of RACM from a facility component." 40 C.F.R. § 61.141 (1997). At hearing, Fodor said that the stripping of ACM from the pipes at the Pabst structure had occurred before January 10, 1996. Tr. at 136-137. Fodor then admitted that deterioration of pipe covering and contamination of other components over time - without any action on Spirco's part - is not renovation. Tr. at 151-152. DeCaney said that, according to the definitions of renovation and demolition, there was no such activity going on at the Pabst structure. Tr. at 174-175.

The Board finds that the definition of renovation is much broader than Fodor and DeCaney's use of the term. Renovation is "altering a facility or one or more facility components in any way" 40 C.F.R. § 61.141 (1997) (emphasis added). Any of the activities that Spirco engaged in at the Pabst structure to remove asbestos would fall under the definition of renovation. As a result, Spirco's activities at the Pabst structure are governed by the asbestos NESHAP.

COUNT II

Statutory Framework

Complainant alleges that Spirco violated Section 9.1(d) of the Act and Section 61.145 of the asbestos NESHAP by failure to completely and timely notify the Agency of the Pabst structure project and failure to perform an inspection there. Comp. at 4-8. The asbestos NESHAP at Section 61.145(b) (40 C.F.R. § 61.145(b) (1997)) lists the notification requirements and provides in pertinent part:

(b) Notification requirements. Each owner or operator of a demolition or renovation activity to which this section applies shall :

- (1) Provide the Administrator with written notice of intention to demolish or renovate

- (3) Postmark or deliver the notice as follows:

- (i) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material)

- (4) Include the following in the notice:

- (x) Description of planned demolition or renovation work to be performed and method(s) to be employed, including demolition or renovation techniques to be used and description of affected facility components.
- (xi) Description of work practices and engineering controls to be used to comply with the requirements of this subpart, including asbestos removal and waste-handling emission control procedures.
- (xii) Name and location of the waste disposal site where the asbestos-containing waste material will be deposited.
- (xiii) A certification that at least one person trained as required by paragraph (c)(8) of this section will supervise the stripping and removal described by this notification

- (xvi) Description of procedures to be followed in the event that unexpected RACM is found or Category II nonfriable ACM becomes crumbled, pulverized, or reduced to powder.

Timely Submission of Notification

On November 28, 1995, Spirco submitted a NESHAP notification of demolition form for a demolition project at the Pabst structure which began on or about January 2, 1996. Stip. at 2. However, Spirco inadvertently neglected to send the second page of the form to the Agency. Stip at 2; Tr. at 71-72, 78-79. As a result of the omission, the Agency did not have timely notice with respect to the type of engineering controls to be used to contain ACM in a controlled area, procedures to be implemented if asbestos was found unexpectedly, and information on where the asbestos waste would be disposed. Tr. at 25-26. In addition, the Agency had no notice regarding a trained on-site asbestos removal expert who was to be present during the removal activity. Tr. at 26. After the missing second page was brought to Spirco's attention, Spirco submitted it on January 8, 1996. Stip. at 2. The second page provided the remaining description of the work practices to be followed during the removal. *Id.*

Complainant alleges that Spirco violated the Act and the asbestos NESHAP by failing to timely submit the second page of the notification form to the Agency. Comp. at 4-8. This has been stipulated by both parties. Stip. at 2. The Board finds that Spirco failed to timely submit a complete notification for renovation of the Pabst structure to the Agency.

Prior Inspection

Section 61.145(a) of the asbestos NESHAP requires that, prior to the beginning of a renovation, the owner or operator must "thoroughly inspect the affected facility or part of the facility where the demolition or renovation will occur for the presence of asbestos . . ." 40 C.F.R. § 61.145(a) (1997). Complainant alleges that Spirco did not conduct the required inspection prior to renovation. Comp. at 5, 8; Comp. Br. at 4. Spirco submitted an exhibit which is a February 8, 1994 letter from James Moriarity, a professional engineer with Spirco, to Tom Williams of the Williams Brothers Construction Company of Peoria. Rsp. Exh. 5. The letter is a proposal for removal of asbestos at the Pabst structure. *Id.* Attached to the letter are several handwritten pages entitled "Pabst Breakdown" which appear to provide a floor by floor description of the amount of asbestos in the Pabst structure. *Id.*

Although the handwritten pages are crude, difficult to read, and appear to have been completed nearly two years before Spirco began renovation, they nonetheless prove that Spirco engaged in a prior inspection pursuant to Section 61.145(a) of the asbestos NESHAP. Rsp. Br. at 8. However, the inspection does not appear to have been "thorough" in accordance with Section 61.145(a). As complainant points out, DeCaney stated during the hearing that the conditions at the Pabst structure on January 2, 1996, were much worse than conditions at most other structures where Spirco had removed asbestos. Tr. at 178, 204-205; Comp. Br. at 6. DeCaney said that the Pabst structure was "a basic mess" where piles of debris and suspect ACM were laying on the floors. Tr. at 176, 204-205. One part of the inspection mentions a "debris pile" on the 8th floor of the Pabst structure and "minor debris on floor" on the 6th and 5th floors. Rsp. Exh 5 at 2. However, another page of the inspection report states that the 2nd and 3rd floors were a "total mess" and give estimates on the amount of debris. Rsp. Exh. 5 at 8. This same page of the inspection report contradicts a previous page of the report and

states that there was “lots of debris” on the 6th floor. *Id.* There is no mention in the report of the bags found at the structure on January 2, 1996.

Respondent correctly points out that Spirco was able to provide an estimate of the amount of RACM at the Pabst structure as a result of the inspection. Resp. Br. at 3. However, the amounts of RACM listed on the Agency inspection form do not correspond to the numbers in the inspection report, and it is not entirely clear which numbers in the inspection report represent RACM. Resp. Exh. 3, 4, 5. Spirco had three samples from the Pabst structure tested in a laboratory about a month before Spirco began its work, and Spirco assumed that all of the pipe covering in the facility was ACM. Resp. Exh. 6; Resp. Br. at 7-8. However, laboratory tests and an assumption about the asbestos at the Pabst structure do not make up for the fact that the inspection was not thorough. The Board finds that Spirco did not conduct a thorough inspection of the Pabst structure and therefore failed to comply with Section 61.145(a) of the asbestos NESHAP.

COUNT III

Complainant alleges that Spirco violated Section 9.1(d) of the Act and Sections 61.145(c) and 61.150 of the asbestos NESHAP by failing to adequately wet RACM at the Pabst structure and label the containers or use a proper alternative method for proper disposal of ACM. Comp. at 8-11.

Alleged Renovation Violations - Section 61.145(c)

Statutory Framework

Complainant alleges that Spirco violated Section 61.145 of the asbestos NESHAP when it failed to adequately wet RACM during renovation. Comp. at 8-10. Section 61.145(c) of the asbestos NESHAP (40 C.F.R. § 61.145(c) (1997)) provides, in pertinent part:

- (c) Procedures for asbestos emission control. Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

- (6) For all RACM, including material that has been removed or stripped:
 - (i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with §61.150;

Facts and Discussion

DeCaney said that the temperature seldom went above 30 to 40 degrees during the entire Pabst structure project. He also said that there was snow blowing in the building on the second floor near the big hole prior to January 10, 1996. Tr. at 178, 189, 191. DeCaney pointed out that several of Fodor's pictures show snow inside the Pabst structure. Tr. at 188-191, 193; Comp. Exh. at Photos 2, 3, 11. Tr. at 177. Fodor said that it was not snowing when he did the inspection. Tr. at 83. Fodor did not recall any snow being in the Pabst structure, and he said that the white material on the ground in one of his pictures was not snow. Tr. at 105, 127; Comp. Exh. 2 at Photo 2.

Fodor did not see water operational at the Pabst structure when he arrived on January 10, 1996. Tr. at 36. Fodor said that when he explained this to Bowker, Bowker replied that Spirco could have the water operational in 15 minutes. *Id.* The water heater, which does not appear to be operational, is pictured in complainant's Exhibit 2. Comp. Exh. 2 at Photo 5. At hearing, DeCaney said that the water heater could be hooked up and working in about 30 minutes, but he said that the water heater was used for the employees' showers. Tr. at 191.

A water heater would have been necessary for wetting the suspect asbestos material at the Pabst structure on January 10, 1996. Fodor said it was 26 degrees (Fahrenheit) at the time of his inspection, and he noted this in his report. Tr. at 37. The Board must rely on Fodor's temperature estimate for January 10, 1996, because DeCaney said that he had to leave the Pabst structure for a period of time while Fodor was there in order to get "a temperature log or something". Tr. at 210. According to Section 61.145(c)(7)(iii) of the asbestos NESHAP, Spirco was supposed to have temperature records available at the Pabst structure when Fodor appeared. 40 C.F.R. § 61.145(c)(7)(iii).

Section 61.145(c)(7) of the asbestos NESHAP states that the owner or operator of the renovation activity does not have to comply with the wetting requirements at Sections 61.145(c)(2)(i) or 61.145(c)(3) if the temperature is below 32 degrees Fahrenheit. 40 C.F.R. § 61.145(c)(7) (1997). The requirements at Section 61.145(c)(2)(i) apply only during cutting and disjoining operations, and the requirements at Section 61.145(c)(3) apply only when stripping components. Here, complainant alleges violations of the asbestos NESHAP at Section 61.145(c)(6) which deals with RACM that has been removed or stripped.

DeCaney said that Spirco was using water on the upper floors of the Pabst structure. Tr. at 184. DeCaney also said that the first picture that Fodor snapped when he came into the building shows Spirco employees "wetting the bags and putting water in the bags." Tr. at 187; Comp. Exh. 2 at Photo 1. Fodor said that he did not see Spirco employees wetting the inside of the bags. Tr. at 91. One of the Spirco employees pictured in Fodor's photo appears to be holding a nozzle from the end of a hose in his right hand, but there is no hose or water visible in the photograph. Comp. Exh. 2 at Photo 1. DeCaney admitted that about 50% of the time, the lines carrying water into the building would freeze and Spirco employees would have to bag the debris without wetting it. Tr. at 214. However, DeCaney said that Spirco employees made sure to put water into bags before the bags were put in the dumpster. Tr. at 214, 215.

While Fodor is fairly consistent in his testimony that he did not see water in use on the day of his inspection, DeCaney's testimony on Spirco's operations is inconsistent. If, as DeCaney claimed, snow was present inside the structure on January 10, 1996, then it would be very difficult, if not impossible, to wet the ACM considering that the temperature was below freezing and that the water heater was not hooked up. DeCaney admits that Spirco employees would sometimes bag the floor debris and RACM and then wait to wet it until the water lines thawed. Tr. at 214. Section 61.145(c)(6) of the asbestos NESHAP states that RACM must remain "wet until collected and contained or treated in preparation for disposal." 40 C.F.R. § 61.145(c)(6) (1997) (emphasis added). Wetting the RACM after it has been bagged does not comport with the asbestos NESHAP. The Board finds that Spirco did not properly wet RACM pursuant to the asbestos NESHAP.

Alleged Disposal Violations - Section 61.150

Statutory Framework

Complainant alleges that Spirco violated Section 61.150 of the asbestos NESHAP in failing to wet the RACM and label the containers during disposal. Section 61.150 of the asbestos NESHAP (40 C.F.R. § 61.150 (1997)) provides, in pertinent part:

Each owner or operator of any source covered under the provisions of §§ 61.144, 61.145, 61.146, and 61.147 shall comply with the following provisions:

- (a) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source or use one of the emission control and waste treatment methods specified in paragraphs (a)(1) through (4) of this section.
 - (1) Adequately wet the asbestos-containing waste material as follows:
 - (i) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and
 - ***
 - (iii) After wetting, seal all asbestos-containing waste material in leaktight containers while wet . . .
 - (iv) Label the containers or wrapped materials specified in paragraph (a)(1)(iii) of this section using warning labels specified by

Occupational Health and Safety Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) . . . The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.

- (v) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

- (4) Use an alternative emission control and waste treatment method that has received prior approval by the Administrator according to the procedure described in §61.149(c)(2).

Visible emissions is defined as

any emissions, which are usually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material, or from asbestos milling, manufacturing, or fabricating operation. This does not include condensed, uncombined water vapor. 40 C.F.R. § 61.141 (1997).

Facts and Discussion

According to the asbestos NESHAP, if Spirco did not allow any visible emissions of asbestos-containing waste materials to escape during the collection, processing, packaging, or transporting phases of the disposal process, then Spirco would not have to comply with disposal requirements listed at Subsections 61.150(a)(1) through (a)(4) of the asbestos NESHAP. 40 C.F.R. §§ 61.150(a)(1), (2), (3), (4). See also Tr. at 86-87.

On cross examination, Fodor admitted that he did not see dust or asbestos fibers leave the Pabst structure. Tr. at 83, 87; Resp. Br. at 4. Despite all of the prior evidence regarding asbestos leaks from the Pabst structure, the Board must base its finding on Fodor's admission here. There were no visible emissions outside of the Pabst structure. According to Section 61.150 of the asbestos NESHAP, Spirco did not have to engage in any requirements listed in Subsections 61.150(a)(1) through (a)(4) including wetting the RACM as described in Subsection 61.150(a)(1)(i), labeling the bags pursuant to Subsection 61.150(a)(1)(iv), or using an alternative method for proper disposal of asbestos pursuant to Subsection 61.150(a)(4).

Complainant has failed to meet the burden set forth in Section 31(e) of the Act. The Board finds that Spirco complied with Section 61.150 of the asbestos NESHAP. See 415 ILCS 5/31(e) (1996).

SECTION 33(c) FACTORS

The Act states that the Board must consider all facts and circumstances involved in an enforcement order including, but not limited to, the factors in Section 33(c). 415 ILCS 5/33(c) (1996). These factors include:

- i. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- ii. the social and economic value of the pollution source;
- iii. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
- iv. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- v. any subsequent compliance.

Other factors, such as good faith, may also be considered. IEPA v. Allen Barry d/b/a Allen Barry Livestock (May 10, 1990), PCB 88-71, slip op. at 35.

Section 33(c)(i) - Injury to Health, Welfare, and Property

At hearing there was conflicting testimony on Spirco's compliance with OSHA regulations. Aspects of worker safety discussed include protective clothing and protective gear such as respirators (Tr. at 39-41, 91; Comp. Exh. 2 at Photo 1), decontamination areas for Spirco employees, the operation of on-site showers (Tr. at 34-35, 119, 191, 210-212; Comp. Exh. 2 at Photo 4.), and other matters related to the asbestos exposure for Spirco's employees and Fodor. (Tr. at 55, 58, 72.) Fodor reported Spirco's operations to OSHA after his visit to the Pabst structure. Tr. at 108-109. OSHA inspectors inspected the site on the afternoon of January 10, 1996 and found no violations. Tr. at 112-113, 173-174; Rsp. Exh. 2 at 1-2.

No testimony was presented on what effect the alleged asbestos emissions from the Pabst structure might have had on Spirco employees or area residents. However, as stated above, scientists have determined that a short exposure to small quantities of asbestos can increase the risk of mesothelioma. Spirco threatened the release of asbestos. The Board weighs this factor against Spirco.

Sections 33(c)(ii) and 33(c)(iii) - Social / Economic Value and Suitability to the Area

The Pabst structure had little social or economic value. Spirco was at the abandoned Pabst structure in order to clear out the asbestos so that the structure could be demolished and the property could be put back into productive use.. Tr. at 203; Resp. Br. at 14. The record does not address the area around the Pabst structure. The Board cannot weight these factors against Spirco.

Section 33(c)(iv) - Economic Reasonableness of Reducing Emissions

No testimony was presented regarding the cost of reducing emissions. The Board notes that Spirco would likely have incurred additional costs in order to keep temperatures warm enough inside the Pabst structure to adequately wet the RACM and comply with the NESHAP. The costs for such compliance would have primarily involved covering all broken windows and other openings with poly and ensuring that heaters were operational. Spirco would also have incurred additional costs in ensuring that the negative air machines at the Pabst structure were in operation during all renovation activities. These efforts would have been technically practicable and the costs would have been reasonable. The Board weighs this factor against Spirco.

Section 33(c)(v) - Subsequent Compliance

When notified of the missing second page in the notification to the Agency, Spirco subsequently sent it to the Agency and the Agency received it on January 8, 1996. Stip at 2. Spirco violated the notification provisions of the asbestos NESHAP at 40 C.F.R. § 61.145(b) by submitting part of the notification after it began asbestos removal at the Pabst structure. Even though Spirco was late in turning in the missing second page, it was attempting to subsequently comply with the notification requirements.

Fodor asked Bowker to voluntarily stop work at the Pabst structure until the proper procedures had been implemented, and he also asked Bowker to submit a work plan to the Agency for acceptance. Tr. at 69, 73, 75, 149; Resp. Br. at 1. Fodor said that Bowker indicated that he would stop the work. Tr. at 73. There is no record of a subsequent work plan. Once the Pabst structure had been inspected by the Agency and OSHA, DeCaney said that Spirco followed all applicable regulations. Tr. at 187. Even considering the absence of a subsequent work plan, the Board cannot weigh this factor against Spirco.

Good Faith

At the hearing, the parties discussed a conversation that took place between Fodor and Bowker on January 10, 1996, before Fodor left the Pabst facility. Complainant appears to have put the conversation on the record in order to indicate a lack of good faith on the part of Spirco. Relevant testimony regarding the conversation is included here:

MR. DAVIS: Yes. A moment ago you indicated something about keeping it quiet or something?

MR. FODOR: Oh, yeah. He just asked me - - I believe his words were, I don't mean this as a bribe, but what can we do to keep this between ourselves. And I informed him, I said, well, I am required to inform my supervisor of the violations that I find, and I would have to officially make my report.

Tr. at 74.

MR. BERRY: Would you call this a bribe, anything that Mr. Bowker said? That word was used. I want to clear that up.

MR. FODOR: I would not call it a bribe, no.

MR. BERRY: You didn't consider it a bribe at the time?

MR. FODOR: I considered it as he was trying to influence me. I would not so much say it was a bribe.

Tr. at 133.

MR. BERRY: Okay. Do you have an idea of what Mr. Fodor might be referring to?

MR. DECANEY: . . . Well, James asked him if there was anything that he could do or anything that could be done that would keep it within his own - - within Mr. Fodor's agency. And he said, no, that once he filed the paperwork that the other agencies would have to be notified, or they would know of the paperwork.

MR. BERRY: Okay. So based on what you heard, did you take it as a bribe?

MR. DECANEY: No.

Tr. at 198.

If Bowker was trying to influence Fodor in order to keep Fodor from reporting Spirco's alleged violations to anyone else, it would indicate bad faith on the part of Spirco. The Board will take a harsh stance against a respondent who bribes or attempts to bribe a public official, but the record here does not indicate that Bowker was trying to bribe Fodor. However, if Bowker was simply asking if Spirco could engage in some activity to remedy the alleged violations so that Fodor would not have to report Spirco to governmental units other than the Agency, it would indicate good faith on the part of Spirco. As there is nothing else in the

record to indicate what the true meaning of the conversation was, the Board cannot weigh this factor in favor of nor against Spirco.

Findings of Violation

Considering the Section 33(c) factors, the Board finds that Spirco violated Section 9(a) of the Act by threatening the release of asbestos which can be injurious to human health. The Board finds that Spirco violated the asbestos NESHAP at 40 C.F.R. § 61.145(a) by failing to perform a thorough inspection of the Pabst facility. The Board also finds that Spirco failed to comply with the asbestos NESHAP at 40 C.F.R. § 61.145(b) by neglecting to turn in the second page of the notification form to the Agency for the asbestos removal project at the Pabst structure, and the Board finds that Spirco failed to comply with the asbestos NESHAP at 40 C.F.R. § 61.145(c) by not adequately wetting the RACM at the Pabst structure. Each failure to comply with the asbestos NESHAP is a violation of Section 9(d) of the Act. The Board finds that complainant did not prove its other allegations against Spirco.

PENALTY - SECTION 42(h) FACTORS

Complainant seeks to impose a total penalty of \$50,000. Reply Br. at 3. In determining a penalty, Section 33(c) lists general factors for the Board to consider when issuing final orders and determinations, while Section 42(h) governs penalty amounts. 415 ILCS 5/42(h) (1996); People v. Kershaw (April 20, 1995), PCB 92-164, slip op. at 3 quoting IEPA v. Barry (May 10, 1990), PCB 88-71, slip op. at 42. Section 42(h) states, in pertinent part:

In determining the appropriate civil penalty to be imposed . . . the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the violator in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the violator because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator. 415 ILCS 5/42(h) (1996).

Section 42(h)(1) - Duration and Gravity

Spirco should have postmarked or delivered the complete notification form to the Agency “at least 10 working days before asbestos stripping or removal work or any other activity begins” 40 C.F.R. § 61.145(b)(3)(i). According to the stipulation, Spirco began work at the site about January 2, 1996, and submitted the second page of the notification on January 8, 1996. Stip. at 1-2. The second page was approximately 14 working days late. Once the second page was submitted, the Agency was fully notified about Spirco’s activities at the Pabst structure.

The record is silent on the length of time that Spirco was emitting asbestos in violation of Section 9(a) of the Act and the amount of asbestos that Spirco released. However, the Board finds that even a small release of asbestos can be injurious to health. The Board also notes that the failure to conduct a thorough inspection in violation of 9(d) of the Act resulted in Spirco submitting misleading information to the Agency regarding the amount of asbestos in the Pabst structure. In addition, had there been a better inspection, Spirco could have been better prepared to clean the ACM and RACM at the structure.

There is also no information on the duration of Spirco’s noncompliance with Section 61.145(c) of the asbestos NESHAP by not wetting the RACM at the Pabst structure. However, the Board finds that Spirco’s inability to continually wet the asbestos at the Pabst structure may have put its employees at risk for health problems as a result of exposure to asbestos floating on the air currents that Fodor observed.

Section 42(h)(2) - Due Diligence

The stipulation states that Spirco submitted the omitted second page once the omission was brought to Spirco’s attention. Stip at 2. Spirco had the proper equipment and was somewhat earnest in attempting to comply with the requirements the Act and the asbestos NESHAP, but it was not enough to meet the strict requirements of the laws and regulations.

Section 42(h)(3) - Economic Benefits

The Board finds that Spirco accrued no economic benefit from neglecting to timely submit the second page of the notification form to the Agency. However, Spirco could have incurred additional costs in order to ensure that it was in compliance with the Act and the asbestos NESHAP. For example, Spirco could have completely sealed all the broken windows and doorways of the Pabst structure with poly or other materials in order to ensure that no asbestos escaped and to keep the inside temperature above 32 degrees Fahrenheit. DeCaney admitted that the reason that Spirco covered the large hole on the second floor was “to keep as much heat in the building as we could.” Tr. at 176-177. Spirco also could have operated its water heater at all times while it was engaged in wetting the RACM, and Spirco could have operated its negative air machines at all times during the removal of asbestos. The Board finds

that Spirco saved money by not complying fully with Section 61.145(c) of the asbestos NESHAP.

Section 42(h)(4) - Deterring Further Violations

Spirco submitted its federal tax forms for years 1993 through 1997 and a “Financial Analysis” from May 31, 1996. Rsp. Exh. 7. Although the Financial Analysis states that “the current financial status of Spirco is dangerous”, the tax returns show increasing gross receipts and increasing taxable income from 1993 to 1997. *Id.* The Board will not consider financial hardship in determining a penalty which will serve to deter Spirco from further violations of the Act.

Section 42(h)(5) - Previous Violations of the Act

Nothing in the record indicates that Spirco has previously violated the Act. Rsp. Br. at 17.

Other Matters of Record

The Federal Case in Missouri.

At the hearing, Berry made an oral motion *in limine* to exclude evidence regarding a settlement in a 1996 criminal case in the U.S. District Court for the Eastern District of Missouri. Tr. at 7-8. Hearing Officer Jackson denied the motion *in limine* and admitted the documents from the federal case into evidence. Tr. at 16; Hearing Report at 1. In that case, Spirco admitted to violations of the federal Clean Air Act and the Emergency Planning and Community Right to Know Act regarding asbestos removal work that it performed at a site in Manchester, Missouri in 1993. Comp. Exh. 1 at Stipulation 7-8. Spirco violated the asbestos NESHAP by improperly disposing asbestos in waste drains. Comp. Exh. 1 at 3. Spirco was placed on three years’ probation and paid a \$70,000 fine. Comp. Exh. 1 at Judgment 2-3. Although the Missouri case was not a violation of the Act, it was a violation of the asbestos NESHAP, and the Board can consider it in determining a penalty.

The Board cannot consider the \$70,000 in the context of deterring further violations because the violations in Missouri occurred after the violations at the Pabst structure. Mot. Rev. at 1-2. However, the Missouri case had been ongoing since 1993. Although the \$70,000 fine was not levied until August 1996, Spirco had been on notice for several years before August 1996 that federal authorities were investigating alleged violations of the asbestos NESHAP with respect to the asbestos removal project in Manchester Missouri in 1993. The Board can consider the \$70,000 fine outside the context of deterring further violations, and it takes notice of Spirco’s conduct in Missouri, which, had it occurred in Illinois, would have violated the Act. Reply Br. at 4. Spirco’s violation of the asbestos NESHAP in Missouri was of a greater magnitude than the failure to comply with the asbestos NESHAP at the Pabst structure. In the Missouri case, Spirco admitted to contaminating the environment outside of its demolition project by disposing asbestos in waste drains. Comp. Exh. 1 at 1-3. The Board has found no such contamination beyond the Pabst structure.

OSHA Compliance.

Much of the hearing was devoted to issues of worker safety and compliance with OSHA regulations. Fodor reported Spirco's operations to OSHA after his visit to the Pabst structure. Tr. at 108-109. OSHA personnel inspected the site on the afternoon of January 10, 1996 and found no OSHA violations. Tr. at 112-113, 173-174; Rsp. Exh. 2 at 1-2.

Penalty and Attorney Fees

Penalties in similar cases before the Board range from a few thousand dollars to \$15,000. Rsp. Br. at 17. Considering the above factors including the risks to human health, the economic reasonableness of reducing the threat of asbestos emissions, the amount necessary to deter further violations of the Act, and the federal case in Missouri, the Board finds it appropriate to order Spirco to pay a penalty of \$9,000.

Complainant also requests attorney fees. Comp. Br. at 9. Section 42(f) of the Act provides that the Board may award attorney fees and reasonable costs to the Attorney General's Office in a case where the respondent "has committed a willful, knowing or repeated violation of the Act." 415 ILCS 5/42(f) (1996). The Board finds that Spirco's violations of the Act in this matter were willful and knowing. Therefore, the Board will award the Attorney General's Office attorney fees and costs. Complainant must submit an affidavit of its attorney fees and costs in this matter before the Board can make such an award.

CONCLUSION

The Board finds that Spirco has violated Section 9(a) of the Act and Section 9.1(d)(1) of the Act by failure to comply with Sections 61.145(a), 61.145(b), and 61.145(c) of the asbestos NESHAP. The Board finds that a civil penalty of \$9,000 is warranted in this case.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. The Board finds that Spirco violated Section 9(a) of the Illinois Environmental Protection Act. 415 ILCS 5/9.1(a) (1996).
2. The Board finds that Spirco violated Section 9.1(d) of the Illinois Environmental Protection Act (415 ILCS 5/9.1(d) (1996)) by failing to comply with Section 61.145(a) of the asbestos NESHAP. 40 C.F.R. § 61.145(a) (1997).
3. The Board finds that Spirco violated Section 9.1(d) of the Illinois Environmental Protection Act (415 ILCS 5/9.1(d) (1996)) by failing to comply with Section 61.145(b) of the asbestos NESHAP. 40 C.F.R. § 61.145(b) (1997).

4. The Board finds that Spirco violated Section 9.1(d) of the Illinois Environmental Protection Act (415 ILCS 5/9.1(d)(1996)) by failing to comply with Section 61.145(c) of the asbestos NESHAP. 40 C.F.R. § 61.145(c) (1997).
5. The Board orders Spirco to pay a civil penalty in the amount of \$9,000 by certified check or money order made payable to the Environmental Protection Trust Fund. Spirco shall send the payment no later than May 18, 1999, at 4:30 p.m. by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Spirco shall write the case name and number and its federal employer identification number on the certified check or money order.

If the penalty is not paid within the time prescribed, it shall incur interest at the rate set forth in Subsection (a) of Section 1003 of the Illinois Income Tax Act (35 ILCS 5/1003 (1996)) as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

6. The Board orders complainant to file with the Clerk of the Board an affidavit of its fees and costs in this action and documentation thereof no later than May 18, 1999, at 4:30 p.m.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the day of 1999 by a vote of .

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board