

ILLINOIS POLLUTION CONTROL BOARD
November 3, 2022

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 21-29
) (Enforcement - Air)
LMS INDUSTRIES, INC., an Illinois limited)
liability company, and TOP METAL BUYERS))
INC., an Illinois corporation,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by M. Gibson):

On October 16, 2020, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against Top Metal Buyers, Inc. (Top Metal). On November 5, 2020, the Board accepted the complaint for hearing. On September 17, 2021, the People filed an amended complaint adding LMS Industries, LLC (LMS) as an additional respondent. On November 4, 2021, the Board accepted the amended complaint for hearing. The amended complaint concerns Top Metal and LMS’ scrap metal recycling facility located at 808 Walnut Avenue, East St. Louis in St. Clair 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 (2020)), 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 (2020); 35 Ill. Adm. Code 103.

In this case, the People allege that Top Metal and LMS:

Count I—Violated Section 9(a) of the Act, 415 ILCS 5/9(a), by causing or allowing the open burning of insulated copper wire.

Count II—Violated Section 9(c) of the Act, 415 ILCS 5/9(c), by causing or allowing the open burning of refuse in a chamber not approved by Illinois EPA for the open burning of refuse.

Count III—Violated Section 728.134(a) of the Board’s Waste Disposal Regulations, 35 Ill. Adm. Code 728.134(a), by causing or allowing the special waste from open burning to be deposited at a landfill not permitted to accept special or hazardous wastes.

On September 15, 2022, the People, Top Metal, and LMS 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) (2020)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2020)), 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 *Belleville News-Democrat* on September 28, 2022. 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) (2020); 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 Top Metal and LMS' 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) (2020)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Top Metal and LMS do not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2020)), which may mitigate or aggravate the civil penalty amount. Under the proposed settlement, Top Metal and LMS agree to pay a civil penalty of \$15,000 within 30 days after the date of this order and an additional \$15,000 within 90 days after the date of this order. The People, Top Metal, and LMS 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. Top Metal and LMS must joint and severally pay a civil penalty of \$15,000 no later than December 5, 2022, which is the first business day following the 30th day after the date of this order, and an additional \$15,000 no later than February 1, 2023. Top Metal and LMS 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 and case number must appear on the certified check or money order.
3. Top Metal and LMS 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

Top Metal and LMS must send a copy of each certified check or money order and any transmittal letter to:

Raymond J. Callery
 Assistant Attorney General
 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) (2020)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2020)).
5. Top Metal and LMS 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.

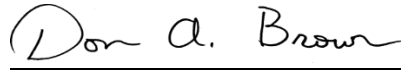
Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2020); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 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
Illinois Attorney General’s Office Attn: Raymond J. Callery Assistant Attorney General Environmental Bureau 500 South Second Street Springfield, IL 62706 Raymond.Callery@ilag.gov	Illinois Pollution Control Board Attn: Don A. Brown, Clerk James R. Thompson Center 100 West Randolph Street, Suite 11-500 Chicago, Illinois 60601 don.brown@illinois.gov

<p>LSM Industries, Inc. Attn: Lynn M. Schultz, R.A. 808 Walnut Street E. St. Louis, IL 62201</p>	
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<p>Top Metal Buyers, Inc. Attn: Norman Schultz 808 Walnut Street E. St. Louis, IL 62201</p>	
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I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 3, 2022, by a vote of 4-0.



Don A. Brown, Clerk
Illinois Pollution Control Board