ILLINOIS POLLUTION CONTROL BOARD January 5, 2006

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)))))) PCB 05-103) (Enforcement - Air))
v.)	
MARC REALTY, INC., an Illinois corporation, and 55 EAST JACKSON, LLC, a Delaware limited liability corporation,,) a))	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On November 30, 2004, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Marc Realty, Inc. and 55 East Jackson, LLC (respondents). *See* 415 ILCS 5/31(c)(1) (2004); 35 Ill. Adm. Code 103.204. The complaint concerns the respondents' renovation of the fifteenth floor of a sixteen story office building at 55 East Jackson Street, in Chicago, Cook County. The parties now seek to settle. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2004)), 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 (2004); 35 Ill. Adm. Code 103. In this case, the People allege that the respondents violated Section 9(a) and 9.1(d) of the Act (415 ILCS 5/9(a) and 9.1(d) (2002)); 35 Ill. Adm. Code 201.141; and 40 C.F.R. 61.145(c)(1) and (c)(6) and 61.150(b)(1) by (1) causing or allowing the emission of asbestos; and (2) failing to comply with the national emission standards for hazardous air pollutants for asbestos.¹

On November 14, 2005, the People and the respondents 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) (2004)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2004)), 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 from hearing. The Board published newspaper notice in the *Chicago Sun-Times* on November 21, 2005. The Board did not receive any requests for

¹ Prior violations were the subject of a previous enforcement action in <u>People of the State of Illinois v. Marc Realty, Inc., 11 East Adams, LLC, and Roberts Environmental Control, Inc., PCB 04-100 (June 16, 2005).</u>

hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2004); 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. 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 the respondents' 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) (2004)), which bears on the reasonableness of the circumstances surrounding the alleged violations.

The respondents neither admit nor deny the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2004)), which may mitigate or aggravate the civil penalty amount. The respondents agree to pay a civil penalty of \$15,000, which the parties stipulate will serve to deter future violations.

The People and the respondents have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement. This docket is now closed.

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. The respondents must pay a civil penalty of \$15,000 no later than February 6, 2006, which is the first business day after the 30th day after the date of this order. The respondents must pay the civil penalty by certified check, money order, or electronic funds transfer, payable to the Environmental Protection Trust Fund. The case number, case name, and the respondents' social security number or federal employer identification number must be included on the certified check or money order.
- 3. The respondents must send the certified check, money order, or electronic funds transfer to the following person at the indicated address:

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

4. The respondents must send a copy of the certified check, money order, or record of electronic funds transfer and any transmittal letter to the following person at the indicated address:

Christopher P. Perzan, Assistant Attorney General Environmental Bureau 188 West Randolph Street, 20th Floor Chicago, Illinois 60601

- 5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
- 6. The respondents must cease and desist from the alleged violations.

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) (2004); *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.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on January 5, 2006, by a vote of 4-0.

Drucky In. June

Dorothy M. Gunn, Clerk

Illinois Pollution Control Board