

ILLINOIS POLLUTION CONTROL BOARD
December 7, 2006

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 06-104
)	(Enforcement – Air, Land, Water)
MOORE PAINTING CO., and ILLINOIS-)	
AMERICAN WATER COMPANY,)	
)	
Respondents.)	

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

On December 20, 2005, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Moore Painting Co. (Moore) and Illinois-American Water Company (IAW) (collectively respondents) (415 ILCS 5/31(c)(1) (2004)); 35 Ill. Adm. Code 103.204. The complaint concerns a vertical water storage tank located at 1013 Cardinal Street in a residential area of the city of Alton, Madison County.

In the complaint, the People allege that respondents violated Sections 9(a), 12(d), 21(a), (e), and (p)(1); and 35 Ill. Adm. Code 722.111 and 808.121(a) (415 ILCS 5/9(a), 12(d), 21(a)(e), and (p)(1) (2004)). The People allege that the respondents violated these provisions by failing to implement effective precautions during the removal of lead-based paint, thereby causing, allowing or threatening the discharge of a contaminant into the air so as to cause or tend to cause air pollution; by failing to implement effective precautions during the removal of lead-based paint thereby creating a water pollution hazard; by depositing, dumping, or abandoning lead-based paint waste; by employing uncontained hydro-blasting on lead-based paint in such a way as to cause or allow open dumping; and by failing to perform hazardous or special waste determinations. The Board accepted the case for hearing on January 5, 2006.

On October 11, 2006, the People filed two stipulations and proposed settlements – one with each respondent, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act with. *See* 415 ILCS 5/31(c)(1) (2004). Although the pleadings are entitled partial stipulations, each resolves the entire matter between the parties. These filings are authorized by Section 31(c)(2) of the Act. 415 ILCS 5/31(c)(2) (2004). *See* 35 Ill. Adm. Code 103.300(a). Under the first proposed stipulation, Moore does not admit the violations alleged in the complaint, but agrees to pay a civil penalty of \$16,800. Under the second stipulation, IAW does not admit the violations alleged in the complaint, but agrees to pay a civil penalty of \$9,200.

The Board provided notice of the stipulations, proposed settlements, and requests for relief from hearing. The Board published newspaper notice in the *Alton Telegraph* on October 27, 2006. 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) (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.

As previously stated, Moore does not admit the violations alleged in the complaint, but agrees to pay a civil penalty of \$16,800. IAW does not admit the violations alleged in the complaint, but agrees to pay a civil penalty of \$9,200. The stipulations address 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 People determined that civil penalties of \$16,800 and \$9,200 were appropriate.

The People and Moore, and the People and IAW have satisfied Section 103.302. The Board accepts the stipulations and proposed settlements.

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

ORDER

1. The Board accepts and incorporates by reference the two stipulations and proposed settlements.
2. Moore Painting Co. (Moore) must pay a civil penalty of \$16,800 on or before January 2, 2007, the first business day following 30 days from the date of this order.
3. Illinois-American Water Company (IAW) must pay a civil penalty of \$9,200 on or before January 2, 2007, the first business day following 30 days from the date of this order.
4. Moore and IAW must pay the civil penalties by certified check, money order or electronic funds transfer, payable to the Environmental Protection Trust Fund. The case number, case name, and the respondents' federal employer identification or social security numbers must be included on the certified checks or money orders. If submitting an electronic funds transfer to the Agency, the electronic funds transfers must be made in accordance to the specific instructions provided to respondents.
5. Moore and IAW must submit the certified checks, money orders or electronic funds transfers to:

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

6. A copy of the certified checks, money orders or record of the electronic funds transfers and any transmittal letters must be sent to the following:

P. Poitevint
 Attorney General's Office
 Environmental Bureau
 500 South Second Street
 Springfield, Illinois 62702

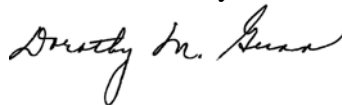
Michael Roubitchek
 Assistant Counsel
 Illinois Environmental Protection Agency
 1021 North Grand Avenue East
 P.O. Box 19276
 Springfield, Illinois 62794-9276

7. 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).
8. Moore and IAW 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 December 7, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board