ILLINOIS POLLUTION CONTROL BOARD June 7, 2012

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
V.)	PCB 12-112
)	(Enforcement - Air)
BERTEAU-LOWELL PLATING WORKS,)	
INC., an Illinois corporation,)	
)	
Respondent		

OPINION AND ORDER OF THE BOARD (by T.A. Holbrook):

On February 17, 2012, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a seven-count complaint against Berteau-Lowell Plating Inc. (respondent). The complaint concerns respondent's electroplating facility at 2320 W. Fullerton Avenue, Chicago, Cook 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 (2010)), 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 (2010); 35 Ill. Adm. Code 103. In this case, the People allege that respondent violated Section 9(b) and 9.1(d)(1) of the Act (415 ILCS 5/9(b), 9.1(d)(1) (2010)); Section 63.342(f)(3)(i), Section 63.466(b)(2), Section 63.467(b)(1), Sections 63.11508(d)(2), (d)(3)(i), (d)(3)(ii)(A), (d)(3)(ii)(B), (d)(3)(iii), and Sections 63.11509(c)(1) and (e) of the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations (40 C.F.R. §§ 63.342(f)(3)(i), 63.466(b)(2), 63.467(b)(1), 63.11508(d)(2), (d)(3)(i), (d)(3)(ii)(A), (d)(3)(iii)(B), (d)(3)(iii), and <math>63.11509(c)(1), (e); and conditions 7(c), 8(a)(i), 9(b)(i), 13(a) of Federally Enforceable State Operating Permit (FESOP) No. 73070088. According to the complaint, respondent violated these provisions by failing to prepare an annual compliance certification and demonstrate continuous compliance with applicable management practices and equipment standards for plating and polishing operations, by failing to prepare an annual certification of compliance report for plating and polishing operations, by failing to maintain records supporting notification of compliance standards for plating and polishing operations, by failing to monitor and record actual dwell time on monthly basis for open top batch vapor degreaser, by failing to maintain records of actual dwell time for open top batch vapor degreaser, by failing to develop and maintain an operations and maintenance plan for decorative chromium electroplating tank, and by failing to maintain a maintenance record for the scrubber.

¹ Although the Board generally does not have jurisdiction over federal Clean Air Act regulations, Section 9(d) of the Act provides that "no person shall violate any provisions of Sections 111, 112, 165, or 173 of the Clean Air Act . . . or federal regulations adopted pursuant thereto."

On April 10, 2012 the People and respondent 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) (2010)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2010)), 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 *Chicago Sun-Times* on April 23, 2012. 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) (2010); 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 respondent's 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) (2010)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondent does not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2010)), which may mitigate or aggravate the civil penalty amount. Berteau-Lowell Plating Inc. agrees to pay a civil penalty of \$1,000.00. The People and respondent 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. Respondent must pay a civil penalty of \$1,000.00 no later than July 9, 2012, which is the first business day following the 30th day after the date of this order. Respondent 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, case number, and respondent's federal tax identification number must appear on the face of the certified check or money order.
- 3. Respondent 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 Respondent must send a copy of the certified check or money order and any transmittal letter to:

Kathryn A. Pamenter Assistant Attorney General Environmental Bureau Illinois Attorney General's Office 69 W. Washington Street, Suite 1800 Chicago, Illinois 60602

- 4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
- 5. Respondent must cease and desist from future violations of the Environmental Protection Act, the NESHAP regulations, and FESOP No. 73070088 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) (2010); 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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 7, 2012 by a vote of 5-0.

John T. Therriault, Assistant Clerk Illinois Pollution Control Board

John T. Therriant