

ILLINOIS POLLUTION CONTROL BOARD
January 21, 1999

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 96-261
) (Enforcement - Air)
G.M. DEMOLITION CORPORATION, an)
Illinois corporation)
)
Respondent.)

ORDER OF THE BOARD (by N. J. Melas):

This matter is before the Board on the November 4, 1998 "Complainant's Motion for Reconsideration" (mot.) filed by the Illinois Attorney General's Office on behalf of the People of the State of Illinois (complainant). In the motion, complainant asks that the Board reconsider portions of its October 1, 1998 order. See People v. G.M. Demolition Corp. (October 1, 1998), PCB 96-261. On December 8, 1998, G.M. Demolition Corporation (GMDC) filed a response opposing the motion (resp.), and on December 31, 1998, complainant filed a reply to GMDC's response (reply). The Board grants the motion for reconsideration. The Board affirms in part and reverses in part its October 1, 1998 order.

Complainant initiated this action on June 24, 1996, alleging that respondent violated Section 9.1(d) of the Illinois Environmental Protection Act (415 ILCS 5/9(d) (1996)) and Section 61.145 of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP). 40 C.F.R. § 61.145 (1997). Complainant alleged that GMDC failed to timely and completely file notices of demolition with the Illinois Environmental Protection Agency (Agency) for several buildings in Cook County and one in Kankakee County.

In the October 1, 1998 order, the Board granted complainant's motion for summary judgment in part and denied it in part. G.M. Demolition, PCB 96-261, slip op. at 11-13. It also granted respondent's motion for summary judgment in part and denied it in part. *Id.* The Board directed remaining issues and penalty matters to hearing. *Id.*

Complainant disputes four points in the Board's order where the Board granted summary judgment in favor of GMDC. Those points are:

1. The structure at 21625 Oak Street in Matteson (21625 structure) was a residence and not subject to the asbestos NESHAP. Mot. at 2-4.
2. Notice to the Agency was timely for demolition for the AKC Haunted House at 231 East Broadway in Bradley (AKC). Mot. at 4-5.

3. There was revised notice for the demolition of AKC. Mot. at 5-8.
4. GMDC need not have included the analytical method for determining the presence of asbestos in the notice to the Agency for the Silo Appliance Store at 17511 South Halsted in Homewood (Silo), the Good Humor Building at 10 North First Avenue in Maywood (Good Humor), and the Whiskey A-Go-Go at 7-9 South State Street in Calumet City (Go-Go). Mot. at 8-10.

STANDARD

In ruling on a motion for reconsideration, the Board is to consider factors including, but not limited to, error in the previous decision and facts in the record which are overlooked. 35 Ill. Adm. Code 101.246(d). In Citizens Against Regional Landfill v. County Board of Whiteside County (March 11, 1993), PCB 93-156, the Board stated that “[t]he intended purpose of a motion for reconsideration is to bring to the court’s attention newly-discovered evidence which was not available at the time of the hearing, changes in the law, or errors in the court’s previous application of the existing law.” Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 572 N.E.2d 1154 (1st Dist. 1992).

DISCUSSION

1. 21625 Structure is a Residence

According to the asbestos NESHAP, demolition companies that demolish structures must provide notice to the Agency. 40 C.F.R. § 61.145(a) (1997)¹. A facility is “any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units).” (Emphasis added.) 40 C.F.R. § 61.141 (1997). In the order, the Board determined that the 21625 structure was not a facility. G.M. Demolition, PCB 96-261, slip op. at 3-4. Complainant contends that the 21625 structure was not a residence with four or fewer units because (1) the structure was a farmhouse owned by a company and (2) respondent filed a notification form with the Agency implying that respondent believed the structure was subject to the asbestos NESHAP. Mot. at 3; reply at 1-2. Complainant states that there is not enough evidence to state definitively if the 21625 structure is a single family residence or a commercial farming operation. Mot. at 3-4; reply at 1-2.

Complainant presents no new evidence or changes in the law in its first contention; the Board already considered the evidence regarding the commercial farming operation in its order. Complainant’s second contention is new, but it cannot be classified as new evidence, a change in the law, or errors in the previous application of the law. Furthermore, the Board

¹ The asbestos NESHAP requires demolition companies to provide notice to the Administrator of the United States Environmental Protection Agency (USEPA). This program has been delegated to the State of Illinois. Although the notification forms are sent to both the USEPA and the Agency, complainant’s allegations concern notification to the Agency only.

finds that the filing of a notification form does not necessarily imply that GMDC knew that the 21625 structure was a facility for purposes of the asbestos NESHAP. The Board affirms its decision from the October 1, 1998 order on point one.

2. Timely Notice for AKC

The asbestos NESHAP provides that demolition companies must postmark or deliver the notice “10 working days before the demolition begins.” 40 C.F.R. § 61.145(b)(3)(i) (1997). The Agency received the original notification that GMDC submitted for the AKC demolition eight working days prior to the start of the demolition. Mot. at 4. It is undisputed that, at the request of the Agency, GMDC delayed the beginning of the demolition for two working days in order to afford the Agency ten working days’ notice. Mot. at 4; resp. at 2-3; reply at 3-4. Complainant offers no new evidence in the motion or reply to dispute this fact, other than to offer a hypothetical scenario in which GMDC should have resubmitted notice to the Agency and then wait ten working days after resubmission. Mot. at 4. Nothing in the asbestos NESHAP requires GMDC to do this.

The Board notes that timely notice should be submitted in written form at least ten days prior to demolition activity. 40 C.F.R. § 61.145(b)(3)(i) (1997); reply at 3. GMDC only provided eight working days of notice, but the Agency requested that GMDC wait an additional two working days. Mot. at 4; resp. at 2-3; reply at 3-4. As a result, GMDC’s notice provided ten working days notice prior to the start of the demolition.

The Board affirms its decision from the October 1, 1998 order on point two.

3. Revised Notice for AKC

Complainant disputes the Board’s finding that GMDC submitted a revised notice for the AKC demolition. Mot. at 5-8. In the order, the Board determined that GMDC was late in submitting the revised notice for the revised demolition. G.M. Demolition, PCB 96-261, slip op. at 5-6. However, complainant insists that AKC submitted no revised notice as opposed to late revised notice. Mot. at 8; reply at 4. If complainant alleged that GMDC filed a late revised notice, the Board might possibly have found in complainant’s favor on this point. Complainant provides a laundry list of items that it claims were left out of GMDC’s revised notice for AKC, but alleges no new facts, changes in law, or errors in the previous application of the law. Mot. at 7-8. The Board affirms its decision from the October 1, 1998 order on point three.

4. Analytical Method

The asbestos NESHAP provides that the “procedure, including analytical methods” used to detect asbestos must be included in the notice. 40 C.F.R. § 61.145(b)(4)(v) (1997). Complainant contends that GMDC violated the asbestos NESHAP when it did not include the procedure for detecting asbestos for the Silo, Good Humor, and Go-Go facilities. Mot. at 8-10; reply at 4-5.

Section IX of the notification form states that the regulated entity must include the “analytical method, if appropriate, used to detect the presence of asbestos material.” G.M. Demolition, PCB 96-261, slip op. at 9. The word “procedure” is not mentioned at Section IX. GMDC concluded that it was inappropriate to describe the analytical method to detect asbestos so it left Section XI of the notification forms blank for those three structures.

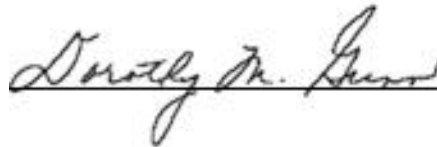
The notification form is provided by the Agency and, according to complainant, is provided for the convenience of regulated entities. Reply at 4. The Agency’s form is misleading. However, the form does not excuse GMDC from complying with the requirements of the asbestos NESHAP. The asbestos NESHAP clearly states that GMDC must provide the Agency with the “procedure”. 40 C.F.R. § 61.145(b)(4)(v) (1997). GMDC did not provide the Agency with the procedure that it used to detect asbestos at the Silo, Good Humor, and Go-Go demolitions. The Board reverses its decision from the October 1, 1998 order on point four. The Board will consider the Agency’s misleading form when it decides the penalty issue for this point.

CONCLUSION

Complainant’s motion for reconsideration is granted, but the Board affirms its October 1, 1998 order on points one, two, and three. The Board has reconsidered point four and reverses its October 1, 1998 order on that point. The parties are urged to expeditiously proceed to hearing consistent with this order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 21st day of January 1999 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board