

RECEIVED  
CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAN 29 2004

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
INTERSTATE BRANDS CORPORATION, )  
a Delaware corporation, )  
 )  
Respondent. )

STATE OF ILLINOIS  
Pollution Control Board

PCB No. 04- 134

NOTICE OF FILING

TO: See Attached Service List


PLEASE TAKE NOTICE that on January 29, 2004, the People of the State of Illinois filed with the Illinois Pollution Control Board a Complaint, true and correct copies of which are attached and hereby served upon you.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office, or an attorney.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

BY:

  
\_\_\_\_\_  
JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
(312) 814-6986

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Paul Duffy, Esq.  
Winston & Strawn  
35 W. Wacker Drive  
Chicago, Illinois 60601

Mr. Kent Magill, Esq.  
Vice President,  
Corp. Counsel & Corp. Secretary  
Interstate Brands Corporation  
12 East Armour Blvd.  
Kansas City, MO 64111

Interstate Brands Corporation  
c/o CT Corporation System  
208 S. LaSalle St., Suite 814  
Chicago, IL 60604-1101

Mr. Chris Pressnall, Esq.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62702

RECEIVED  
CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAN 29 2004

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
INTERSTATE BRANDS CORPORATION, )  
a Delaware corporation, )  
 )  
Respondent. )

PCB No. 04-134

COMPLAINT FOR CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, INTERSTATE BRANDS CORPORATION, as follows:

COUNT I

FAILURE TO FOLLOW NOTIFICATION REQUIREMENTS

1. This count is brought on behalf of the PEOPLE OF TE STATE OF ILLINOIS, by LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to the terms and provisions of Section 31 of the Environmental Protection Act ("Act") 415 ILCS 5/31 (2002).

2. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Respondent,

Interstate Brands Corporation ("IBC") was and is a Delaware corporation registered to do business in Illinois.

4. At all times relevant to this Complaint, IBC has owned and operated a plant located at 9555 W. Soreng, Schiller Park, Cook County, Illinois.

5. At its plant, IBC produces and packages for distribution numerous bakery products under the Hostess brand name, including but not limited to, Hostess Twinkies and Ho Ho's.

6. IBC had a hot water storage tank ("water tank") at its plant. The water tank, from which IBC removed asbestos-containing insulation material, was 15 feet long and 4 feet in diameter with round ends. The surface area of the water tank was greater than 160 square feet.

7. The water tank was located in the IBC plant's boiler room. The boiler room is located adjacent to the production area of the plant.

8. On January 11, 1998, IBC employees, acting pursuant to instructions from IBC's operations manager, removed friable asbestos-containing insulation material from the water tank.

9. On January 11, 1998, IBC wheeled the uncontained asbestos-containing insulation material through the plant's production area in an open cart, and in doing so caused the dry and friable asbestos-containing insulation materials to be as

close as 10 to 20 feet from the plant's food production lines.

10. IBC failed to maintain barriers between the boiler room and the production area while asbestos removal activities were taking place.

11. IBC failed to ensure that the employees involved in the asbestos removal activities wore appropriate protective equipment during the removal activities.

12. From January 11, 1998 through January 23, 1998, IBC allowed unlimited access to the boiler room in which gross asbestos contamination was observed on January 23, 1998.

13. An Illinois Department of Public Health ("IDPH") inspector inspected the IBC facility on January 23, 1998.

14. The IDPH inspector observed gross debris, which included chunks, dust and various sized pieces of suspect asbestos-containing building material on floors and other horizontal surfaces in the boiler room. Some asbestos material pieces that the IDPH inspector observed were the size of a baseball.

15. The IDPH inspector also observed uncovered finished bakery products within 20 feet of where the asbestos removal activities had taken place.

16. The IDPH inspector took three (3) samples of suspect material found lying on the floor in the boiler room.

17. All three of the IDPH inspector's samples tested

positive for asbestos. One sample contained 5-10% chrysotile asbestos and 10-15% amosite asbestos. One sample contained 70-80% chrysotile asbestos. One sample contained 20-30% amosite asbestos. Amosite is an asbestiform variety of cummingtonite-grunerite asbestos.

18. At the request of the Illinois EPA, an inspector for the Cook County Environmental Control Department ("CCECD") also inspected the IBC facility on January 23, 1998. The CCECD inspector observed a pile of grey fibrous suspect asbestos material under the water tank. The pile of suspect debris was approximately 4 inches high, 6 feet long and 1 foot wide. The CCECD inspector took two samples of the suspect debris. One sample contained 30% amosite asbestos, and the other sample contained 60% chrysotile asbestos.

19. As observed by both inspectors, IBC caused or allowed friable asbestos material to be deposited, uncontained, on the floor in the boiler room at the IBC facility.

20. IBC recalled the potentially contaminated bakery products. Some of the recalled bakery products were disposed of as asbestos-containing material.

21. Asbestos is a known human carcinogen.

22. Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), provides as follows:

No person shall:

1. Violate any provisions of Sections 111, 112, 165, or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto . . .

23. Pursuant to Section 112(b)(1) of the Clean Air Act ("CAA"), 42 USC 7412(b)(1), the Administrator of the United States Environmental Protection Agency ("USEPA") has listed asbestos as a hazardous air pollutant.

24. Section 112(d) of the CAA, 42 US 7412(d), titled, Emission Standards, provides in pertinent part as follows:

1. The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation . . .

25. Section 112(h) of the CAA, 42 USC 7412(h), titled, Work Practice Standards and Other Requirements, provides in pertinent part as follows:

1. For the purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, operation standard, or combination thereof, which in the Administrator's judgment is consistent with the provisions of subsection (d) or (f) of this section . . .

26. On June 19, 1978, the Administrator determined that work practice standards rather than emission standards are appropriate in the regulation of asbestos (see 43 Fed. Reg. 26372

(1978)), and therefore, pursuant to Section 112 of the CAA, the USEPA has adopted NESHAPs, including a NESHAP for asbestos, 40 CFR 61, Subpart M.

27. Section 61.141 of the asbestos NESHAP, 40 CFR 61.141 (July 1, 2003), provides, in pertinent part, as follows:

All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in subpart A of this part.

*Asbestos* means the abestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

*Demolition* means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

*Facility* means 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); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

*Friable asbestos material* means any material containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 CFR part 763 section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.



*Owner or operator of a demolition or renovation activity* means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

*Regulated asbestos-containing material (RACM)* means (a) Friable asbestos material, (b) Category I nonfriable ACM (asbestos containing material) that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

*Renovation* means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

28. Section 61.145(a) of the asbestos NESHAP, 40 CFR 61.145(a), titled, Standard for demolition and renovation; Applicability, provides in pertinent part as follows:

(4) In a facility being renovated, including any individual nonscheduled renovation operation, all the requirements of paragraphs (b) and (c) of this section apply if the combined amount of RACM to be stripped, removed, cut, drilled, or similarly disturbed is

- (i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or
- (ii) At least 1 cubic meter (35 cubic feet) off facility components where the area could not be measured previously.

29. The asbestos-containing material found at the IBC facility is "regulated asbestos-containing material (RACM)" as

that term is defined in 40 CFR 61.141.

30. The IBC plant at which the asbestos removal activities took place is a "facility" as that term is defined in 40 CFR 61.141.

31. The removal of the asbestos-containing insulation material from the water tank at the IBC facility that occurred on January 11, 1998 was a "renovation" as that term is defined in 40 CFR 61.141.

32. IBC, as the owner and operator of the IBC facility at which the asbestos removal operation took place, was the "owner" and operator" of the renovation activity, as those terms are defined in 40 CFR 61.141.

33. The amount of RACM removed by IBC during the asbestos renovation at the facility was in excess of 160 square feet.

34. IBC failed to properly notify the Illinois EPA of the asbestos removal activities prior to their taking place.

35. Section 61.145(b) of the asbestos NESHAP, 40 CFR 61.145(b), as adopted in Section 9.1(d) of the Act, titled, Standard for demolition and renovation: Notification requirements, provides in pertinent part as follows:

Each owner or operator of a demolition or renovation activity to which this section applies shall:

- (1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery service is acceptable.

(3) Postmark or deliver the notice as follows:

- (i) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb an asbestos material), if the operation is described in paragraphs (a) (1) and (4) (except (a) (4) (iii) and (a) (4) (iv)) of this section. If the operation is as described in paragraph (a) (2) of this section, notification is required 10 working days before demolition begins.

36. Respondent conducted its renovation activities on January 11, 1998 without providing notice to the Administrator or to Illinois EPA about the renovation activities.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent IBC on Count I:

- 1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
- 2. Finding that Respondent has violated Section 9.1(d) (1) of the Act, 415 ILCS 5/9.1(d) (1) (2002), and Section 61.145(b) of the asbestos NESHAP, 40 CFR 61.145(b);
- 3. Ordering Respondent to cease and desist from further violations of Section 9.1(d) (1) of the Act, 415 ILCS 5/9.1(d) (1) (2002), and Section 61.145(b) of the asbestos NESHAP, 40 CFR 61.145(b);
- 4. Assessing against Respondent a civil penalty of Fifty

Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

## COUNT II

### FAILURE TO REMOVE ALL RACM BEFORE RENOVATION BEGINS

1-32. Complainant realleges and incorporates herein by reference paragraphs 2 through 33 of Count I as paragraphs 1 through 32 of this Count II.

33. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS by LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion pursuant to the terms and provisions of Section 31 of the Act 415 ILCS 5/31 (2002).

34. Section 61.145(c)(1) of the asbestos NESHAP, 40 CFR 61.145(c)(1), as adopted in Section 9.1(d) of the Act, titled, Standard for demolition and renovation: Procedures for asbestos emission control, provides as follows:

Procedures for asbestos emission control. Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

- (1) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. RACM need not be removed before demolition if:
  - (i) It is Category I nonfriable ACM that is not in poor condition and is not friable.
  - (ii) It is on a facility component that is encased in concrete or other similarly hard material and is adequately wet whenever exposed during demolition; or
  - (iii) It was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed. If not removed for safety reasons, the exposed RACM and any asbestos-contaminated debris must be treated as asbestos-containing waste material and adequately wet at all times until disposed of.
  - (iv) They are Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.

35. Respondent failed to remove all RACM from its facility before breaking up, dislodging, and disturbing the RACM. None of the exceptions in Section 61.145(c)(1) of the asbestos NESHAP apply to Respondent's activities at its facility.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent IBC on Count II:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), and Section 61.145(c)(1) of the asbestos NESHAP, 40 CFR 61.145(c)(1);

3. Ordering Respondent to cease and desist from further violations of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), and Section 61.145(c)(1) of the asbestos NESHAP, 40 CFR 61.145(c)(1);

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

### COUNT III

#### FAILURE TO ADEQUATELY WET RACM

1-33. Complainant realleges and incorporates herein by reference paragraphs 1 through 33 of Count I as paragraphs 1 through 33 of this Count III.

34. On January 11, 1998, during the asbestos renovation activities, IBC failed to follow proper emission control procedures such as keeping the dry and friable RACM wet.

35. Sections 61.145(c)(3) and (c)(6) of the asbestos NESHAP, 40 CFR 61.145(c)(3) and (c)(6), as adopted in Section 9.1(d) of the Act, titled, Standard for demolition and renovation: Procedures for asbestos emission control, provides in pertinent part as follows:

Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

\* \* \*

(3) When RACM is stripped from a facility component while it remains in place in the facility, adequately wet the RACM during the stripping operation.

\* \* \*

(6) For all RACM, including material that has been removed or stripped:

(i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with §61.150; . . .

36. Respondent failed to adequately wet the RACM while it was stripping the RACM from the water tank at its facility.

37. Respondent also failed to adequately wet the stripped RACM until collected and contained in preparation for disposal.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent IBC on Count III:

1. Authorizing a hearing in this matter at which time

Respondent will be required to answer the allegations herein;

2. Finding that Respondent has violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), and Section 61.145(c)(3) and (c)(6) of the asbestos NESHAP, 40 CFR 61.145(c)(3) and (c)(6);

3. Ordering Respondent to cease and desist from further violations of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), and Section 61.145(c)(3) and (c)(6) of the asbestos NESHAP, 40 CFR 61.145(c)(3) and (c)(6);

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

#### COUNT IV

##### FAILURE TO HAVE A TRAINED PERSON PRESENT FOR RACM REMOVAL

1-33. Complainant realleges and incorporates herein by reference paragraphs 1 through 33 of Count I as paragraphs 1 through 33 of this Count IV.

34. Section 61.145(c)(8) of the asbestos NESHAP, 40 CFR



61.145(c) (8), as adopted in Section 9.1(d) of the Act, titled, Standard for demolition and renovation: Procedures for asbestos emission control;; provides in pertinent part as follows:

Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

\* \* \*

- (8) Effective 1 year after promulgation of this regulation, no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present . . .

35. On January 11, 1998, Respondent conducted its renovation activities, including stripping, removing, or otherwise handling or disturbing RACM at the facility, without having present at least one on-site representative trained in the provisions of the asbestos NESHAP and the means of complying with the asbestos NESHAP.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent IBC on Count IV:

- 1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
- 2. Finding that Respondent has violated Section 9.1(d) (1) of the Act, 415 ILCS 5/9.1(d) (1) (2002), and Section 61.145(c) (8)

of the asbestos NESHAP, 40 CFR 61.145(c)(8);

3. Ordering Respondent to cease and desist from further violations of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), and Section 61.145(c)(8) of the asbestos NESHAP, 40 CFR 61.145(c)(8);

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

#### COUNT V

##### FAILURE TO FOLLOW WASTE DISPOSAL PROCEDURES

1-33. Complainant realleges and incorporates herein by reference paragraphs 1 through 33 of Count II as paragraphs 1 through 33 of this Count V.

34. During the asbestos renovation activities on January 11, 1998, IBC failed to immediately bag the RACM in leak-tight containers after it was removed from the water tank.

35. IBC then wheeled the uncontained and uncovered RACM outside of the plant, and placed it into an ordinary refuse

dumpster/compactor for disposal as ordinary trash.

36. Section 61.150(a) of the asbestos NESHAP, 40 CFR 61.150(a), as adopted in Section 9.1(d) of the Act, titled, Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations, provides in pertinent part as follows:

Each owner or operator of any source covered under the provisions of §§61.144, 61.145, 61.146, and 61.147 shall comply with the following provisions:

- (a) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in paragraphs (a)(1) through (4) of this section.
  - (1) Adequately wet asbestos-containing waste material as follows:
    - (i) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and
    - (ii) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by §61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and
    - (iii) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and
    - (iv) Label the containers or wrapped materials specified in paragraph

(a) (1) (iii) of this section using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(j) (2) or 1926.58(k) (2) (iii). The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.

(v) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(2) Process asbestos-containing waste material into nonfriable forms as follows:

(i) Form all asbestos-containing waste material into nonfriable pellets or other shapes;

(ii) Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified by Sec. 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

\* \* \*

(4) Use an alternative emission control and waste treatment method that has received prior approval by the Administrator according to the procedure described in §61.149(c) (2).

37. From January 11, 1998, until at least January 23, 1998, Respondent failed to wet and keep wet all RACM, including the RACM that had been removed and/or stripped during its renovation activities, until it was collected and contained in labeled leak-

tight containers. Respondent also failed to process asbestos-containing waste material into nonfriable forms and failed to use approved alternative emission controls and waste treatment methods.

38. From January 11, 1998 until at least January 23, 1998, Respondent, as an owner or operator of a source covered by the provisions of Section 61.145 of the asbestos NESHAP, 40 CFR 61.145, Respondent failed to use one of the emission control and waste treatment methods specified in 40 CFR 61.150(a)(1), (a)(2) or (a)(4).

39. Respondent, by its actions as alleged herein, has violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), and Section 61.150(a) of the asbestos NESHAP, 40 CFR 61.150(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent IBC on Count V:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), and Section 61.150(a) of the asbestos NESHAP, 40 CFR 61.150(a);
3. Ordering Respondent to cease and desist from further violations of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1)

(2002), and Section 61.150(a) of the asbestos NESHAP, 40 CFR 61.150(a);

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

6. Granting such other relief as the Board deems appropriate and just.

#### COUNT VI

#### AIR POLLUTION

1-21. Complainant realleges and incorporates herein by reference paragraphs 2 through 21 of Count I and paragraph 33 of Count II as paragraphs 1 through 21 of this Count VI.

22. Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), provides as follows:

No person shall:

- a. Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

23. Section 201.141 of the Pollution Control Board

("Board") Air Pollution Regulations, 35 Ill. Adm. Code 201.141  
titled, Prohibition of Air Pollution, provides as follows:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

24. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002),  
defines "person" as follows:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

25. Respondent IBC is a corporation, and therefore a "person" as that term is defined in section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

26. Section 3.115 of the Act, 415 ILCS 5/3.115 (2002),  
defines "air pollution" as follows:

"AIR POLLUTION" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health or to property, or to unreasonably interfere with the enjoyment of life or property.

27. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002),  
defines "contaminant" as follows:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

28. The asbestos fibers released or potentially released to the environment by IBC are contaminants as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

29. By its improper handling of the dry and friable asbestos-containing materials, its failure to follow appropriate emission control and disposal procedures, and its failure to seal the area where the asbestos removal activities were taking place, IBC has caused, threatened, and/or allowed the release and distribution of asbestos fibers to the IBC plant's food production area and to the environment.

30. IBC has caused, threatened or allowed the release of asbestos fibers into the facility and the environment in sufficient quantity and of such duration so as to cause or tend to cause "air pollution" as that term is defined in Section 3.115 of the Act, 415 ILCS 5/3.115 (2002).

31. Respondent IBC, by its actions as alleged herein, has violated Section 9(a) of the Act, 415 5/9(a) (2002), and Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter a judgment in favor of Complainant and against Respondent IBC on Count VI:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;



2. Finding that Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141;

3. Ordering Respondent to cease and desist from further violations of Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141;

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, including attorney, expert witness and consultant fees, against Respondent; and

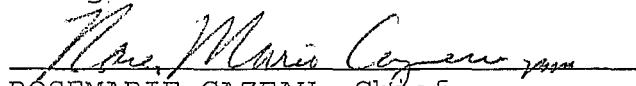
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,

by LISA MADIGAN  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:

  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

OF COUNSEL:

JOEL STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor.  
Chicago, IL 60601  
(312) 814-6986

H:\common\Environmental\JOEL\Case Documents\IBC Hostess\complaint1.wpd

CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 29th day of January, 2004, I caused to be served by First Class Mail the foregoing Complaint to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

  
\_\_\_\_\_  
JOEL J. STERNSTEIN