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JUL 30 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
MICHAEL COLLINS, d/b/a C & R)
CONSTRUCTION,)
)
Respondent.)

PCB NO. 05-14
(Enforcement)

NOTICE OF FILING

To: Mr. Michael Collins
C & R Construction
22 Loisel
East St. Louis, Illinois 62201

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, an ENTRY OF APPEARANCE and COMPLAINT, copies of which are attached hereto and herewith 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 this 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.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (1994), to correct the pollution alleged in the Complaint filed in this case.

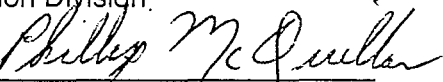
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

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

BY:



PHILLIP McQUILLAN
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: July 27, 2004

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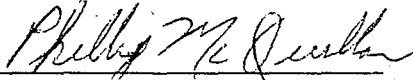
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, PHILLIP McQUILLAN, Assistant Attorney General of the State of Illinois, hereby enters his appearance as attorney of record.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General of the
State of Illinois

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

BY: 
PHILLIP McQUILLAN
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STATE OF ILLINOIS
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	No. PCB
)	(Enforcement)
MICHAEL COLLINS d/b/a C & R)	
CONSTRUCTION,)	
)	
Respondent.)	

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of the Respondent, MICHAEL COLLINS d/b/a C & R CONSTRUCTION, as follows:

COUNT I
NOTIFICATION VIOLATION

1. 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 and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

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

3. The Respondent, Michael Collins, is a contractor engaged in general construction and demolition activities, doing business as C & R Construction.

4. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002), provides:

(d) 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;

* * *

5. The regulations on National Emission Standards for Hazardous Air Pollutants ("NESHAP") governing asbestos, 40 CFR Part 61, Subpart M *et seq.*, were adopted pursuant to Section 112 of the Clean Air Act, 42 U.S.C. §7412. Asbestos is regulated as a hazardous air pollutant because it is a carcinogen.

6. 40 CFR 61.141 provides, in pertinent part:

* * *

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. * * *

* * *

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.

* * *

7. 40 CFR §61.145 provides, in pertinent part:

(a) *Applicability.* To determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

* * *

(3) If the facility is being demolished under an order of a State or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements of paragraphs (b)(1), (b)(2), (b)(3)(iii), (b)(4) (except (b)(4)(viii)), (b)(5), and (c)(4) through (c)(9) of this section apply.

* * *

(b) *Notification requirements.* 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 is acceptable.

(2) Update notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent.

(3) Postmark or deliver the notice as follows:

* * *

(iii) As early as possible before, but not later than, the following working day if the operation is a demolition ordered according to paragraph (a)(3) of this section. . . .

* * *

(c) *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:

* * *

(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. . . .

- (9) For facilities described in paragraph (a)(3) of this section, adequately wet the portion of the facility that contains RACM during the wrecking operation.

* * *

- 8. 40 CFR §61.150 provides, in pertinent part:

Each owner or operator of any source covered under the provisions of [sections] 61.144, 61.145, 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 course, or use one of the emission control and waste treatment methods specified in paragraphs (a)(1) through (4) of this section.

* * *

- (3) For facilities demolished where the RACM is not removed prior to demolition according to §§ 61.145(c)(1) (i), (ii), (iii), and (iv) or for facilities demolished according to § 61.145(c)(9), adequately wet asbestos-containing waste material at all times after demolition and keep wet during handling and loading for transport to a disposal site. . . .

* * *

- (b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

- (1) A waste disposal site operated in accordance with the provisions of § 61.154. . . .

* * *

9. The Respondent, Michael Collins, was hired by the City of East St. Louis to demolish a facility known as the former Montgomery Ward building and located at 420 St. Louis Avenue in East St. Louis, St. Clair County, Illinois. The City had issued an order for emergency demolition on July 12, 2002, because the former Montgomery Ward building had been mostly burned in a fire on July 4, 2002. In a letter dated July 23, 2002, the City had directed Michael Collins to obtain a certified asbestos supervisor for the demolition.

10. On or about July 18, 2002, Michael Collins began to demolish the former Montgomery Ward building.

11. The former Montgomery Ward building is a "facility" and the Respondent, Michael Collins, is an "operator" of a "demolition," as the terms are defined at 40 CFR §61.141.

12. On July 24, 2002, the Illinois EPA inspected the operations at the facility and determined that suspected asbestos-containing waste materials were present at the facility and in the demolition debris, that there was no on-site representative trained in the provisions of the NESHAP regulations, and that there were no efforts being made to wet the asbestos-containing waste materials during handling and loading for transport.

13. On July 24, 2002, the Illinois EPA sampled the suspected asbestos-containing waste materials, including pipe insulation. The analytical testing subsequently indicated that the pipe insulation contained at least 20% asbestos.

14. Although an operator of a demolition is required by 40 CFR §61.145(b)(1) to provide written advance notification, the Respondent, Michael Collins, did not submit, and the Illinois EPA did not receive, the required written notification for the demolition.

15. By failing to provide written notification prior to the demolition, the Respondent violated 40 C.F.R. § 60.145(b)(1) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2002).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an Order against the Respondent, Michael Collins:

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

- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and
- F. Grant such other and further relief as the Board deems appropriate.

COUNT II
WASTE HANDLING VIOLATIONS

1-13. Complainant realleges and incorporates herein by reference paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count II.

14. On July 27, 2002, the Illinois EPA returned to the facility and determined that demolition debris and asbestos-containing waste material were being disposed of at the site. In particular, the Illinois EPA observed a truck dumping dirt upon the remaining demolition debris and asbestos-containing waste materials.

15. The Respondent, Michael Collins, failed to adequately wet the asbestos-containing waste material at all times after demolition and keep wet such waste during handling and loading for transport to an EPA-approved waste disposal site, resulting in visible dust cloud emissions.

16. The Respondent, Michael Collins, failed to transport to an EPA-approved waste disposal site as soon as practical all asbestos-containing waste material generated during the demolition.

particular, the Illinois EPA observed a truck dumping dirt upon the remaining demolition debris and asbestos-containing waste materials.

15. The Respondent, Michael Collins, failed to adequately wet the asbestos-containing waste material at all times after demolition and keep wet such waste during handling and loading for transport to an EPA-approved waste disposal site, resulting in visible dust cloud emissions.

16. Respondent, Michael Collins, failed to transport to an EPA-approved waste disposal site as soon as practical all asbestos-containing waste material generated during the demolition.

17. The Respondent, Michael Collins, failed to provide an on-site representative trained in the provisions of the NESHAP regulations during the demolition and waste handling and thereby violated 40 C.F.R. § 61.145(c)(8) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2002).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an Order against the Respondent, Michael Collins:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of not more than the statutory maximum;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and

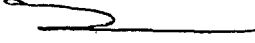
F. Grant such other and further relief as the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN
Attorney General of the
State of Illinois

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

BY: _____


THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

PHILLIP McQUILLAN
Senior Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: July 23, 2004

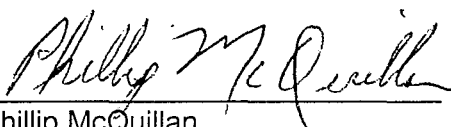
CERTIFICATE OF SERVICE

I hereby certify that I did on July 27, 2004, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: Mr. Michael Collins
C & R Construction
22 Loisel
East St. Louis, Illinois 62201

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601


Phillip McQuillan
Assistant Attorney General

This filing is submitted on recycled paper.