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STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 22, 2004

PCB05-99

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. James Zeller, et al.***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, COMPLAINT and APPEARANCE in regard to the above-captioned matter. Please file the originals and return file-stamped copies of the documents to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Raymond Callery", is written over a horizontal line.

Raymond Callery
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

RC/pp
Enclosures

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CERTIFICATE OF SERVICE

STATE OF ILLINOIS
Pollution Control Board

I hereby certify that I did on November 22, 2004, send by certified 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:

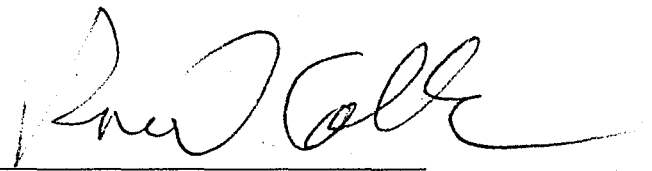
To: **JAMES ZELLER**
d/b/a TZ Builders
900 Skyline Drive
Marion, IL 62959

THOMAS ZELLER
d/b/a TZ Builders
900 Skyline Drive
Marion, IL 62959

MATTHEW SHORT
d/b/a Short Bros. Excavating & Trucking
121 54 Short Drive
Marion, IL 62959

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
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



RAYMOND CALLERY
Assistant Attorney General

This filing is submitted on recycled paper.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

NOV 29 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)

Complainant,)

vs.)

JAMES ZELLER, THOMAS ZELLER,)
and MATTHEW SHORT,)

Respondents.)

PCB No. 05-99
(Enforcement)

NOTICE OF FILING

To: **JAMES ZELLER**
d/b/a TZ Builders
900 Skyline Drive
Marion, IL 62959

THOMAS ZELLER
d/b/a TZ Builders
900 Skyline Drive
Marion, IL 62959

MATTHEW SHORT
d/b/a Short Bros. Excavating & Trucking
121 54 Short Drive
Marion, IL 62959

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is 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 (2002), 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: 

RAYMOND CALLERY
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 22, 2004

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF
ILLINOIS,

Complainant,

vs.

JAMES ZELLER, THOMAS ZELLER,
and MATTHEW SHORT,

Respondent.

No. 05-99

ENTRY OF APPEARANCE

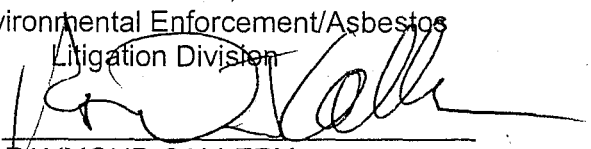
On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, RAYMOND
CALLERY, Assistant Attorney General of the State of Illinois, hereby enters his appearance as
attorney of record.

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:


RAYMOND CALLERY
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 22, 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

NOV 29 2004

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
JAMES ZELLER, THOMAS ZELLER, and)
MATTHEW SHORT,)
)
Respondents.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 05-99
(Enforcement)

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of the Respondents, JAMES ZELLER, THOMAS ZELLER, and MATTHEW SHORT, as follows:

COUNT I
NESHAP VIOLATIONS

1. This Complaint is brought by the Attorney General 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 in proceedings before the Illinois Pollution Control Board ("Board").

3. The Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2002), after providing the Respondents with notice and opportunity for a meeting with the Illinois EPA.

4. JAMES ZELLER is the owner of a parcel of property at 408 South Court Street in Marion, Williamson County, Illinois.

5. THOMAS ZELLER is a contractor doing business as "TZ Builders."

6. MATTHEW SHORT is a contractor doing business as "Short Brothers Excavating and Trucking."

7. On or about March 31, 2003, JAMES ZELLER sold to MATTHEW SHORT a building located at 408 South Court Street for the express purpose of being demolished and removed from the property. The document signed by both parties also states as follows: "Buyer is aware of asbestos siding and that is [sic] has to be handled with legal disposal."

8. On or before April 2, 2003, MATTHEW SHORT employed heavy equipment to demolish the building and to remove the siding from the building. In response to a citizen complaint on that date, the Illinois EPA visited the site and photographed the building. On April 8, 2003, the Illinois EPA attempted to contact JAMES ZELLER and MATTHEW SHORT.

9. On a date better known to the Respondents, MATTHEW SHORT ceased demolition activities. On a date better known to the Respondents, THOMAS ZELLER resumed demolition activities, employing heavy equipment to demolish the building and to remove the siding from the building.

10. On October 30, 2003, the Illinois EPA returned to the site in response to another citizen complaint. All of the siding had been removed from the building with only the structural steel beams remaining intact; a second, smaller building had been completely demolished. The Illinois EPA observed demolition debris remaining at the site including transite panels and broken pieces thereof. Samples were collected of the debris and the subsequent analyses confirmed that the transite pieces contained asbestos ranging from 18% to 21%. The Illinois EPA attempted to contact JAMES ZELLER again.

11. On November 3, 2003, the Illinois EPA returned to the site to further its investigation. The Illinois EPA observed that the transite panels had been crushed and most of the debris had been loaded into an open roll off box.

12. 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;

* * *

13. The regulations on National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR Part 61, Subpart M, were adopted pursuant to Section 112 of the Clean Air Act, 42 USC §7412. Asbestos is regulated as a hazardous air pollutant because it is a carcinogen. Regulated asbestos-containing materials ("RACM") contain more than one percent asbestos and are generally "friable," which means such materials, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

14. 40 CFR §61.145, provides the following definitions:

Category I nonfriable asbestos-containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products 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.

Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

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.

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 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.

Structural member means any load-supporting member of a facility, such as beams and load supporting walls; or any nonload-supporting member, such as ceilings and nonload-supporting walls.

15. 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:

* * *

- (2) In a facility being demolished, only the requirements of paragraphs (b)(1), (2), (3)(i) and (iv), and (4)(i) through (vii) and (4)(ix) and (xvi) of this section apply, if the combined amount of RACM is
 - (i) Less than 80 linear meters (260 linear feet) on pipes and less than 15 square meters (160 square feet) on other facility components, and
 - (ii) Less than one cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously or there is no asbestos.

* * *

- (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:
 - (i) * * * If the operation is as described in paragraph (a)(2) of this section, notification is required 10 working days before demolition begins.

* * *
 - (iv) * * * for a demolition described in paragraph (a)(2) of this section, that will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator * * *
- (4) Include the following in the notice:
 - (i) An indication of whether the notice is the original or a revised notification.
 - (ii) Name, address, and telephone number of both the facility owner and operator and the asbestos removal contractor owner or operator.
 - (iii) Type of operation: demolition or renovation.
 - (iv) Description of the facility or affected part of the facility including the size (square meters [square feet] and number of floors), age, and present and prior use of the facility.
 - (v) Procedure, including analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM.
 - (vi) Estimate of the approximate amount of RACM to be removed from the facility in terms of length of pipe in linear meters (linear feet), surface area in square meters (square feet) on other facility components, or volume in cubic meters (cubic feet) if off the facility components. Also, estimate the approximate amount of Category I and Category II nonfriable ACM in the affected part of the facility that will not be removed before demolition.
 - (vii) Location and street address (including building number or name and floor or room number, if appropriate), city,

county, and state, of the facility being demolished or renovated.

* * *

- (ix) Scheduled starting and completion dates of demolition or renovation.

* * *

- (xvi) For facilities described in paragraph (a)(3) of this section, the name, title, and authority of the State or local government representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin. A copy of the order shall be attached to the notification.

* * *

16. Each of the Respondents, JAMES ZELLER, THOMAS ZELLER, and MATTHEW SHORT, was an "operator" of a "demolition," and the building was a "facility," as the terms are defined at 40 CFR §61.141.

17. The transite removed during the demolition was a cementitious material containing asbestos ranging from 18% to 21% that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure, and therefore considered as Category II nonfriable ACM.

18. Although an operator of a demolition is required by 40 CFR §61.145(b)(2) to provide written advance notification, the Respondents did not provide written notification to the Illinois EPA prior to the demolition of the facility thereby violating 40 CFR §61.145(b)(2) 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 Respondents, JAMES ZELLER, THOMAS ZELLER, and MATTHEW SHORT, as follows:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that the Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents 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
WORK PRACTICES VIOLATIONS

1-16. Complainant realleges and incorporates herein by reference paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count II.

17. The transite removed during the demolition and subsequently crushed at the site was a cementitious material containing asbestos ranging from 18% to 21% and therefore considered as 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 the demolition.

19. 40 CFR §61.145(c) provides procedures and work practice standard for asbestos emission control. According to 40 CFR §61.145(c)(1)(iv), Category II nonfriable ACM need not be removed prior to demolition if the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition. The definition of RACM in 40 CFR §61.141

includes 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 activities.

20. Respondents, MATTHEW SHORT and THOMAS ZELLER, employed heavy equipment to demolish the building and to remove the siding from the building, thereby creating a high probability that the transite would become crumbled, pulverized, or reduced to powder.

21. Respondents, MATTHEW SHORT and THOMAS ZELLER, failed to remove the transite prior to the demolition and thereby violated 40 CFR §61.145(c)(1) and Section 9.1(d) 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 Respondents, THOMAS ZELLER and MATTHEW SHORT, as follows:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that the Respondents have violated the Act and regulations as alleged herein;
- C. Ordering Respondents 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:

RAYMOND CALLERY

Assistant Attorney General

500 South Second Street

Springfield, Illinois 62706

217/782-9031

Dated: November 19, 2004