

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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DEC 06 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
)
vs.)
)
ENVIRONMENTAL HEALTH and SAFETY)
SERVICES, INC., an Illinois)
corporation)
)
Respondent.)

PCB No. 05-51
(Enforcement - Air)

NOTICE OF FILING OF FIRST AMENDED COMPLAINT

TO: Bryan G. Selander
Schlueter Ecklund
4023 Charles Street
Rockford, Illinois 61108

Pollution Control Board
Attention: Clerk
100 West Randolph Street
James R. Thompson Center
Suite 11-500
Chicago, Illinois 60601-3218

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board Complainant's First Amended Complaint, a Notice of Filing, and a Certificate of Service on behalf of the People of the State of Illinois, a copy of which is attached and herewith served upon you.

Section 103.204(f) of the Pollution Control Board Procedural Rules, 35 Ill. Adm. Code 103.204(f) provides: "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,

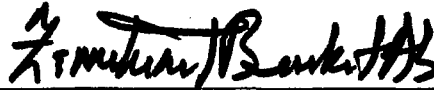
you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney."

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:



ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-3816

DATE: December 6, 2004

G:\Environmental Enforcement\Z BEREKET-AB\Environmental Health notice of filing 12-06-04.wpd

DEC 06 2004

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

STATE OF ILLINOIS
Pollution Control Board

Complainant,)

PCB No. 05-51

-vs-)

(Enforcement-Air)

ENVIRONMENTAL HEALTH & SAFETY)
SERVICES, INC., an Illinois corporation,)

Respondent.)

FIRST AMENDED COMPLAINT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by
LISA MADIGAN, Attorney General of the State of Illinois, and
complains of Respondent, ENVIRONMENTAL HEALTH & SAFETY SERVICES,
INC., as follows:

COUNT I

AIR POLLUTION

1. This Complaint is brought by LISA MADIGAN, Attorney
General of the State of Illinois, on her own motion and at the
request of the Illinois Environmental Protection Agency
("Illinois EPA") against ENVIRONMENTAL HEALTH & SAFETY SERVICES,
INC., pursuant to the terms and provisions of Section 31 of the
Illinois Environmental Protection ("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. Environmental Health & Safety Services, Inc., ("Respondent") is an Illinois corporation in good standing.

4. Respondent conducts asbestos consulting services, including building inspections, asbestos abatement project management, and asbestos removal and disposal activities.

5. At all times relevant to this Complaint, Respondent was located at 1304 Derby Lane, Rockford, Winnebago County, Illinois 61107.

6. Respondent, as the asbestos removal contractor, contracted with the owner of the former Lincoln Park School located at 4103 West State Street, Rockford, Winnebago County, Illinois ("Facility") to remove and dispose of regulated asbestos-containing material ("RACM") from the boiler room located within the Facility. Respondent was the operator of the renovation activity at the Facility.

7. On December 9, 2002, the Illinois EPA received from Respondent a Notification of Demolition and Renovation ("Notification"), informing the Illinois EPA of scheduled asbestos removal activities to be conducted within the Facility.

The asbestos removal was scheduled to begin on January 2, 2003, and be completed by January 24, 2003.

8. The Notification failed to state an estimate of the approximate amount of asbestos that will not be removed during demolition of the facility.

9. On January 7, 2003, Illinois EPA inspected the Facility.

10. On January 7, 2003, Respondent informed the Illinois EPA that asbestos removal activities, originally scheduled to commence within the Facility on January 2, 2003, commenced on January 6, 2003, two working days after the scheduled starting date for asbestos removal activity stated in the Notification.

11. On January 7, 2003, and on a date(s) better known to Respondent, Respondent's employees removed and dropped to the boiler room floor dry friable regulated asbestos-containing boiler insulation located on one boiler and boiler pipes causing the visible emission of regulated asbestos-containing boiler insulation. Respondent's employees conducted asbestos removal activities within the boiler area without utilizing a containment area with negative air, decontamination unit, bagout area, or water spray to control asbestos emissions.

12. On January 7, 2003, the Illinois EPA inspected one of several bags located within the boiler room area and utilized by Respondent's employee to contain boiler insulation. At least one

bag contained dry friable regulated asbestos-containing boiler insulation that could easily be crushed and crumbled by hand pressure. Neither water nor condensation were visible within at least one bag utilized to contain regulated asbestos-containing boiler insulation.

13. On January 7, 2003, the Illinois EPA collected three samples of dry friable RACM from the Facility for analytical testing. Two samples of dry friable RACM were collected from inside the boiler room work area, and one sample was collected from the area adjacent to the entry door to the work area.

14. On January 24, 2003, the Illinois EPA received from EnviroHealth Technologies, Inc., test data documenting that one of the samples contained concentrations of chrysotile asbestos from 10% to 20% and all three samples contained concentrations of amosite asbestos from 10% to 30%.

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

No person shall:

1. 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;

16. Section 201.141 of the Illinois 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 . . .

17. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), defines a 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.

18. Respondent, a corporation, is a "person" as that term is defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

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

"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.

20. 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.

21. Asbestos is a contaminant as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

22. As operator of an asbestos removal activity, Respondent caused, threatened or allowed the discharge or emission of asbestos into the environment so as to cause or tend to cause air pollution in that dry friable RACM located on one boiler and boiler pipes within the Facility was removed without utilizing wet methods or measures to control asbestos emissions.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent and in favor of Complainant:

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 and 35 Ill. Adm. Code Section 201.141;

3. Ordering Respondent to cease and desist from any further violations of Sections 9(a) of the Act, and 35 Ill. Adm. Code Section 201.141;

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

5. Requiring Respondent to pay all costs of this proceeding pursuant to Section 42(f) of the Act, including expert witnesses, consultant, and attorney fees; and

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

COUNT II

FAILURE TO PROVIDE A COMPLETE NESHAP FOR ASBESTOS NOTIFICATION

14. Complainant realleges and incorporates by reference herein, paragraphs 1 through 14 of Count I as paragraphs 1 through 14 of this Count II.

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

(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.

16. Pursuant to Section 112(b)(1) of the Clean Air Act ("CAA"), 42 U.S.C. 7412(b)(1), the Administrator of the United States Environmental Protection Agency ("USEPA") lists asbestos as a hazardous air pollutant.

17. Section 112(d) of the CAA, 42 U.S.C. 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

. . . .

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

1. For 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, or operational standard, or combination thereof, which in the Administrator's judgment is consistent with the provisions of subsection (d) or (f) of this section . . .

19. Pursuant to Section 112 of the CAA, the USEPA has adopted NESHAP. The Administrator determined that work practice standards rather than emission standards were appropriate in the regulation of asbestos.

20. The federal regulations set forth within the NESHAP for asbestos are enforceable through Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002).

21. Section 61.141 set forth within the NESHAP for asbestos, 40 CFR 61.141 (January 17, 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 asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

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.

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 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 facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

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.

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.

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.

Remove means to take out RACM or facility components that contain or are covered with RACM from any facility.

22. The structure within which Respondent conducted asbestos removal activities is a "facility" as defined in 40 CFR 61.141.

23. The removal of asbestos from the facility constitutes a renovation as defined in 40 CFR 61.141.

24. As the contractor who operated, controlled, or supervised asbestos removal activities, Respondent was the operator of a renovation activity as that term is defined in 40 CFR 61.141.

25. Section 61.145(a) of the NESHAP, 40 CFR 61.145(a) (January 17, 2003), titled, Standard for Demolition and Renovation, provides in pertinent part as follows:

(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:

(1) In a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section, if the combined amount of RACM 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) of facility components where the length or area could not be measured previously.

26. The Notification stated the Facility was to be demolished, that 1000 linear feet of RACM on pipes was to be removed, 630 square feet of RACM was to be removed from the boilers, and 12,500 square feet of Category I nonfriable asbestos-containing floor tile was to be removed.

27. Asbestos removal activities performed by Respondent within the Facility were subject to the requirements of 40 CFR 61.145(b) (c), and 61.150.

28. Section 61.145(b) (4) (vi), set forth within the NESHAP for asbestos, CFR 61.145(b) (4) (vi) (January 17, 2003), titled Standard for Demolition and Renovation: Notification Requirements, provides in pertinent part:

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

(4) Include the following in the notice:

(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.

29. In the Notification received by the Illinois EPA from Respondent on December 6, 2002, Respondent failed to set forth an estimate of the approximate amount of Category I and Category II nonfriable ACM in the affected area of the Facility that will not be removed before demolition of the Facility.

30. By its failure to submit a complete notification in accordance with the requirements of 40 C.F.R. 61.145(b) (4) (vi),

Respondent violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), and 40 CFR 61.145(b)(4)(vi).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent and in favor of the Complainant:

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 and 40 CFR 61.145(b)(4)(vi);
3. Ordering Respondent to cease and desist from any further violations of Section 9.1(d)(1) of the Act and 40 CFR 61.145(b)(4)(vi);
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of violation;

Requiring Respondent to pay all costs of this proceeding pursuant to Section 42(f) of the Act, including expert witness, consultant, and attorney fees; and
5. Granting such other relief as this Board deems appropriate and just.

COUNT III

FAILURE TO TIMELY SUBMIT A NESHAP FOR ASBESTOS NOTIFICATION

1-29. Complainant realleges and incorporates by reference herein, paragraphs 1 through 29 of Count II as paragraphs 1 through 29 of this Count III.

30. Section 61.145(b)(1) and (3)(iv) set forth within the NESHAP for asbestos, 40 CFR 61.145(b)(1) and (3)(iv) (January 17, 2003), titled, Standard for Demolition and Renovation: Notification Requirements, provides in pertinent part as follows:

- (b) 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.
 - (3) Postmark or deliver the notice as follows:
 - (iv) For asbestos stripping or removal work in a demolition or renovation operation, described in paragraphs (a)(1) and (4) (except (a)(4)(iii) and (a)(4)(iv)) of this section, and 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 as follows:
 - (A) When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin after the date contained in the notice,

- (1) Notify the Administrator of the new start date by telephone as soon as possible before the original start date, and
- (2) Provide the Administrator with a written notice of the new start date as soon as possible before, and no later than, the original start date. Delivery of the updated notice by the U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

31. Respondent failed to submit to the Illinois EPA a notification revising the scheduled starting date for asbestos removal activities prior to the expiration of the original scheduled starting date of January 2, 2003, as required by 40 CFR 61.145(b) (3) (iv).

32. Respondent, by its failure to notify the Illinois EPA of the new starting date for asbestos removal activity, violated Section 9.1(d) (1) of the Act, 415 ILCS 5/9.1(d) (1) (2002), and 40 CFR 61.145(b) (1) and (3) (iv) (January 17, 2003).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent and in favor of the Complainant:

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 and 40 CFR 61.145 and (3) (iv);

3. Ordering Respondent to cease and desist from any further violations of Section 9.1(d) (1) of the Act and 40 CFR 61.145(b) (3) (iv);

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

5. Requiring Respondent to pay all costs of this proceeding pursuant to Section 42(f) of the Act, including expert witness, consultant, and attorney fees; and

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

COUNT IV

FAILURE TO ADEQUATELY WET ALL RACM PRIOR TO STRIPPING FROM STRUCTURES

1-27. Complainant realleges and incorporates by reference herein, paragraphs 1 through 27 of Count II as paragraphs 1 through 27 of this Count IV.

28. Section 61.145(c) (3) set forth within the NESHAP for asbestos, 40 CFR 61.145(c) (3) (January 17, 2003), titled, Standard for Demolition and Renovation: Procedures for Asbestos Emission Control, provides in pertinent part as follows:

- (c) Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to

(d) 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.

29. Respondent failed to adequately wet all RACM during asbestos removal activities within the Facility.

30. In failing to adequately wet the RACM during asbestos removal activities, Respondent violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), and 40 CFR 61.145(c)(3).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent and in favor of the Complainant:

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 and 40 CFR 61.145(c)(3);
3. Ordering Respondent to cease and desist from any further violations of Section 9.1(d)(1) of the Act and 40 CFR 61.145(c)(3);
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of violation;

5. Requiring Respondent to pay all costs of this proceeding pursuant to Section 42(f) of the Act, including expert witness, consultant, and attorney fees; and

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

COUNT V

FAILURE TO ADEQUATELY WET ALL RACM
UNTIL COLLECTION

1-27. Complainant realleges and incorporates by reference herein, paragraphs 1 through 27 of Count II as paragraphs 1 through 27 of this Count V.

28. Section 61.145(c)(6)(i) set forth within the NESHAP for asbestos, 40 CFR 61.145 (c)(6)(i) (January 17, 2003), titled, Standard for Demolition and Renovation: Procedures for Asbestos Emission Control, provides in pertinent part as follows:

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; . . .

29. Respondent failed to adequately wet and maintain wet all RACM and regulated asbestos-containing waste material until collected and contained in preparation for disposal at a site permitted to accept such waste.

30. By failing to ensure that the RACM and regulated asbestos-containing waste material remained wet until collected and contained, Respondent violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), and 40 CFR 61.145(c)(6)(i).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent and in favor of the Complainant:

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 and 40 CFR 61.145(c)(6)(i);

3. Ordering Respondent to cease and desist from any further violations of Section 9.1(d)(1) of the Act and 40 CFR 61.145(c)(6)(i);

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

5. Requiring Respondent to pay all costs of this proceeding pursuant to Section 42(f) of the Act, including expert witness, consultant, and attorney fees; and

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

COUNT VI

FAILURE TO ADEQUATELY WET AND KEEP WET
ASBESTOS-CONTAINING WASTE MATERIAL

1-27. Complainant realleges and incorporates by reference herein, paragraphs 1 through 27 of Count II as paragraphs 1 through 27 of this Count VI.

28. Section 61.150(a)(1) set forth within the NESHAP for asbestos, 40 CFR 61.150(a)(1) (October 10, 2003), 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 materials as follows:

29. Respondent failed to adequately wet and keep wet, containerize, and label all regulated asbestos-containing waste materials, thereby causing or allowing the discharge of visible emissions.

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

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent and in favor of the Complainant:

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 and 40 CFR 61.150(a) (1);
3. Ordering Respondent to cease and desist from further violations of Section 9.1(d) (1) of the Act and 40 CFR 61.150(a) (1);
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act and 40 C.F.R. 61.150(a) (1), with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of violation;
5. Requiring Respondent to pay all costs of this proceeding pursuant to Section 42(f) of the Act, including expert witness, consultant, and attorney fees; and
6. Granting such other relief as this Board deems appropriate and just.

COUNT VII

FAILURE TO DEPOSIT RACM AT A PERMITTED SITE

1-27. Complainant realleges and incorporates by reference herein, paragraphs 1 through 27 of Count II as paragraphs 1 through 27 of this Count VII.

28. Sections 61.150(b)(1) set forth within the NESHAP for asbestos, 40 CFR 61.150(b)(1) (October 10, 2003), 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:

(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 Section 61.154, or ...

29. Respondent failed to dispose of all RACM and asbestos-containing waste material generated during renovation activities as soon as is practical.

30. Respondent, by its failure as alleged herein, has violated Section 91.(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), and 40 CFR 61.150(b).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent and in favor of the Complainant:

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 Sections 9.1(d)(1) of the Act and 40 CFR 61.150(b).

3. Ordering Respondent to cease and desist from any further violations of Section 9.1(d)(1) of the Act and 40 CFR 61.150(b).

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

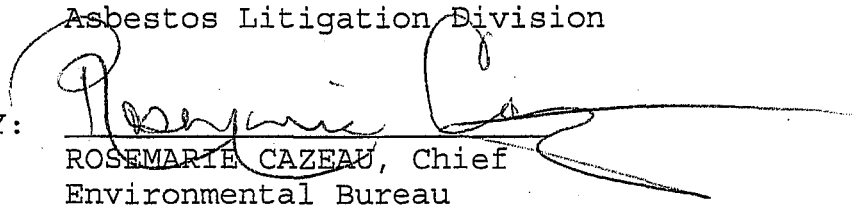
5. Requiring Respondent to pay all costs of this proceeding pursuant to Section 42(f) of the Act, including expert witness, consultant, and attorney fees; and

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

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

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

BY:



ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:
ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
188 W. Randolph St, 20th Fl.
Chicago, Illinois 60601
(312) 814-3816

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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached First Amended Complaint,
Notice of Filing, and a Certificate of Service via United States Postal certified mail upon:

Bryan G. Selander
Schlueter Ecklund
4023 Charles Street
Rockford, Illinois 61108



ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, Illinois 60601