

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PEOPLE OF THE STATE OF ILLINOIS,)
Complainant,)
)
v.)
)
CHAMPION ENVIRONMENTAL SERVICES,)
INC., a Wisconsin corporation)
)
Respondent.)

AUG 22 2005

STATE OF ILLINOIS
Pollution Control Board

PCB No. 2005-199
(Enforcement-Air)

CHAMPION ENVIRONMENTAL SERVICES, INC.'S ANSWER TO COMPLAINT

COUNT I

Violations of the National Emissions Standards for Asbestos

1. This count is brought on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

RESPONSE: Champion Environmental Services, Inc. ("Champion") admits that this action has been brought by the Attorney General. Champion is without knowledge sufficient to form a belief as to the truth of the remaining allegations of this paragraph 1 and therefore denies the same.

2. The Illinois Environmental Protection Agency ("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 investigating and enforcing violations of the Act.

RESPONSE: This paragraph 2 contains legal conclusions for which Champion is not required to answer, and the cited statute speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 2.

3. Champion Environmental Services, Inc. ("Champion") is a Wisconsin corporation that has filed a certificate of authority to transact business in Illinois [and is] in good standing. The registered agent for Champion is Barbara J. Gorniak, 38 West End Drive, Gilberts, Kane County, Illinois 60136.

RESPONSE: Champion admits the allegations of this paragraph 3.

4. CNH America LLC of East Moline is the owner of the former Case manufacturing facility located at 1100 Third Street, East Moline, Rock Island County, Illinois. The size of the facility is approximately two million five hundred thousand (2,500,000) square feet. CNH America LLC contracted Champion to remove approximately fifteen thousand linear feet of regulated asbestos containing materials ("RACM"), ten thousand (10,000) square feet of Category I non-friable asbestos containing material ("ACM"), and two million ten thousand (2,010,000) square feet of Category II non-friable ACM, prior to the demolition of the facility.

RESPONSE: Champion admits the allegations of this paragraph 4.

5. Champion submitted a notification of the asbestos abatement and demolition project to the Illinois EPA on February 14, 2005. The project commenced on or after February 24, 2005. Champion subsequently submitted a revised notification of the asbestos abatement and demolition project to the Illinois EPA on March 23, 2005.

RESPONSE: Champion admits the allegations of this paragraph 5 and states that the project commenced in March 2005.

6. On May 4, 2005, the Illinois Attorney General's Office was contacted by local citizens with complaints alleging improper asbestos removal activity at the facility. The Illinois EPA was requested to investigate the complaints.

RESPONSE: Champion is without knowledge sufficient to form a belief as to the truth of the allegations of this paragraph 6 and therefore denies the same. Without admitting the accuracy of the following, Champion states: According to the May 9, 2005 Asbestos Inspection Memorandum, the "Reason for Inspection" was an "anonymous complaint was emailed to the LaSalle IEPA office from Dale Halford regarding possible improper asbestos removal at the former Case I H Plant in East Moline Illinois."

7. The Illinois EPA subsequently provided its investigatory reports to Illinois Attorney General's Office.

RESPONSE: Champion is without knowledge sufficient to form a belief as to the truth of the allegations of this paragraph 7 and therefore denies the same.

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

RESPONSE: This paragraph 8 contains legal conclusions for which Champion is not required to answer, and the cited regulation speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 8.

9. 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. RACM contains more than one percent asbestos and is generally "friable," which means such materials, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

RESPONSE: This paragraph 9 contains legal conclusions for which Champion is not required to answer, and the cited regulation speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 9.

10. 40 CFR §61.141 provides the following pertinent definitions:

Adequately wet means sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

Asbestos-containing waste materials means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this subpart. . . . As applied to demolition and renovation operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

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.

Facility means any institutional, commercial, public, industrial, or residential structure, installation, or building . . .

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.

Nonfriable asbestos-containing 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, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Outside air means the air outside buildings and structures, including, but not limited to, the air under a bridge or in an open air ferry dock.

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-containing 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.

Visible emissions means any emissions, which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material . . . This does not include condensed, uncombined water vapor.

RESPONSE: This paragraph 10 contains legal conclusions for which Champion is not required to answer, and the cited regulation speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 10.

11. 40 CFR §61.145 provides in pertinent part as follows:

Standard for demolition and renovation.

(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.

* * *

(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:

(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:

* * *

(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.

* * *

(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; and
- (ii) Carefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.
- (iii) Transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections.
- (iv) RACM contained in leak-tight wrapping that has been removed in accordance with paragraphs (c)(4) and (c)(3)(i)(B)(3) of this section need not be wetted.

RESPONSE: This paragraph 11 contains legal conclusions for which Champion is not required to answer, and the cited regulation speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 11.

12. 40 CFR §61.150 provides in pertinent part as follows:

Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.

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 material . . .

* * *

(5) As applied to demolition or renovation, the requirements of paragraph (a) of this section do not apply to Category I nonfriable ACM waste and Category II nonfriable ACM waste that did not become crumbled, pulverized, or reduced to powder.

(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,
or

(2) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of §61.155.

(3) The requirements of paragraph (b) of this section do not apply to Category I nonfriable ACM that is not RACM.

* * *

RESPONSE: This paragraph 12 contains legal conclusions for which Champion is not required to answer, and the cited regulation speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 12.

13. The former Case building in East Moline is a “facility” and the Respondent is an “operator” of a “demolition” as these terms are defined at 40 CFR 61.141.

RESPONSE: Champion admits the allegations of this paragraph 13.

14. Transite is a cementitious product classified as “Category II nonfriable ACM” as that term is defined at 40 CFR 61.141. Category II materials that have a high probability of being crumbled, pulverized, or reduced to powder as part of demolition must be removed before demolition begins.

RESPONSE: This paragraph 14 contains legal conclusions for which Champion is not required to answer, and the cited regulation speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 14.

15. On May 5, 2005, during the Illinois EPA inspection of the facility, Champion was removing transite panels from the roof of the facility. The Respondent’s removal methods rendered much of this formerly non-friable material friable. Specifically, some of the transite was being struck with hammers, dropped from the roof to the concrete floor, and run over by heavy equipment. Due to the Respondent’s improper work practices as to removal, the transite materials became crumbled, pulverized, or reduced to powder during demolition.

RESPONSE: Champion denies the allegations of this paragraph 15.

16. During the May 5, 2005, inspection, large amounts of dry friable asbestos-containing waste materials were on the floor of the facility and scattered around on the site. Champion was not using water to suppress or control emissions. Eight open bins and three partially covered thirty cubic yard containers with dry friable asbestos-containing waste materials were located on site. Suspected asbestos-containing waste materials and construction

debris were scattered on the banks of the Mississippi River near the facility. Analytical testing of samples taken of the transite at the site revealed the presence of approximately 30 to 35 percent asbestos.

RESPONSE: Champion denies the allegations of this paragraph 16.

17. The Respondent failed to properly remove Category II nonfriable ACM from the facility and thereby ensure that such materials would not become crumbled, pulverized, or reduced to powder during demolition, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2002) and 40 CFR §61.145(c)(1).

RESPONSE: Champion denies the allegations of this paragraph 17.

18. The Respondent failed to adequately wet and keep wet all RACM removed during renovation operations until collected and contained in leak-tight wrapping in preparation for disposal, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2002) and 40 CFR §61.145(c)(6).

RESPONSE: Champion denies the allegations of this paragraph 18.

19. The Respondent failed to deposit as soon as practicable all RACM and asbestos-containing waste material at a site permitted to accept such waste, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2002) and 40 CFR §61.150 (b)(1).

RESPONSE: Champion denies the allegations of this paragraph 19.

20. The Respondent failed to collect, contain and deposit as soon as practicable all RACM and asbestos-containing waste materials generated during the removal at a site permitted to accept such waste, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2002), 40 CFR §61.145(c)(6), and 40 CFR §61.150(b)(1).

RESPONSE: Champion denies the allegations of this paragraph 20.

21. Champion has previously been adjudicated in violation of Sections 9(a) and 9.1(d) of the Act in PCB 97-135. These presently alleged violations constitute repeated violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), and Complainant is thereby authorized to seek attorney's fees and costs.

RESPONSE: Champion denies the allegations of this paragraph 21.

PRAYER FOR RELIEF

WHEREFORE, Champion prays that judgment be entered in favor of Champion and against Complainant.

COUNT II

Air Pollution Violations

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

RESPONSE 1-16: Champion realleges and incorporates by reference its responses to paragraphs 1 through 21 of Count I as its responses to these paragraphs 1 through 16.

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

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;

RESPONSE: This paragraph 17 contains legal conclusions for which Champion is not required to answer, and the cited statute speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 17.

18. Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141 (2002), provides:

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.

RESPONSE: This paragraph 18 contains legal conclusions for which Champion is not required to answer, and the cited regulation speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 18.

19. Section 3.115 of the Act, 415 ILCS 3.115 (2002), provides the following definition:

“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.

RESPONSE: This paragraph 19 contains legal conclusions for which Champion is not required to answer, and the cited statute speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 19.

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

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

RESPONSE: This paragraph 20 contains legal conclusions for which Champion is not required to answer, and the cited statute speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 20.

21. Asbestos is a contaminant as that term is defined in Section 3.165 of the Act.

RESPONSE: This paragraph 21 contains legal conclusions for which Champion is not required to answer, and the cited statute speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 21.

22. Due to the Respondent’s improper work practices as to both removal and the collection or processing of the asbestos-containing waste materials, the transite materials became crumbled, pulverized, or reduced to powder during demolition and resulted in “visible emissions” as that term is defined at 40 CFR 61.141.

RESPONSE: Champion denies the allegations of this paragraph 22.

23. By causing or allowing visible emissions from asbestos-containing waste materials, the Respondent has violated Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2002) and 40 CFR §61.150(a).

RESPONSE: Champion denies the allegations of this paragraph 23.

24. The Respondent has caused, threatened, or allowed the discharge or emission of dry friable asbestos, a contaminant and hazardous air pollutant, into the environment so as to tend to cause air pollution, thereby violating Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and 35 Ill. Adm. Code 201.141.

RESPONSE: Champion denies the allegations of this paragraph 24.

25. Champion has previously been adjudicated in violation of Sections 9(a) and 9.1(d) of the Act in PCB 97-135. These presently alleged violations constitute repeated violations pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2002), and Complainant is thereby authorized to seek attorney's fees and costs.

RESPONSE: Champion denies the allegations of this paragraph 24.

PRAYER FOR RELIEF

WHEREFORE, Champion prays that judgment be entered in favor of Champion and against Complainant.

COUNT III

Open Dumping

1-16 [sic]. Complainant realleges and incorporates herein by reference paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count III.

RESPONSE: Champion realleges and incorporates by reference its responses to paragraphs 1 through 21 of Count I as its responses to these paragraphs 1 through 16.

17. Section 21 of the Act, 415 ILCS 5/21 (2002), provides, in pertinent part, as follows:

No person shall:

a. Cause or allow the open dumping of any waste.

* * *

e. Dispose, treat, store or abandon any waste . . . except at a site which meets the requirements of this Act and of regulations and standards thereunder.

* * *

- p. In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

1. litter;

* * *

RESPONSE: This paragraph 17 contains legal conclusions for which Champion is not required to answer, and the cited statute speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 17.

18. Section 3.385 of the Act, 415 ILCS 5/3.385 (2002), provides as follows:

“Refuse” means waste.

RESPONSE: This paragraph 18 contains legal conclusions for which Champion is not required to answer, and the cited statute speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 18.

19. Section 3.535 of the Act, 415 ILCS 5/3.535 (2002), provides as follows:

“Waste” means any garbage . . . or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities,

* * *

RESPONSE: This paragraph 19 contains legal conclusions for which Champion is not required to answer, and the cited statute speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 19.

20. Section 3.505 of the Act, 415 ILCS 5/3.505 (2002), provides as follows:

“Open dumping” means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

RESPONSE: This paragraph 20 contains legal conclusions for which Champion is not required to answer, and the cited statute speaks for itself. To the extent any answer is required, Champion denies any allegations of this paragraph 20.

21. Since on or before May 4, 2005, and at times known better to the Respondent, Champion has caused or allowed the open dumping of asbestos-containing waste and other refuse at the site. Such dumping has resulted in litter and, due to the presence of asbestos-containing waste, has created a danger to the public health and environment. The site does not meet the requirements of the Act, and the regulations and standards thereunder, for a waste disposal site.

RESPONSE: Champion denies the allegations of this paragraph 21.

22. By causing or allowing the open dumping of refuse and waste, and by disposing or abandoning wastes at a site that does not meet the requirements of the Act and the regulations and standards thereunder, the Respondent, Champion, has violated Sections 21(a) and 21(e) of the Act, 415 ILCS 5/21(a), 21(e)(2002). By causing or allowing open dumping in a manner resulting in litter, the Respondent has also violated Section 21(p) of the Act, 415 ILCS 5/21(p) (2002).

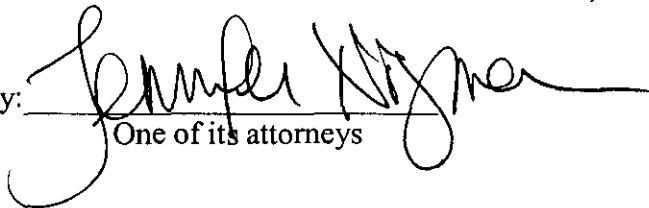
RESPONSE: Champion denies the allegations of this paragraph 22.

PRAYER FOR RELIEF

WHEREFORE, Champion prays that judgment be entered in favor of Champion and against Complainant.

Respectfully submitted,

CHAMPION ENVIRONMENTAL SERVICES, INC.

By: 
One of its attorneys

August 22, 2005

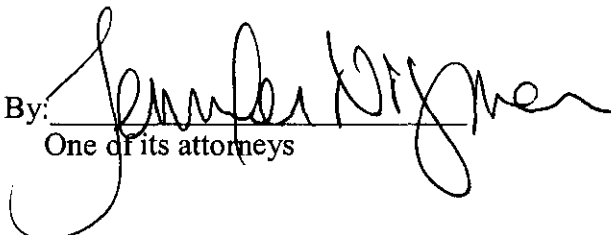
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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that she caused a copy of the foregoing CHAMPION ENVIRONMENTAL SERVICES, INC.'S ANSWER TO COMPLAINT to be served upon:

J. L. Homan
Environmental Bureau, Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706

by depositing the same in the United States Mail, postage prepaid, at 35 W. Wacker Drive, Chicago, IL 60601 on August 22, 2005.

By: 
One of its attorneys

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