



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE
OCT 22 2008
STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

October 17, 2008

PCB09-27

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Richard King, Kay King and Isaac King***

Dear Clerk:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Andrew J. Nicholas".

Andrew J. Nicholas
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

AJN/pk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
RICHARD KING, KAY KING and)
ISAAC KING,)
)
Respondents.)

PCB No. 09-27
(Enforcement)

NOTICE OF FILING

RECEIVED
CLERK'S OFFICE

OCT 22 2008

STATE OF ILLINOIS
Pollution Control Board

To: Christine Zeman
Hodge Dwyer Zeman
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776

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.

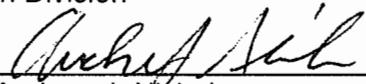
FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2006), to correct the pollution alleged in the Complaint filed in this case.

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: 
Andrew J. Nicholas
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 17, 2008

CERTIFICATE OF SERVICE

I hereby certify that I did on October 17, 2008, 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: Christine Zeman
Hodge Dwyer Zeman
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776

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

To: John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



Andrew J. Nicholas
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

RICHARD KING, KAY KING and ISAAC KING,

Respondents.

PCB No. 09-27
(Enforcement)

RECEIVED
CLERK'S OFFICE
OCT 22 2008
STATE OF ILLINOIS
Pollution Control Board

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, Andrew J. Nicholas, 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: Andrew J. Nicholas
Andrew J. Nicholas
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 17, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
RICHARD KING, KAY KING)
& ISAAC KING,)
)
Respondents.)

PCB NO. 09-27
(Enforcement - Air)

RECEIVED
CLERK'S OFFICE
OCT 22 2008
STATE OF ILLINOIS
Pollution Control Board

COMPLAINT

Complainant, 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 Respondents, RICHARD KING, KAY KING, and ISAAC KING as follows:

COUNT I

AIR POLLUTION

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 (2006).

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 (2006), and charged, *inter alia*, with the duty of investigating and enforcing violations of the Act.

3. At all times relevant to this Complaint, Respondents Richard and Kay King (the "Kings") were the owners of a vacant three story building, formerly known as the Buck's

Building, located at 527 East Washington Street, Springfield, Illinois ("Buck's Building").

4. The Kings employed Isaac King, their son, to supervise and participate in renovation and restoration activities at the Buck's Building.

5. On January 12, 2007, the Illinois EPA inspected the interior and entrance to the Buck's Building. The building contained debris, including carpet, drywall joint compound, wallpaper and dimensional lumber in an open dumpster, located at the corner of Washington and 6th Streets. In addition, there was broken suspect drywall and plaster at various locations on the ground adjacent to the dumpster and leading to the doorway entrance of the building and significant quantities of dry white dust coating the floor. All wall covering, flooring, and ceiling material had been removed from within the building.

6. On January 12, 2007, the Illinois EPA collected a sample of friable suspect drywall from the ground adjacent to an open dumpster. It was capable of being crumbled, pulverized or reduced to powder by hand pressure.

7. The sample drywall was tested and determined to contain a concentration of chrysotile asbestos ranging from 1% to 5%. Additional testing revealed an asbestos concentration in the amount of 2.9% within the sample.

8. On January 29 and 30, 2007, material samples were collected from within the facility during an asbestos survey performed by a contractor retained by the Kings to identify the presence of asbestos-containing materials or asbestos contaminated debris. Data resulting from analytical testing of the samples, by an analytical testing laboratory utilized by the contractor, revealed the presence of asbestos concentrations within wall paper, paneling mastic, joint compound, floor tile, debris powder, wall plaster finish coat, and baseboard material greater than 1 percent. In addition, the asbestos survey revealed the presence of asbestos within materials located on each floor and the basement of the building.

9. On a date prior to January 12, 2007, and better known to the Respondents, the Respondents commenced the removal of wall, ceiling and flooring material, including regulated asbestos-containing material within the Buck's Building.

10. Section 9(a) of the Act, 415 ILCS 5/9(a) (2006), 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;

11. Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141 (2005), 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.

12. Section 3.115 of the Act, 415 ILCS 3.115 (2006), 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.

13. On or before January 12, 2007, by improperly disturbing, handling and disposing of asbestos-containing material, the Respondents caused, threatened or allowed the discharge or emission of asbestos, a contaminant that is a known human carcinogen and which has no known safe level of exposure, into the environment.

14. By causing, threatening or allowing the discharge or emission of a contaminant into the environment, Respondents caused or tended to cause air pollution in Illinois.

15. By causing or tending to cause air pollution in Illinois, Respondents violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2006) and Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141 (2005).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, RICHARD KING, KAY KING and ISAAC KING, on this Count I:

- 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 the 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) (2006), impose a civil penalty of not more than the statutory maximum; and
- E. Grant such other and further relief as the Board deems appropriate.

COUNT II

**FAILURE TO INSPECT FOR ASBESTOS AND
PROVIDE NOTIFICATION OF DEMOLITION AND RENOVATION**

1-9. Complainant realleges and incorporates by reference herein paragraphs 1 through 9 of Count I as paragraphs 1 through 9 of this Count II.

10. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d)(2006) 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;

11. Section 61.141 of the NESHAP for asbestos, 40 C.F.R. 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 means the asbestiform varieties of serpentine (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.

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.

Installation means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

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.

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, 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.

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.

12. The Buck's Building is a "facility" as that term is defined in Section 61.141 of the NESHAP for asbestos, 40 C.F.R. 61.141.
13. The activities of the Respondents at the Buck's Building constitute a "renovation" as that term is defined in 40 C.F.R. 61.141.
14. Respondents Richard King and Kay King own the facility being renovated and are therefore each an "owner" as defined in 40 C.F.R. 61.141.
15. Respondent Isaac King controlled, supervised, and participated in asbestos removal activities at the Buck's Building and is therefore an "operator" as defined in 40 C.F.R. 61.141.

16. The material disturbed by Respondents during asbestos removal and disposal activities contained more than 1% chrysotile asbestos, was capable of being crumbled, pulverized, or reduced to powder by hand pressure, and is therefore "friable asbestos material" as that term is defined in 40 C.F.R. 61.141.

17. 40 C.F.R. 61.145(a) 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:

* * *

(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. . . .

(3) Postmark or deliver the notice as follows:

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

* * *

18. Respondents failed to thoroughly inspect the Buck's Building for the presence and location of asbestos-containing material ("ACM") prior to commencing asbestos removal and disposal activities at the facility as required by 40 C.F.R. 61.145(a), thereby violating

Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

19. Respondents failed to notify the Illinois EPA of scheduled asbestos removal activities at the Buck's Building, at least 10 working days prior to commencing such activities, as required by 40 C.F.R. 61.145(b), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, RICHARD KING, KAY KING and ISAAC KING, on this Count II:

- 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 the 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) (2006), impose a civil penalty of not more than the statutory maximum; and
- E. Grant such other and further relief as the Board deems appropriate.

COUNT III

**FAILURE TO REMOVE AND CONTAIN RACM
IN COMPLIANCE WITH NESHAP REQUIREMENTS**

1-16. Complainant realleges and incorporates by reference herein paragraphs 1 through 9 of Count I and paragraphs 9 through 15 of Count II, as paragraphs 1 through 16 of this Count III.

- 17. 40 C.F.R. 61.145(c) provides, in pertinent part, as follows:

(c) Procedures for asbestos emission control. Each owner or operator of 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...

* * *

(2) When a facility component that contains, is covered with, or is coated with RACM is being taken out of the facility as a unit or in sections:

(i) Adequately wet all RACM exposed during cutting or disjoining operations; and

(ii) Carefully lower each unit or section to the floor and to ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the RACM.

* * *

(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.

* * *

(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...

18. Respondents failed to properly remove all RACM from the Buck's Building before commencing planned renovation activities, which broke up, dislodged and similarly disturbed the RACM, as required by 40 C.F.R. 61.145(c)(1), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

19. Respondents failed to adequately wet all RACM and prevent damage or disturbance to the RACM during cutting or disjoining operations at the Buck's Building, as required by 40 C.F.R. 61.145(c)(2), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

20. Respondents failed to adequately wet and maintain wet all RACM and regulated asbestos-containing waste material at the Buck's Building until collected and contained in preparation for disposal at a site permitted to accept such waste, as required by 40 C.F.R. 61.145(c)(6), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

21. Respondents failed to have at least one representative at the Buck's Building trained in the provisions of the NESHAP for asbestos and the means of complying with them, as required by 40 C.F.R. 61.145(c)(8), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, RICHARD KING, KAY KING and ISAAC KING, on this Count III:

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 the 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) (2006), impose a civil penalty of not more than the statutory maximum; and

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

COUNT IV

IMPROPER DISPOSAL OF REGULATED ASBESTOS-CONTAINING MATERIALS

1-16. Complainant realleges and incorporates by reference herein paragraphs 1 through 9 of Count I and paragraphs 9 through 15 of Count II, as paragraphs 1 through 16 of this Count IV.

17. 40 C.F.R. 61.150 provides, in pertinent part, as follows:

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

(a) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in paragraphs (a) (1) through (4) of this section.

(1) Adequately wet asbestos-containing waste material as follows:

* * *

(iii) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and

(iv) Label the containers or wrapped materials

specified in paragraph (a)(1)(iii) of this section...

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

- (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 Section 61.155.

* * *

18. 40 C.F.R. 61.141, provides the following definition:

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. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. 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.

19. The RACM removed from the Buck's Building during the asbestos removal activities constituted "asbestos-containing waste material" as that term is defined in 40 C.F.R. 61.141.

20. Respondents failed to adequately wet and keep wet, containerize, and label all asbestos-containing waste material at the Buck's Building, thereby causing or allowing the discharge of visible emissions to the outside air in violation of 40 C.F.R. 61.150(a)(1)(iii), (iv) and (v), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

21. Respondents failed to transport to a waste disposal site, or Illinois EPA-approved

site that converts RACM and asbestos-containing waste material into nonasbestos material, and deposit as soon as practical all asbestos-containing waste material generated during asbestos removal activities at the Buck's Building, as required by 40 C.F.R. 61.150(b), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, RICHARD KING, KAY KING and ISAAC KING, on this Count IV:

- 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 the 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) (2006), impose a civil penalty of not more than the statutory maximum; and
- E. 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:

Andrew J. Nicholas
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 17, 2008

