

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	PCB 09 -
vs.)	
)	(Enforcement–Air)
AL-ALGONGUIN APARTMENTS, LLC,)	
an Indiana limited liability company;)	
ALGONQUIN APARTMENTS, LLC, an)	
Indiana limited liability company; and)	
ALGONQUIN MANAGEMENT, LLC, a)	
Delaware limited liability company,)	
)	
Respondents.)	

NOTICE OF FILING

TO: Eddie Tapper (VIA ELECTRONIC FILING)
MAC Property Management
214 East Armour Blvd.
Kansas City, Missouri 64111

Member/Manager of Respondents
AL-Algonquin Apartments, LLC;
Algonquin Apartments, LLC; and
Algonquin Management, LLC

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, a copy of which is attached and hereby 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 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.

NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1 *et seq.*] to correct the alleged violation.

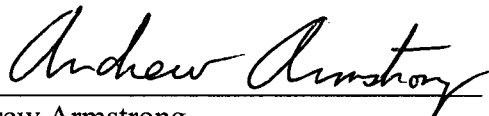
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN

Attorney General of the State of Illinois

BY:



Andrew Armstrong

Assistant Attorney General

Andrew Armstrong

Assistant Attorney General

Environmental Bureau

69 West Washington Street, 18th Floor

Chicago, Illinois 60602

312-814-0660

DATE: December 15, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	PCB 09 -
v.)	
)	(Enforcement—Air)
AL-ALGONGUIN APARTMENTS, LLC,)	
an Indiana limited liability company;)	
ALGONQUIN APARTMENTS, LLC, an)	
Indiana limited liability company; and)	
ALGONQUIN MANAGEMENT, LLC, a)	
Delaware limited liability company,)	
)	
Respondents.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* 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, AL-ALGONGUIN APARTMENTS, LLC; ALGONQUIN APARTMENTS, LLC; and ALGONQUIN MANAGEMENT, LLC, as follows:

COUNT I
AIR POLLUTION—RELEASE OF ASBESTOS FIBERS

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 and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”), pursuant to Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2006).

2. The Illinois Environmental Protection Agency ("Illinois EPA") is an administrative agency established by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4, and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Respondent Algonquin Apartments, LLC ("Algonquin Apartments") was and is an Indiana limited liability company in good standing with the state of Illinois. At all times relevant to this Complaint, Respondent AL-Algonquin Apartments, LLC ("AL-Algonquin") was and is an Indiana limited liability company in good standing with the state of Illinois. At all times relevant to this Complaint, Respondent Algonquin Management, LLC ("Algonquin Management") was a Delaware limited liability company.

4. At all times relevant to this Complaint, Algonquin Apartments owned a residential apartment building located at 1605 East 50th Street in Chicago, Cook County, Illinois (the "Building"). At all times relevant to this Complaint, AL-Algonquin served as the managing member of Algonquin Apartments. At all times relevant to this Complaint, Algonquin Management served as manager of the Building.

5. On dates better known to the Respondents, but on and prior to May 7, 2007, the Respondents were engaged in a renovation of the Building (the "Renovation"). The Renovation involved the removal of floor tiles ("Floor Tiles") from the first through seventh floors of the Building. The Floor Tiles were asbestos-containing material.

6. Approximately 1,900 square feet of Floor Tiles were removed from the floors of the Building during the Renovation.

7. On dates better known to the Respondents, but on or prior to May 7, 2007, the Respondents commissioned an asbestos inspection. Upon information and belief, this inspection revealed that the Floor Tiles were asbestos-containing materials. Upon information and belief,

this inspection also revealed that the mastic – the glue used to affix the Floor Tiles to the floor – was asbestos containing material.

8. On May 7, 2007, an Illinois EPA inspector (the “Inspector”) inspected the Building. A sample of the Floor Tiles taken from the third floor of the Building by the Inspector on May 7, 2007 tested positive for 17.9% asbestos content. A sample of the Floor Tiles taken from the seventh floor of the Building by the Inspector on May 7, 2007 tested positive for 21.6% asbestos content. A sample of mastic taken from the seventh floor of the Building by the Inspector on May 7, 2007 tested positive for 15.8% asbestos content.

9. During this inspection, the Inspector observed several piles of the Floor Tiles on the seventh floor of the Building. The Floor Tiles in the piles were dry. The Inspector also observed a dumpster located outside the rear of the Building that was filled with bags of dry floor tiles. Most of the Floor Tiles in the piles or in the dumpster were broken into pieces of varying size, indicating that they were not removed intact. The inspector did not observe any evidence of the use of emission control measures such as the use of containment devices or negative air pressure machines.

10. Upon information and belief, on dates better known to the Respondents but on or before May 7, 2007, the Respondents removed the Floor Tiles from the floors of the Building using hand-held scrapers and/or pneumatic jackhammers or drills, and did not wet the Floor Tiles during or after their removal.

11. Upon information and belief, the removal of the Floor Tiles from the floors of the Building without being wetted and without the use of emission control measures threatened or caused the release of asbestos fibers into the air.

12. Upon information and belief, on dates better known to the Respondents but on or prior to May 7, 2007, the Respondents disposed of the Floor Tiles in the dumpster located at the rear of the Building.

13. Upon information and belief, no foreman or other authorized representative of the Respondents who was trained in the laws regulating asbestos removal was present during the removal of the Floor Tiles from the floors of the Building.

14. The Respondents did not submit a notice to the Illinois EPA regarding the Renovation prior to the commencement of the Renovation.

15. Section 9(a) of the Act, 415 ILCS 5/9(a) (2006), provides as follows:

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;

16. Section 201.141 of the Illinois Pollution Control Board ("Board") Air Pollution Regulations, 35 Ill. Adm. Code 201.141, 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 3.165 of the Act, 415 ILCS 5/3.165 (2006), defines contaminant as:

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

18. Asbestos is a contaminant as defined by Section 3.165 of the Act.

19. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), defines person as:

"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.

20. Each Respondent is a person as that term is defined in Section 3.315 of the Act.

21. Section 3.115 of the Act, 415 ILCS 5/3.115 (2006), 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.

22. By disturbing the asbestos-containing Floor Tiles without first wetting the material, and/or by otherwise mishandling the Floor Tiles, the Respondents caused, threatened, and/or allowed the release of asbestos fibers into the environment in sufficient quantities and in such a manner as to be injurious to human health, and thereby caused air pollution in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006), and Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141.

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, AL-ALGONGUIN APARTMENTS, LLC, ALGONQUIN APARTMENTS, LLC, and ALGONQUIN MANAGEMENT, LLC, on this Count I:

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

2. Finding that the Respondents have violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2006), and Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141;

3. Ordering the Respondents to cease and desist from any further violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006), and Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141;

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

5. Ordering the Respondents pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and

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

COUNT II
FAILURE TO PROVIDE NOTICE OF A RENOVATION ACTIVITY

1-14. The Complainant realleges and incorporates herein by reference 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) (2006), provides as follows:

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. Section 112(b)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(b)(1) (2007), provides, in pertinent part, as follows:

The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

* * *

Asbestos

17. Section 112(h)(1) of the CAA, 42 U.S.C. § 7412(h)(1) (2007), provides, in pertinent part, as follows:

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

19. On June 19, 1978, the Administrator determined that work practice standards rather than emission standards are appropriate in the regulation of asbestos, 43 Fed. Reg. 26372 (1978), and therefore, pursuant to Section 112(h)(1) of the Clean Air Act, the Administrator of the United States Environmental Protection Agency adopted National Emissions Standards for Hazardous Air Pollutants for asbestos ("Asbestos NESHAP"), which are found at 40 C.F.R. Part 61, Subpart M.

20. Section 61.141 of the Asbestos NESHAP, 40 C.F.R. § 61.141 (2007), 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.

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.

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.

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.

21. The Building is a “facility” as that term is defined in Section 61.141 of the Asbestos NESHAP.

22. The Respondents are each an “owner or operator” of the Building as that term is defined in Section 61.141 of the Asbestos NESHAP.

23. The Renovation was a “renovation” as that term is defined in Section 61.141 of the Asbestos NESHAP.

24. The Floor Tiles were “category I nonfriable asbestos-containing material” (ACM) that became “regulated asbestos-containing material” (RACM), as those terms are defined in Section 61.141 of the Asbestos NESHAP, after being subjected to cutting and abrading during the Renovation.

25. Section 61.145(a) of the Asbestos NESHAP, 40 C.F.R. § 61.145(a) (2007), provides, in pertinent part, as follows:

Applicability. . . . 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:

* * *

(4) In a facility being renovated, including any individual nonscheduled renovation operation, all the requirements of paragraphs (b) and (c) of this section apply if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed 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

* * *

26. The Renovation disturbed more than 160 square feet of RACM, and is therefore subject to the requirements of paragraphs (b) and (c) of Section 61.145 of the Asbestos NESHAP, 40 C.F.R. § 61.145(b) and (c) (2007).

27. Section 61.145(b) of the Asbestos NESHAP, 40 C.F.R. § 61.145(b), provides as follows:

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. . . if the operation is described in paragraphs (a)(1) and (4). . . of this section. . . .

28. By failing to provide notice of the Renovation to the Illinois EPA at least 10 days before its commencement, the Respondents violated Section 61.145(b) of the Asbestos

NESHAP, 40 C.F.R. § 61.145(b), which is a regulation adopted pursuant to Section 112(h) of the Clean Air Act, 42 U.S.C. § 7412(h)(1); and thereby also violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006).

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, AL-ALGONGUIN APARTMENTS, LLC, ALGONQUIN APARTMENTS, LLC, and ALGONQUIN MANAGEMENT, LLC, on this Count II:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer to the allegations herein;
2. Finding that the Respondents have violated Section 61.145(b) of the Asbestos NESHAP, 40 C.F.R. § 61.145(b), which is a regulation adopted pursuant to Section 112(h) of the Clean Air Act, 42 U.S.C. § 7412(h)(1), and thereby also violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006);
3. Ordering the Respondents to cease and desist from any further violations of Section 61.145(b) of the Asbestos NESHAP, 40 C.F.R. § 61.145(b), and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006);
4. Assessing against each of the Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) against each of the Respondents for each day of violation;
5. Ordering the Respondents pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT III
FAILURE TO WET AND TO PROPERLY HANDLE
REGULATED ASBESTOS-CONTAINING MATERIALS DURING REMOVAL

1-26. The Complainant realleges and incorporates herein by reference paragraphs 1 through 26 of Count II as paragraphs 1 through 26 of this Count III.

27. Section 61.145(c)(3) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(3), provides, in pertinent part, as follows:

- (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:

* * *

- (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.

28. By failing to wet the Floor Tiles during their removal from the floors of the Building, the Respondents stripped RACM from a facility component without adequately wetting it, and thereby violated Section 61.145(c)(3) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(3), which is a regulation adopted pursuant to Section 112(h) of the Clean Air Act, 42 U.S.C. § 7412(h)(1), and thereby also violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006).

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, AL-ALGONGUIN APARTMENTS, LLC, ALGONQUIN APARTMENTS, LLC, and ALGONQUIN MANAGEMENT, LLC, on this Count III:

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

2. Finding that the Respondents violated Section 61.145(c)(3) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(3), which is a regulation adopted pursuant to Section 112(h) of the Clean Air Act, 42 U.S.C. § 7412(h)(1), and thereby also violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006);

3. Enjoining the Respondents from committing any further violations of Section 61.145(c)(3) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(3), and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006);

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

5. Taxing all costs in this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including expert witness, consultant and attorney fees, against the Respondents; and

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

COUNT IV
FAILURE TO WET AND TO PROPERLY HANDLE
REGULATED ASBESTOS-CONTAINING MATERIALS AFTER REMOVAL

1-26. The Complainant realleges and incorporates herein by reference paragraphs 1 through 26 of Count III as paragraphs 1 through 26 of this Count IV.

27. Section 61.145(c)(6)(i) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(6)(i), provides as follows:

- (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. . . .

* * *

28. By failing to wet the Floor Tiles after their removal from the floors of the Building, and by failing to ensure that the Floor Tiles remained wet until they were collected and disposed of, the Respondents violated Section 61.145(c)(6)(i) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(6)(i), which is a regulation adopted pursuant to Section 112(h) of the Clean Air Act, 42 U.S.C. § 7412(h)(1), and thereby also violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006).

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, AL-ALGONGUIN APARTMENTS, LLC, ALGONQUIN APARTMENTS, LLC, and ALGONQUIN MANAGEMENT, LLC, on this Count IV:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer to the allegations herein;
2. Finding that the Respondents have violated Section 61.145(c)(6)(i) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(6)(i), which is a regulation adopted pursuant to Section 112(h) of the Clean Air Act, 42 U.S.C. § 7412(h)(1), and thereby also violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006);
3. Enjoining the Respondents from committing any further violations of Section 61.145(c)(6)(i) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(6)(i), and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006);
4. Assessing against the Respondents a civil penalty 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) for each day of continued violation;

5. Taxing all costs in this action, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including expert witness, consultant, and attorney fees, against the Respondents; and
6. Granting such other relief as this Court deems appropriate and just.

COUNT V
FAILURE TO HAVE A TRAINED FOREMAN
OR REPRESENTATIVE PRESENT DURING
THE DISTURBANCE OF REGULATED ASBESTOS CONTAINING MATERIALS

1-26. The Complainant realleges and incorporates herein by reference paragraphs 1 through 26 of Count IV as paragraphs 1 through 26 of this Count V.

27. Section 61.145(c)(8) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(8), provides as follows:

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 onsite 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.

28. By failing to ensure that a foreman or other authorized representative of the Respondents who was trained in the laws regulating asbestos removal was present during the removal of the Floor Tiles from the floors of the Building, the Respondents violated Section 61.145(c)(8) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(8), which is a regulation adopted pursuant to Section 112(h) of the Clean Air Act, 42 U.S.C. § 7412(h)(1), and thereby also violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006).

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, AL-ALGONGUIN APARTMENTS, LLC, ALGONQUIN APARTMENTS, LLC, and ALGONQUIN MANAGEMENT, LLC, on this Count V:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer to the allegations herein;
2. Finding that the Respondents have violated Section 61.145(c)(8) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(8), which is a regulation adopted pursuant to Section 112(h) of the Clean Air Act, 42 U.S.C. § 7412(h)(1), and thereby also violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006);
3. Enjoining the Respondents from committing any further violations of Section 61.145(c)(8) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(8), and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006);
4. Assessing against the Respondents a civil penalty 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) for each day of continued violation;
5. Taxing all costs in this action, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including expert witness, consultant, and attorney fees, against the Respondents;
and
6. Granting such other relief as this Court deems appropriate and just.

COUNT VI
FAILURE TO DEPOSIT ALL ASBESTOS-CONTAINING
WASTE MATERIAL WITHIN A SITE PERMITTED
TO ACCEPT SUCH WASTE AS SOON AS PRACTICABLE

- 1-26. The Complainant realleges and incorporates herein by reference paragraphs 1 through 26 of Count V as paragraphs 1 through 26 of this Count VI.
27. 40 CFR § 61.150(b) provides, in part:

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 § 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.

* * *

28. By failing to deposit the Floor Tiles in an approved asbestos disposal site, the Respondents violated Section 61.150(b) of the Asbestos NESHAP, 40 C.F.R. § 61.150(b), which is a regulation adopted pursuant to Section 112(h) of the Clean Air Act, 42 U.S.C. § 7412(h)(1), and thereby also violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006).

WHEREFORE, the Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, AL-ALGONGUIN APARTMENTS, LLC, ALGONQUIN APARTMENTS, LLC, and ALGONQUIN MANAGEMENT, LLC, on this Count VI:

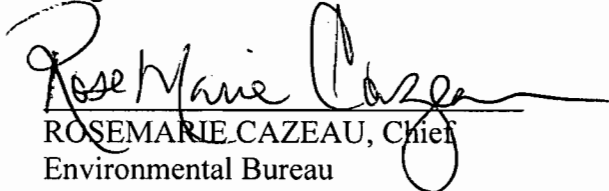
- 1. Authorizing a hearing in this matter at which time the Respondents will be required to answer to the allegations herein;
- 2. Finding that Respondents have violated Section 61.150(b) of the Asbestos NESHAP, 40 C.F.R. § 61.150(b), which is a regulation adopted pursuant to Section 112(h) of the Clean Air Act, 42 U.S.C. § 7412(h)(1), and thereby also violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006);

3. Enjoining the Respondents from committing any further violations of Section 61.150(b) of the Asbestos NESHAP, 40 C.F.R. § 61.150(b), and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006);
4. Assessing against Respondents a civil penalty 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) for each day of continued violation;
5. Taxing all costs in this action, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), including expert witness, consultant, and attorney fees, against Respondents; and
6. Granting such other relief as this Court deems appropriate and just.

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

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

By:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

ANDREW ARMSTRONG
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602
(312) 814-0660

CERTIFICATE OF SERVICE

I, ANDREW ARMSTRONG, an Assistant Attorney General, do certify that I caused to be served this 15th day of December, 2008, the foregoing Notice of Filing and Complaint upon the person listed on said Notice of Filing by placing true and correct copies of each in an envelope, certified mail postage prepaid, and depositing same with the United States Postal Service at 69 West Washington Street, Chicago, Illinois, at or before the hour of 5:00 p.m.



ANDREW ARMSTRONG