



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

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CLERK'S OFFICE

APR 06 2009

STATE OF ILLINOIS
Pollution Control Board

April 1, 2009

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

PCB 09-74

Re: ***People v. David J. Shultz***

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,

Kristen Laughridge Gale
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

KLG/pk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
DAVID J. SHULTZ,)
)
Respondent.)

PCB No. 09-74
(Enforcement)

NOTICE OF FILING

To: David J. Shultz
2816 Wordsworth Road
Springfield, IL 62711-4025

RECEIVED
CLERK'S OFFICE

APR 15 2009

STATE OF ILLINOIS
Pollution Control Board

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:



Kristen Laughridge Gale
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: April 1, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on April 1, 2009, 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: David J. Shultz
2816 Wordsworth Road
Springfield, IL 62711-4025

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


KRISTEN LAUGHRIDGE GALE
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
Complainant,)
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vs.)
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)
DAVID J. SHULTZ,)
)
)
Respondent.)

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CLERK'S OFFICE

APR 06 2009

PCB No. 09-74
(Enforcement)

STATE OF ILLINOIS
Pollution Control Board

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, KRISTEN LAUGHRIDGE GALE, Assistant Attorney General of the State of Illinois, hereby enters her 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: Kristen Laughton Gale
Kristen Laughton Gale
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: April 1, 2009

(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;

5. The regulations on National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR *et seq.* (1993), 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.

6. 40 CFR 61.141 provides the following definitions:

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.

* * *

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,...

* * *

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.

7. 40 CFR 61.145 provides, in pertinent part:

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:

* * *

- (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 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.

- (b) *Notification requirements.* Each owner or operator of a demolition or renovation activity to which this section applies shall:
 - (1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

8. On February 4, 1999, PSI Environmental Geotechnical Construction Co. ("PSI") performed an Asbestos Survey & Assessment Report for the St. John's East/Building T Building ("Building T") located at 400 North Ninth Street, Springfield, Sangamon County, Illinois. Building T, which was owned by St. John's Hospital of the Hospital Sisters of the Third Order of St. Francis, had 3 floors and a room on the roof called the "penthouse."

9. The PSI Asbestos Survey & Assessment Report stated that the mudded joint packing on pipes in Building T was asbestos containing material.

10. Mudded joint packing is the thermal insulation on the pipes in Building T.

11. St. John's Hospital of the Hospital Sisters of the Third Order of St. Francis ("St. John's Hospital") is a non-for-profit corporation registered to do business in Illinois. It's registered

location is 4936 LaVerna Rd, Springfield, Sangamon County, IL. In 2004, St. John's Hospital decided to demolish Building T.

12. In 2004, Parkland Environmental Group performed a walk through of Building T in preparation of creating a proposal for demolition. Parkland Environmental Group observed asbestos inspection tags on the insulation covering the pipes in Building T.

13. On August 19, 2004, Parkland Environmental Group, submitted a Notification of Demolition and Renovation to the Illinois EPA for Building T.

14. The Notification of Demolition and Renovation submitted by Parkland Environmental Group on August 19, 2004 stated that there were 1,706 linear feet of regulated asbestos containing material ("RACM") on the pipes at Building T.

15. Upon information and belief, at some time before August 9, 2004, Melvin "Jay" Tode, the Purchasing and Surplus Manager for St. John's Hospital, allowed the Respondent, DAVID SHULTZ, to scrap materials from Building T, including the pipes and copper wire.

16. On August 20, 2004, Parkland Environmental Group and Biggs Construction, Inc. walked through Building T.

17. On August 20, 2004, Parkland Environmental Group observed broken joint compound, a.k.a. thermal insulation, on the floor in the penthouse.

18. On September 3, 2004, Parkland Environmental Group observed stripped insulation in the penthouse and on the roof.

19. On September 9, 2004, Illinois EPA conducted an inspection of Building T.

20. Illinois EPA observed thermal insulation on the roof between the condensing units, and on the floor in the doorway of the penthouse and within the penthouse.

21. Illinois EPA also observed stickers on the thermal insulation on the floor in the penthouse that stated "DANGER, Contains Asbestos Fibers, Avoid Creating Dust, Cancer and Lung Disease Hazard."

22. Illinois EPA collected seven samples of the thermal insulation to analyze for asbestos. Five of the samples were collected from the penthouse, one sample was collected from thermal insulation on the roof, and one sample was collected from thermal insulation in the stairwell landing. All samples had no moisture and were reduced to powder by hand pressure.

23. Analysis of the seven samples collected by the Illinois EPA showed that all of the samples contained asbestos.

24. The thermal insulation in Building T was friable asbestos containing material as defined by 40 CFR 61.141, therefore the thermal insulation was regulated asbestos containing material.

25. Between approximately August 9, 2004 and August 20, 2004, on dates better known to the Respondent, Respondent, DAVID SHULTZ, removed pipes and other material from Building T, including but not limited to from the penthouse, for the purpose of selling the pipes and material.

26. Between approximately August 9, 2004 and August 20, 2004, on dates better known to the Respondent, Respondent, DAVID SHULTZ, removed the thermal insulation from the pipes at Building T without wetting the thermal insulation.

27. Between approximately August 9, 2004 and August 20, 2004, on dates better known to the Respondent, Respondent, DAVID SHULTZ, dropped, damaged and disturbed the thermal insulation while removing the insulation from the pipes at Building T.

28. Between approximately August 9, 2004 and August 20, 2004, on dates better known to the Respondent, Respondent, DAVID SHULTZ, dropped pipes and other materials that had been covered in thermal insulation from the roof of Building T to the ground below.

29. Respondent, DAVID SHULTZ, altered components in Building T, including stripping and removing regulated asbestos containing material from the pipes in Building T, and therefore was "renovating" Building T as that term is defined by 40 CFR 61.141.

30. Respondent, DAVID SHULTZ, is an "operator" of a "renovation activity" as that term is defined in 40 CFR 61.141.

31. Respondent, DAVID SHULTZ, is not trained in NESHAP requirements for renovation of a building. Nor was there an on-site representative trained in the NESHAP requirements present during the renovation.

32. The requirements of §61.145(b) and (c) apply to the Respondent, DAVID SHULTZ, and Building T because the facility being renovated had a combined amount of 1,706 linear feet of regulated asbestos containing material on pipes, pursuant to §61.145(a)(4).

33. The Illinois EPA did not receive notification from the Respondent, DAVID SHULTZ, for the renovation of Building T.

34. The Respondent, DAVID SHULTZ, did not provide written notification prior to the renovation of Building T, thereby violating 40 C.F.R. 60.145(b)(1) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2006).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board grant the following relief:

A. Find that Respondent, DAVID SHULTZ, has violated Section 9.1(d) of the Act, 415 ILCS 5/9(d) (2006), and 40 CFR 61.145(a) and (b)(1);

B. Order the Respondent to cease and desist from further violations of the Act and associated regulations;

C. Assess against the Respondent a civil penalty of fifty thousand dollars (\$50,000.00) allowed for each of the violations of the Act and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation has continued thereafter;

D. Award the Complainant its costs in this proceeding, including attorneys' fees and expert witness fees and costs; and

E. Grant such other relief as the Board may deem appropriate.

COUNT II

ASBESTOS RENOVATION AND DISPOSAL VIOLATIONS

1-32. Complainant realleges and incorporates herein by reference paragraphs 1 through 32 of Count I and paragraphs 1 through 32 of this Count II.

33. 40 CFR 61.145(c) (1993), provides, in pertinent part:

(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:
 - (i) It is Category I nonfriable ACM that is not in poor condition and not friable.
 - (ii) It is on a facility component that is encased in concrete or other similarly hard material and is adequately wet whenever exposed during demolition; or
 - (iii) It was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed. If not removed for safety reasons, the exposed RACM and

any asbestos-contaminated debris must be treated as asbestos-containing waste material and adequately wet at all times until disposed of.

- (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.

* * *

- (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.

* * *

- (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

* * *

- (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.

* * *

34. 40 CFR 61.150 (1993), provides, in pertinent part:

Each owner or operator of any source covered under the provisions of §§ 61.144, 61.145, 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:

- (i) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and
- (ii) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by [section] 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and
- (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 using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(j)(2) or 1926.58(k)(2)(iii). The labels shall be printed in letters of sufficient size and contrast to be readily visible and legible.
- (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 [section] 61.145, or
- (2) An EPA-approved site that converts RACM asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of [section] 61.155.

* * *

35. The Respondent, DAVID SHULTZ, failed to remove all regulated asbestos containing material from Building T before removing the pipes and other materials, thereby violating 40 C.F.R. 61.145(c)(1) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2006).

36. The Respondent, DAVID SHULTZ, failed to wet all regulated asbestos containing material during and after the removal of the pipes from Building T, allowing the airborne migration of asbestos fibers, thereby violating 40 C.F.R. 61.145(c)(3), 61.145(c)(6)(i), and 61.150(a)(1) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2006).

37. The Respondent, DAVID SHULTZ, failed to carefully lower the regulated asbestos containing material to the ground and floor, but dropped, damaged and disturbed the thermal insulation, thereby violating 40 C.F.R. 61.145(c)(6)(ii) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2006).

38. The Respondent, DAVID SHULTZ, failed to transport the regulated asbestos containing material in leak-tight chutes or containers from the roof to the ground, thereby violating 40 C.F.R. 61.145(c)(6)(iii) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2006).

39. The Respondent, DAVID SHULTZ, failed to have a person trained in NESHAP requirements present during the renovation activities, thereby violating 40 C.F.R. 61.145 (c)(8) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2006).

40. The Respondent, DAVID SHULTZ, failed to deposit regulated asbestos containing waste materials in an appropriate waste disposal site as soon as possible, thereby violating 40 C.F.R. 61.150(b) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2006).

PRAYER FOR RELIEF


WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board grant the following relief:

- A. Find that Respondent, DAVID SHULTZ , has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006), 40 CFR 61.145(c) and 40 CFR 61.150;
- B. Order the Respondent to cease and desist from further violations of the Act and associated regulations;
- C. Assess against the Respondent a civil penalty of fifty thousand dollars (\$50,000.00) allowed for each of the violations of the Act and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation has continued thereafter;
- D. Award the Complainant its costs in this proceeding, including attorneys' fees and expert witness fees and costs; and
- E. Grant such other relief as the Board may deem appropriate.

Respectfully submitted,

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: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

KRISTEN LAUGHRIDGE GALE
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: March 30, 2009