

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 BLICK'S CONSTRUCTION CO., INC., an )  
 Illinois Corporation, and RON BRICKER, )  
 )  
 Respondents. )

 ORIGINAL

PCB No. PCB 13-43  
(Air-Enforcement)  
**RECEIVED**  
CLERK'S OFFICE  
MAR 04 2013  
STATE OF ILLINOIS  
Pollution Control Board

**MOTION FOR LEAVE TO FILE INSTANTER RESPONDENT'S MOTION TO DISMISS COUNT II OF THE COMPLAINT**

NOW COMES the Respondent, BLICK'S CONSTRUCTION CO., INC., by and through its attorneys, and moves the Illinois Pollution Control Board, pursuant to the Board' Procedural Rules at 35 Ill. Admin. Code Sections 101.500, 101.504, and 101.506, and Section 2-615 of the Code of Civil Procedure [735 ILCS 5/2-615], for leave to file, instanter, its Motion to Dismiss Count II of the Complaint.

In support of its Motion, Respondent states as follows:


1. The Board's Procedural Rules at 35 Ill. Admin. Code Sections 101.500, 101.504, and 101.506, provide that all motions to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board must be filed within 30 days after the service of the challenged document.
2. The Board's Procedural Rules further provide that the Board may entertain any motion the parties wish to file that is permissible under the Act or other applicable law, these rules, or the Illinois Code of Civil Procedure.
3. A review of Count II of the State's Complaint filed in this proceeding demonstrates that it is substantially insufficient at law and is subject to dismissal as provided by Section 2-615 of the Code of Civil Procedure [735 ILCS 5/2-615].

4. The reasons supporting a Motion to Dismiss Count II of the State's Complaint are set forth in the Respondent's Motion to Dismiss Count II, being filed concurrently with this Motion for Leave to file said Motion.

WHEREFORE, the Respondent, BLICK'S CONSTRUCTION CO., INC., respectfully requests issuance of an Order approving its *Motion for Leave to File Instantly Respondent's Motion To Dismiss Count II*, and authorizing the filing of *Respondent's Motion To Dismiss Count II of Complaint*, and for all other appropriate relief.

Respectfully submitted,

On behalf of Blick's Construction Co., Inc.,  
Respondent

  
\_\_\_\_\_  
Jon S. Faletto  
One of His Attorneys

Jon S. Faletto  
Hinshaw & Culbertson LLP  
416 Main Street, 6th Floor  
Peoria, IL 61602  
309-674-1025  
309-674-9328  
[jfaletto@hinshawlaw.com](mailto:jfaletto@hinshawlaw.com)

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CERTIFICATE OF SERVICE

I hereby certify that I did on February 27, 2013, file a true and correct copy of the attached two (2) instruments entitled *Motion for Leave to File Instantly Respondent's Motion To Dismiss Count II*, and *Respondent's Motion To Dismiss Count II of Complaint*, and served the following, by depositing copies in the U.S. mail addressed as follows:

Kelly O. Phelps  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, IL 62706  
217-782-9031

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274  
217-524-8509

Dated: February 27, 2013

Respectfully Submitted,

On behalf of BLICK'S CONSTRUCTION CO.,  
INC., Respondent

By: 

Jon S. Faletto  
HINSHAW & CULBERTSON LLP  
416 Main Street – 6<sup>th</sup> Floor  
Peoria, IL 61602-3126  
309-674-1025  
309-674-9328 (fax)  
[jfaletto@hinshawlaw.com](mailto:jfaletto@hinshawlaw.com)

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**RESPONDENT'S MOTION TO DISMISS COUNT II OF THE COMPLAINT**

NOW COMES the Respondent, BLICK'S CONSTRUCTION CO., INC., by and through its attorneys, and moves the Illinois Pollution Control Board, pursuant to the Board's Procedural Rules at 35 Ill. Admin. Code Sections 101.500, 101.504, and 101.506, and Section 2-615 of the Code of Civil Procedure [735 ILCS 5/2-615], for dismissal of Count II of the Complaint.

In support of its Motion, Respondent states as follows:

1. The Board's Procedural Rules at 35 Ill. Admin. Code Sections 101.500, 101.504, and 101.506, provide that all motions to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board must be filed within 30 days after the service of the challenged document.
2. The Board's Procedural Rules further provide that the Board may entertain any motion the parties wish to file that is permissible under the Act or other applicable law, these rules, or the Illinois Code of Civil Procedure.
3. In Count II of the Complaint filed in this proceeding, Complainant People of the State of Illinois ("Complainant" or "State") makes two separate but related allegations of violations of the Illinois Environmental Protection Act ("Act").

4. First, Complainant alleges that Respondent Blick's Construction Co., Inc. ("Respondent" or "Blick's"), violated Section 9.1(d) of the Act which prohibits any party from violating specific provisions of the federal Clean Air Act and implementing federal regulations.

5. Complainant alleges that Respondent violated federal regulations at 40 Code of Federal Regulations §61.145(b) of the "*National Emission Standards for Hazardous Air Pollutants*" ("NESHAP"), applicable to various asbestos-related activities (40 CFR 61.145(b)). Section 61.145(b) provides that notice must be provided "*...at least 10 working days before asbestos stripping or removal work or any other activity begins.*" If the contemplated work constitutes "*demolition*" as that term is defined by the regulations, Section 61.145(b) provides that "*...notification is required 10 working days before demolition begins.*"

6. In Paragraph 12 of Count II of its Complaint, the State alleges that this Respondent provided to the Illinois Environmental Protection Agency ("IEPA") a "Notification of Demolition and Renovation" which was received by the IEPA on May 5, 2011 ("May 5, 2011 Notice"). The May 5, 2011 Notice related to the commencement of regulated asbestos activities to be undertaken by Triple A Asbestos Services, Inc., a subcontractor retained by the Respondent to perform all regulated asbestos activities at the subject premises.

7. Nowhere in Count II of the Complaint does the State allege a specific date upon which asbestos stripping or removal work or asbestos demolition was initiated by this Respondent. Indeed, there is no allegation in the Complaint that Respondent Blick's conducted any of the activities proscribed by the asbestos NESHAP. Instead, the State alleges only that Blick's "caused or allowed" an unrelated, independent third party to engage in such activities on some unspecified date.

8. The State's Complaint does not allege a specific date that Respondent began any regulated asbestos activity for which the 10-day notice is required under Section 61.145(b). Moreover, the State's Complaint alleges no facts from which it could be determined that regulated asbestos activity was initiated by this Respondent sooner than ten days from the date of IEPA's receipt of the May 5, 2011 Notice.

9. Since the State's Complaint fails to properly allege any facts which could be interpreted as demonstrating a violation of the 10-day notice requirement, Count II of the Complaint alleging violations of Section 9.1(d) of the Act is legally deficient.

10. Premised on its allegation that Respondent failed to provide the requisite 10-day advance notice before commencing regulated asbestos activities, the State further alleges in Count II that Respondent has violated Section 9.13(b) of the Act which doubles the amount of certain fees owed to IEPA if those regulated activities are commenced "without proper filing of the 10-day Notice."

11. As demonstrated above, the State alleges that Respondent provided advance notice to the Agency that Triple A Asbestos Services, Inc. would be conducting regulated asbestos activities with the submittal of its May 5, 2011 Notice. However, the Complaint fails to include any allegations as to the date that Respondent commenced those regulated activities for which the 10-day notice is required under Section 61.145(b).

12. The alleged violation of Section 9.13(b) of the Act for failing to submit a "double fee" is dependent upon a violation of the 10-day notice requirements. Since the State's Complaint fails to properly allege any facts which could be interpreted as demonstrating a violation of the 10-day notice requirement, the alleged violation of Section 9.13(b) set forth in Count II of the Complaint is also legally deficient.

13. For the foregoing reasons, Count II the State's Complaint is substantially insufficient in law and must be dismissed pursuant to Section 2-615 of the Code of Civil Procedure [735 ILCS 5/2-615], as adopted and incorporated into the Board's procedural rules at 35 Ill. Admin. Code Sections 101.500, 101.504, and 101.506.

WHEREFORE, the Respondent, BLICK'S CONSTRUCTION CO., INC., respectfully requests issuance of an Order granting *Respondent's Motion To Dismiss Count II of Complaint*, dismissing Count II of the State's Complaint, and for all other appropriate relief.

Respectfully submitted,

On behalf of Blick's Construction Co., Inc.,  
Respondent

  
\_\_\_\_\_  
Jon S. Faletto  
One of His Attorneys

Jon S. Faletto  
Hinshaw & Culbertson LLP  
416 Main Street, 6th Floor  
Peoria, IL 61602  
309-674-1025  
309-674-9328  
[jfaletto@hinshawlaw.com](mailto:jfaletto@hinshawlaw.com)

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**ANSWER TO COUNTS I, III, AND IV OF COMPLAINT**

BLICK'S CONSTRUCTION CO., INC., an Illinois Corporation, by and through its attorneys, HINSHAW & CULBERTSON LLP, submits its Answer to the Complaint filed by Complainant, PEOPLE OF THE STATE OF ILLINOIS, in this proceeding.

**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 on behalf 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 (2010).

**ANSWER:** Respondent admits the allegations of Paragraph 1.

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly under Section 4 of the Act, 415 ILCS 5/4 (2010), and is charged, *inter alia*, with the duty of enforcing the Act.

**ANSWER:** Respondent admits the allegations of Paragraph 2.

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), by the Attorney General on her own motion and upon request of the Illinois EPA for



enforcement regarding Respondent Blick's Construction Co., Inc. ("BCC"). The Illinois EPA did not comply with notice requirements prescribed by Section 31 relative to Respondent, Ron Bricker, and violations alleged herein are upon the motion of the Attorney General.

**ANSWER:** Respondent has insufficient information and knowledge to admit or deny the allegations of Paragraph 3. Therefore, Respondent denies the allegations of Paragraph 3, at this time.

4. BCC is an Illinois corporation registered with the Secretary of State and is in good standing. The company's business office is located at 112 West Lock and Dam Road, Quincy, Illinois 62305. The Company's registered agent is Carl J. Blickhan, Sr., located at P.O. Box 530 Lock & Dam Road, Quincy, Illinois 62301.

**ANSWER:** Respondent admits the allegations of Paragraph 4.

5. Respondent, Ron Bricker is an Illinois resident and all actions which are the subject of the Complaint took place in Illinois.

**ANSWER:** Respondent has insufficient information and knowledge to admit or deny the allegations of Paragraph 5. Therefore, Respondent denies the allegations of Paragraph 5, at this time.

6. At all times relevant to the Complaint, BCC, controlled or supervised renovation and waste disposal operations at a former commercial banking building ("facility") located at 1201 Broadway, Quincy, Illinois which is the subject of this Complaint. In addition, Ron Bricker performed, controlled, or supervised renovation activities at the facility. The Respondents are owners or operators of a renovation activity as defined by Section 61.141 of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR 61.141.

**ANSWER:** Respondent denies each and every allegation of Paragraph 6.

7. The structure is a commercial building defined as a “facility” by Section 61.141 of the NESHAP for asbestos, 40 CFR 61.141.

**ANSWER:** Respondent has insufficient information and knowledge to admit or deny the allegations of Paragraph 7. Therefore, Respondent denies the allegations of Paragraph 7, at this time.

8. On information and belief, First Bankers Trust Company, N.A. (“FBTC”) owns the facility.

**ANSWER:** Respondent has insufficient information and knowledge to admit or deny the allegations of Paragraph 8. Therefore, Respondent denies the allegations of Paragraph 8, at this time.

9. On information and belief, prior to May 5, 2011, FBTC employed Mass Construction (“Mass”), as a general contractor, to supervise and control demolition operations at the facility.

**ANSWER:** Respondent has insufficient information and knowledge to admit or deny the allegations of Paragraph 9. Therefore, Respondent denies the allegations of Paragraph 9, at this time.

10. On information and belief, prior to May 5, 2011, Mass employed BCC as a subcontractor to perform, control, and supervise demolition operations at the facility. John Blickhan is the President of BCC.

**ANSWER:** Respondent admits only that Carl J. Blickhan, Sr., is the President of BCC and that BCC entered into a contract with Gerald A. Maas doing business as Maas Construction during the time period relevant to the Complaint. Respondent denies the remaining allegations of Paragraph 10.

11. On information and belief, prior to May 5, 2011, BCC employed Triple A Asbestos Services, Inc. (“Triple A”) to remove asbestos-containing material (“ACM”) including Regulated Asbestos Containing Material (“RACM”) from the facility.

**ANSWER:** Respondent admits the allegations of Paragraph 11.

12. On May 5, 2011, the Illinois EPA received a Notification of Demolition and Renovation stating 385 square feet of RACM located in restrooms, stairways, and janitor’s closet was to be removed by Triple A beginning on May 10, 2011. Upon completion of the RACM removal, BCC was to begin demolition on May 16, 2011. Demolition was to end on July 8, 2011.

**ANSWER:** Respondent admits only that it caused to be submitted a Notification of Demolition and Renovation to the Illinois Environmental Protection Agency. Respondent denies the remaining allegations of Paragraph 12.

13. On information and belief, spray-on asbestos-containing ceiling material and thermal insulation in excess of 160 square feet or 35 cubic feet was disturbed or removed by or under the supervision and control of Respondent Ron Bricker prior to June 7, 2011.

**ANSWER:** Respondent has insufficient information and knowledge to admit or deny the allegations of Paragraph 13. Therefore, Respondent denies the allegations of Paragraph 13, at this time.

14. On information and belief, on at least two occasions prior to June 7, 2011, the President of BCC, John Blickhan, observed Ron Bricker removing items from within the facility, including ceiling tiles, in preparation for demolition of the facility.

**ANSWER:** Respondent denies the allegations of Paragraph 14.

15. On June 7, 2011, Triple A entered the facility and observed dry, friable, cut and broken regulated asbestos-containing waste material at numerous locations within the facility resulting from the removal of various building components. Triple A then informed the Illinois EPA of the improper asbestos removal activity.

**ANSWER:** Respondent has insufficient information and knowledge to admit or deny the allegations of Paragraph 15. Therefore, Respondent denies the allegations of Paragraph 15, at this time.

16. On June 8, 2011, Illinois EPA Asbestos Unit inspector Alan Grimmatt conducted an inspection of the facility. Most of the ceiling on the second floor of the facility was removed on a date or dates prior to June 7, 2011, and dry, friable, cut and broken regulated-asbestos-containing ceiling material was deposited into the basement area through large openings cut in the second and first floors of the facility. Metal building components were removed from the facility and deposited outside the building. Dry, friable regulated-asbestos-containing thermal insulation was disturbed or removed, on a date or dates prior to June 7, 2011. Approximately 1,253 square feet of dry, friable asbestos-containing spray-on ceiling material, and an undetermined quantity of dry, friable asbestos-containing thermal insulation, was removed or disturbed within the facility. There was no evidence of a water source or water spraying devices within the facility utilized to wet the ceiling material and thermal insulation to control the emission of asbestos.

**ANSWER:** Respondent has insufficient information and knowledge to admit or deny the allegations of Paragraph 16. Therefore, Respondent denies the allegations of Paragraph 16, at this time.

17. Four samples of dry, friable suspect material were collected from ceiling tiles within the facility and two samples from ceiling tiles outside the facility. On June 10, 2011, the Illinois EPA received from TEM incorporated test data resulting from analytical testing of each sample by polarized light microscopy.

**ANSWER:** Respondent has insufficient information and knowledge to admit or deny the allegations of Paragraph 17. Therefore, Respondent denies the allegations of Paragraph 17, at this time.

18. Spray-on ceiling material located within and deposited outside the facility contained chrysolite asbestos equal to or in excess of 1%.

**ANSWER:** Respondent has insufficient information and knowledge to admit or deny the allegations of Paragraph 18. Therefore, Respondent denies the allegations of Paragraph 18, at this time.

19. Section 3.165 of the Act, 415 ILCS 5/3.165 (2010), defines contaminant as follows:

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

**ANSWER:** Respondent admits the allegations of Paragraph 19.

20. Section 3.115 of the Act, 415 ILCS 5/3.115 (2010) defines air pollution as follows:

“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.

**ANSWER:** Respondent admits the allegations of Paragraph 20.

21. Section 7412(b)(1) of the Clean Air Act, 42 U.S.C.A. 7412(b)(1) lists asbestos as a hazardous air pollutant.

**ANSWER:** Respondent admits the allegations of Paragraph 21.

22. Section 9(a) of the Act, 415 ILCS 5/9(a) (2010), provides in pertinent part:

Acts prohibited. 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.

**ANSWER:** Respondent admits the allegations of Paragraph 22.

23. Section 201.141 of the Board's regulations, 35 Ill. Admin. Code 201.141, provides in pertinent part:

Prohibition of Air Pollution

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.

**ANSWER:** Respondent admits the allegations of Paragraph 23.

24. Respondents caused or allowed dry, friable regulated asbestos-containing material at the facility to be removed which caused, threatened or allowed the discharge or emission of asbestos into the environment so as to cause or tend to cause air pollution in Illinois.

**ANSWER:** Respondent denies each and every allegation of Paragraph 24.

25. By causing, threatening or allowing the discharge or emission of asbestos into the environment so as to cause or tend to cause air pollution in Illinois Respondents violated Section

9(a) of the Act, 415 ILCS 5/9(a) (2010) and Section 201.141 of the Board's regulations, 35 Ill. Admin. Code 201.141.

**ANSWER:** Respondent denies each and every allegation of Paragraph 25.

WHEREFORE, the Respondent, BLICK'S CONSTRUCTION CO., INC., respectfully requests that this Court deny the relief requested by Complainant, PEOPLE OF THE STATE OF ILLINOIS, and render a decision in favor of the Respondent.

**COUNT II**  
**ASBESTOS ABATEMENT NOTIFICATION AND PAYMENT VIOLATIONS**

Concurrent with the filing of Respondent's "*Answer to Counts I, III and IV of Complaint*," this Respondent, Blick's Construction Co., Inc., requests leave to file, instanter, its *Respondent's Motion to Dismiss Count II* of the State's Complaint pursuant to 35 Ill. Admin. Code §101.500(b) and Section 2-615 of the Code of Civil Procedure [735 ILCS 5/2-615]. If the Board refuses to allow Respondent to file its *Respondent's Motion to Dismiss Count II* of the Complaint, Respondent hereby denies each and every allegation of Count II of the Complaint.

**COUNT III**  
**ASBESTOS ABATEMENT WORK PRACTICE VIOLATIONS**

Complainant adopts and incorporates by reference Paragraphs 1 – 22 of Count I of this Complaint as Paragraphs 1 – 22 of this Count III.

**ANSWER:** Respondent incorporates by reference herein its responses to Paragraphs 1 through 22 of Count I as its responses to Paragraphs 1 through 22 of Count III of the Complaint.

23. Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010), provides in pertinent part:

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...

**ANSWER:** Respondent admits the allegations of Paragraph 23.

24. Section 61.145(c)(1) of the NESHAP for asbestos, 40 CFR 61.145(c)(1), 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 ...

\* \* \*

**ANSWER:** Respondent admits the allegations of Paragraph 24.

25. Section 61.145(c)(6) of the NESHAP for asbestos, 40 CFR 61.145(c)(6), provides in pertinent part:

(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.



**ANSWER:** Respondent admits only that Complainant appears to have accurately set forth language contained in a federal regulation, and denies each and every remaining allegation of Paragraph 25.

26. Respondents did not remove all RACM, including Category I non-friable ACM that would breakup, dislodge, or be similarly disturbed prior to commencing salvaging activities.

**ANSWER:** Respondent denies each and every allegation of Paragraph 26.

27. By not removing all RACM, including Category I non-friable ACM that would breakup, dislodge, or be similarly disturbed prior to commencing salvaging activities, Respondents violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010), and Section 61.145(c)(1) of the NESHAP for asbestos, 40 CFR 61.145(c)(1).

**ANSWER:** Respondent denies each and every allegation of Paragraph 27.

28. Respondents did not adequately wet, and maintain wet, all RACM and regulated asbestos-containing waste material until collected and contained in accordance with asbestos NESHAP requirements in preparation for disposal at a site permitted to accept such waste.

**ANSWER:** Respondent denies each and every allegation of Paragraph 28.

29. By not adequately wetting, and maintaining wet, all RACM and regulated asbestos-containing waste material until collected and contained in accordance with asbestos NESHAP requirements in preparation for disposal at a site permitted to accept such waste, Respondents violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010), and Section 61.145(c)(6) of the NESHAP for asbestos, 40 CFR 61.145(c)(6).

**ANSWER:** Respondent denies each and every allegation of Paragraph 29.

WHEREFORE, the Respondent, BLICK'S CONSTRUCTION CO., INC., respectfully requests that this Court deny the relief requested by Complainant, PEOPLE OF THE STATE OF ILLINOIS, and render a decision in favor of the Respondent.

**COUNT IV**  
**ASBESTOS WASTE HANDLING VIOLATION**

Complainant adopts and incorporates by reference Paragraphs 1 – 22 of Count I of this Complaint as Paragraphs 1 – 22 of this Count IV.

**ANSWER:** Respondent incorporates by reference herein its responses to Paragraphs 1 through 22 of Count I as its responses to Paragraphs 1 through 22 of Count IV of the Complaint.

23. Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010), provides in pertinent part:

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 ...

**ANSWER:** Respondent admits the allegations of Paragraph 23.

24. Sections 61.150(a) and (b) of the NESHAP for asbestos, 40 CFR 61.150(a) and (b) provides in pertinent 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:

(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 § 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)(4) or 1926.1101(k)(8). The labels shall be printed in letters of sufficient size and contrast so as 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.

(2) Process asbestos-containing waste material into nonfriable forms as follows:

(i) Form all asbestos-containing waste material into non friable pellets or other shapes;

(ii) Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) For facilities demolished where the RACM is not removed prior to demolition according to §§ 61.145(c)(1) (i), (ii), (iii), and (iv) or for facilities demolished according to § 61.145(c)(9), adequately wet asbestos-containing waste material at all times after demolition and keep wet during handling and loading for transport to a disposal site. Asbestos-containing waste materials covered by this paragraph do not have to be sealed in leak-tight containers or wrapping but may be transported and disposed of in bulk.

(4) Use an alternative emission control and waste treatment method that has received prior approval by the Administrator according to the procedure described in § 61.149(c)(2).

(5) As applied to demolition and 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.

\*

\*

\*

**ANSWER:** Respondent admits only that Complainant appears to have accurately set forth language contained in a federal regulation, and denies each and every remaining allegation of Paragraph 24.

25. Respondents did not wet asbestos-containing waste material or keep asbestos-containing waste material wet during handling and loading for transport to a disposal site; or process asbestos-containing waste material into nonfriable forms, and Respondent's did not use an alternative emission control and waste treatment method that received prior approval by the U.S. EPA's Administrator during renovation activities.

**ANSWER:** Respondent denies each and every allegation of Paragraph 25.

26. By not wetting asbestos-containing waste material or keeping asbestos-containing waste material wet during handling and loading for transport to a disposal site, or processing asbestos-containing waste material into nonfriable forms and not using an alternative emission control and waste treatment method that received prior approval by the U.S. EPA's Administrator

during renovation activities, Respondents violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010), and Section 61.150(a) of the NESHAP for asbestos, 40 CFR 61.150(a).

**ANSWER:** Respondent denies each and every allegation of Paragraph 26.

27. Respondents did not transport all regulated asbestos-containing waste material generated during asbestos removal activities to a proper waste disposal site as soon as practical.

**ANSWER:** Respondent denies each and every allegation of Paragraph 27.

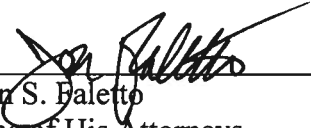
28. By not transporting all regulated asbestos-containing waste material generated during asbestos removal activities to a proper waste disposal site as soon as practical, Respondents violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010), and Section 61.150(b) of the NESHAP for asbestos, 40 CFR 61.150(b).

**ANSWER:** Respondent denies the allegations of Paragraph 28.

WHEREFORE, the Respondent, BLICK'S CONSTRUCTION CO., INC., respectfully requests that this Court deny the relief requested by Complainant, PEOPLE OF THE STATE OF ILLINOIS, and render a decision in favor of the Respondent.

Respectfully submitted,

On behalf of Blick's Construction Co., Inc.,  
Respondent

  
\_\_\_\_\_  
Jon S. Faletto  
One of His Attorneys

Jon S. Faletto  
Hinshaw & Culbertson LLP  
416 Main Street, 6th Floor  
Peoria, IL 61602  
309-674-1025  
309-674-9328  
[jfaletto@hinshawlaw.com](mailto:jfaletto@hinshawlaw.com)

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MAR 04 2013

STATE OF ILLINOIS  
Pollution Control Board

CERTIFICATE OF SERVICE

I hereby certify that I did on February 27, 2013, file a true and correct copy of the attached instrument entitled *Answer to Counts I, III and IV of Complaint*, and served the following, by depositing a copy in the U.S. mail addressed as follows:

Kelly O. Phelps  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, IL 62706  
217-782-9031

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274  
217-524-8509

Dated: February 27, 2013

Respectfully Submitted,

On behalf of BLICK'S CONSTRUCTION CO.,  
INC., Respondent

By: 

Jon S. Faletto  
HINSHAW & CULBERTSON LLP  
416 Main Street – 6<sup>th</sup> Floor  
Peoria, IL 61602-3126  
309-674-1025  
309-674-9328 (fax)  
[jfaletto@hinshawlaw.com](mailto:jfaletto@hinshawlaw.com)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 BLICK'S CONSTRUCTION CO., INC., an )  
 Illinois Corporation, and RON BRICKER, )  
 )  
 Respondents. )

PCB No. PCB 13-43  
(Air-Enforcement)

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Pollution Control Board

ENTRY OF APPEARANCE

On behalf of Respondent, BLICK'S CONSTRUCTION CO., INC., an Illinois Corporation, JON S. FALETTO of the law firm of HINSHAW & CULBERTSON LLP, hereby enters his appearance as attorney of record.

Respectfully submitted,

On behalf of Blick's Construction Co., Inc.,  
Respondent



\_\_\_\_\_  
Jon S. Faletto  
One of His Attorneys

Jon S. Faletto  
Hinshaw & Culbertson LLP  
416 Main Street, 6th Floor  
Peoria, IL 61602  
309-674-1025  
309-674-9328  
[jfaletto@hinshawlaw.com](mailto:jfaletto@hinshawlaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that I did on February 27, 2013, file a true and correct copy of the attached instrument entitled *Entry of Appearance*, and served the following, by depositing a copy in the U.S. mail addressed as follows:

Kelly O. Phelps  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, IL 62706  
217-782-9031

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
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217-524-8509

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**CLERK'S OFFICE**

**MAR 04 2013**

**STATE OF ILLINOIS**  
**Pollution Control Board**

Dated: February 27, 2013

Respectfully Submitted,

On behalf of BLICK'S CONSTRUCTION CO.,  
INC., Respondent

By: 

Jon S. Faletto  
HINSHAW & CULBERTSON LLP  
416 Main Street – 6<sup>th</sup> Floor  
Peoria, IL 61602-3126  
309-674-1025  
309-674-9328 (fax)  
[jfaletto@hinshawlaw.com](mailto:jfaletto@hinshawlaw.com)



# HINSHAW

& CULBERTSON LLP

February 27, 2013

Mr. John Therriault  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph, Suite 11-500  
Chicago, IL 60601-3218

**Re: People v. Blick's Construction Co. and Ron Bricker  
PCB No. 13-43**

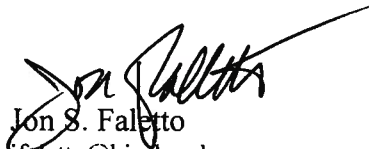
Dear Mr. Therriault:

On behalf of the Respondent, Blick's Construction Co., Inc., we are enclosing the original and ten (10) copies of our *Entry of Appearance; Motion for Leave to File Instanter Respondent's Motion to Dismiss Count II of the Complaint; Respondent's Motion to Dismiss Count II of the Complaint* and *Answer to Counts I, III, and IV of Complaint*, for filing in the above-captioned matter. Please return one file-stamped copy of each document to us in the postage-paid, self-addressed envelope enclosed for your convenience.

Please do not hesitate to contact the undersigned for any questions or comments.

Very truly yours,

HINSHAW & CULBERTSON LLP

  
Jon S. Faletto  
jfaletto@hinshawlaw.com

**ATTORNEYS AT LAW**

416 Main Street  
4th Floor  
Peoria, IL 61602-3126

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MAR 03 2013

309-674-1025

309-674-9328 (fax)

www.hinshawlaw.com

STATE OF ILLINOIS  
Pollution Control Board



ORIGINAL

JSF/pw  
Enclosures