

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. 13-043
(Enforcement-Air)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

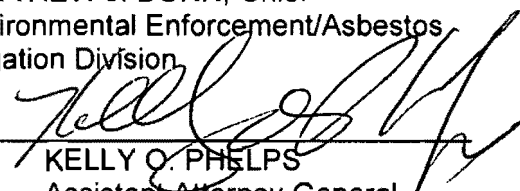
PLEASE TAKE NOTICE that on March 7, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, COMPLAINANT'S RESPONSE TO RESPONDENT BLICK'S CONSTRUCTION CO., INC.'S MOTION TO DISMISS COUNT II OF THE COMPLAINT, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

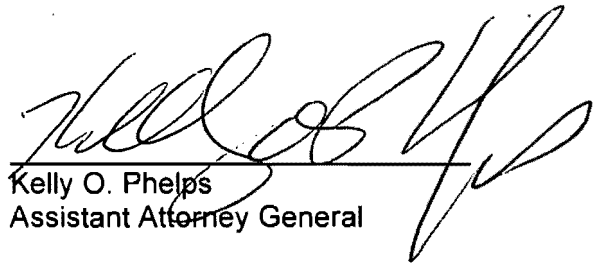
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
 KELLY O. PHELPS
 Assistant Attorney General
 Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: March 7, 2013

CERTIFICATE OF SERVICE

I hereby certify that I did on March 7, 2013, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING and COMPLAINANT'S RESPONSE TO RESPONDENT BLICK'S CONSTRUCTIN CO., INC.'S MOTION TO DISMISS COUNT II OF THE COMPLAINT upon the persons listed on the Service List.



Kelly O. Phelps
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Jon S. Falleto
Hinshaw & Culbertson LLP
416 N. Main St., Suite 600
Peoria, IL 61602

Ron Bricker
1799 E. 1625th
P.O. Box 64
Paloma, IL 62359

Carol Webb, Hearing Officer
Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADAMS COUNTY, STATE OF ILLINOIS**

**PEOPLE of THE STATE of ILLINOIS, by
LISA MADIGAN, Attorney General of the State
of Illinois,**)

Complainant,)

v.)

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

**BLICK'S CONSTRUCTION CO., INC.,
an Illinois Corporation, and
RON BRICKER,**)

Respondents.)

**COMPLAINANT'S RESPONSE TO RESPONDENT BLICK'S CONSTRUCTION CO.,
INC.'s, MOTION TO DISMISS COUNT II OF THE COMPLAINT**

NOW COMES, the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and moves the Illinois Pollution Control Board, pursuant to the Board's Procedural Rules at 35 Ill. Admin. Code Sections 101.500 and 101.506 and Section 2-615 of the Code of Civil Procedure, 735 ILCS 5/2-615 (2010), to deny Respondent, BLICK'S CONSTRUCTION CO., INC.'s ("BCC") Motion to Dismiss and in support thereof states:

1. Section 101.500(a) of the Board's Rules, 35 Ill. Admin. Code Sections 101.500(a), states:

a) 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.

2. The Board's Procedural Rules at 35 Ill. Admin. Code Sections 101.500 and 101.506, provide that all responses to motions to dismiss must be filed within 14 days after service of the motion.

3. In Paragraph 13 of its Motion Respondent requests that Count II of the Complaint be dismissed pursuant to Section 2-615 of the Code of Civil Procedure, 735 ILCS 5/2-615 (2010), because it is substantially insufficient in law.

4. Count II of the People's Complaint alleges two distinct violations amounting to three violations of law 1) failure to notify the Illinois EPA of asbestos removal activities at the facility, prior to commencing such activities (*See*, 415 ILCS 5/9.1(d)(1) (2010) and 40 CFR 61.145 (b)(1) and (3)), and 2) failure to submit the required fee with notification of demolition and renovation prior to commencing asbestos removal activities (*See*, 415 ILCS 5/9.13(b) (2010)).

5. Count II of the People's Complaint alleges violations of the following:

- a) "Each owner or operator of a demolition or renovation activity [regulated by 40 CFR 61.145] shall provide the [Illinois EPA] with written notice of intention to demolish or renovate.... [and] postmark or deliver the notice at least 10 working days before asbestos stripping or removal work or any other activity begins . . ." (Section 6145(b) of the NESHAP for asbestos, 40 CFR 6145(b)).
- b) "If demolition or renovation of a site has commenced without proper filing of the 10-day Notice, the fee is double the amount otherwise due...." (415 ILCS 9.13(b) (2010)).
- c) "No person shall violate [specified sections] of the Clean Air Act, ..." (415 ILCS 5/9.1(d)(1) (2010)).

6. Complainant has alleged in the Complaint all elements necessary to establish a violation of the applicable Act and Regulations, namely that:

- a) Respondents are owners or operators of a renovation activity as defined by Section 61.141 of the [NESHAP for asbestos] (*See*, Paragraph 6, Count II).
- b) spray-on asbestos-containing ceiling material and thermal insulation in excess of 160 square feet or 35 cubic feet, a jurisdictional amount of asbestos, was disturbed or removed by or under the supervision and control of Respondent Ron Bricker prior to June 7, 2011, (*See*, Paragraph 13, Count II).
- c) On at least two occasions prior to June 7, 2011, the President of BCC, John Blickham, observed Ron Bricker removing items from within the facility, including ceiling tiles, in preparation for demolition of the facility (*See*, Paragraph 14, Count II). And
- d) On June 7, 2011, Triple A ... 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.... (*See*, Paragraph 15, Count II).
- e) By not notifying the Illinois EPA of asbestos removal activities at the facility prior to commencing such activities, Respondent violated 415 ILCS 5/9.1(d)(1) (2010) and 40 CFR 61.145 (b)(1) and (3)) (*See*, Paragraphs 26 and 30, Count II).
- f) By not submitting the requisite fee to the Illinois EPA with a notification of demolition and renovation prior to commencing asbestos removal activities, Respondents violated 415 ILCS 5/9.13(b) (2010)) (*See*, Paragraph 28, Count II).

7. Complainant has alleged that Respondent was an owner or operator of a renovation activity having a legal duty to comply with the notification provision of the Clean Air Act and the fee payment provision of the Environmental Protection Act. Further, Complainant has alleged that renovation activity occurred without proper notice or fee payment.

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AIR-ENFORCEMENT

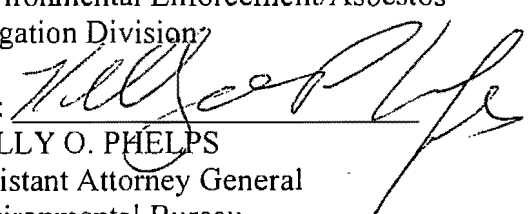
8. Count II of the Complaint is well pled and contains such information as reasonably informs the Respondent of the nature of the claims and defenses which it is called upon to meet. Count II of the Complaint is substantially sufficient in law.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully request that this Honorable Board deny Respondent's Motion to Dismiss Count II of the Complaint and further issue an Order requiring Respondent, BCC, to timely answer Count II of the Complaint, and for all other appropriate relief.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN,
Attorney General of the State of Illinois,

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

BY: 
KELLY O. PHELPS
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