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JUN 08 2007

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 6, 2007

PC 07-131

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Vithalbhai Patel***

Dear Clerk Gunn:

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

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen J. Janasie", is written over a horizontal line.

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

SJJ/pp
Enclosures

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JUN 08 2007

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 VITHALBHAI PATEL,)
)
 Respondent.)

PCB No. 07-131
(Enforcement - Air)

NOTICE OF FILING

To: Bill Wimmer
Attorney at Law
2 Park Place
Professional Center
Belleville, IL 62226

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 (2004), to correct the pollution alleged in the Complaint filed in this case.

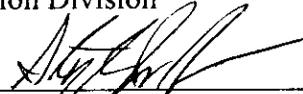
Respectfully submitted,

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:



STEPHEN J. JANASIE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 6, 2007

ORIGINAL CERTIFICATE OF SERVICE

RECEIVED
CLERK'S OFFICE

JUN 08 2007

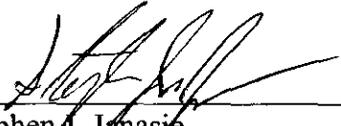
STATE OF ILLINOIS
Pollution Control Board

I hereby certify that I did on June 6, 2007, 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: Bill Wimmer
Attorney at Law
2 Park Place
Professional Center
Belleville, IL 62226

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

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



Stephen J. Janasie
Assistant Attorney General

This filing is submitted on recycled paper.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUN 08 2007

PEOPLE OF THE STATE OF)
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STATE OF ILLINOIS
Pollution Control Board

PCB No. 07-131
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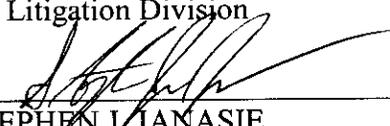
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, STEPHEN J. JANASIE, Assistant Attorney General of the State of Illinois, hereby enters his appearance as attorney of record.

Respectfully submitted,

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

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

BY: 
STEPHEN J. JANASIE
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 6, 2007

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
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 Complainant,)
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 vs.)
)
 VITHALBHAI PATEL,)
)
 Respondent.)

PCB No. 07-131
(Enforcement-Air)

COMPLAINT

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, complains of the Respondent, VITHALBHAI PATEL, as follows:

COUNT I

NOVEMBER 2003 NESHAP VIOLATIONS

1. This count is brought on behalf of the People of the State of Illinois, by Lisa Madigan, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2006).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of investigating and enforcing violations of the Act.

3. At all times relevant to this Complaint, Vithalbhair Patel was the owner and/or operator of a Howard Johnson Express Inn located at 301 North Bluff Road, Collinsville,

Madison County, Illinois.

4. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d)(2006) provides as follows:

(d) No person shall:

(1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto;

5. The regulations on National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for asbestos, 40 CFR Part 61, Subpart M, 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. Regulated ACM contains more than one percent asbestos and is generally “friable,” which means such materials, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

6. 40 CFR §61.141 provides the following pertinent definitions:

Adequately wet means sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

Facility means any institutional, commercial, public, industrial, or residential structure, installation, or building. . . .

Friable asbestos material means any material containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 CFR part 763 section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

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.

Remove means to take out RACM or facility components that contain or are covered with RACM from any facility.

Renovation means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

7. 40 CFR §61.145 provides in pertinent part as follows:

Standard for demolition and renovation.

(a) *Applicability.* To determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

- * * *
- (1) In a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section, 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

* * *

(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. . . .
 - (i) At least 10 working days before asbestos stripping or removal work or any other activity begins. . . .

* * *

(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:

* * *

(6) For all RACM, including material that has been removed or stripped:

- (i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with §61.150; and
- (ii) Carefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.

* * *

8. 40 CFR §61.150 provides in pertinent part as follows:

Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.

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. . . .

* * *

(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

* * *

(3) The requirements of paragraph (b) of this section do not apply to Category I nonfriable ACM that is not RACM.

* * *

9. On November 5, 2003, the Respondent was conducting the demolition of the office portion of the Howard Johnson Express Inn. The Respondent ceased work at the request of the Illinois EPA and retained Farmer Environmental Services to thoroughly inspect for the presence of asbestos. It was determined that over 200 square feet of sprayed on ceiling material contained asbestos. A proper abatement of the office portion was subsequently accomplished.

10. The Howard Johnson Express Inn is a “facility” and the Respondent is an “owner” and/or “operator” of a “demolition” as these terms are defined at 40 CFR 61.141.

11. The ceiling tile in Respondent’s facility was classified as “regulated asbestos-containing material” (“RACM”), as defined at 40 CFR 61.141, and therefore subject to the asbestos NESHAP work practices and other requirements.

12. The owner and operator of a demolition activity subject to the asbestos NESHAP is required by 40 CFR 61.145(a) to thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos prior to the commencement of the demolition or renovation. The Respondent did not do so, thereby violating 40 CFR 61.145(a) and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

13. The owner and operator of a demolition activity subject to the asbestos NESHAP is required by 40 CFR 61.145(b)(1) to provide to the Illinois EPA notification of renovation activity at least 10 working days prior to commencing such activity. The Respondent did not provide written notification to the Illinois EPA prior to the commencement of demolition

activities at the facility, thereby violating 40 CFR 61.145(b)(1) and Section 9.1(d) 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 enter an Order against the Respondent:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), impose a civil penalty of not more than the statutory maximum;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and
- F. Grant such other and further relief as the Board deems appropriate.

COUNT II

JUNE 2005 NESHAP VIOLATIONS

1-8. Complainant realleges and incorporates herein by reference paragraphs 1 through 8 of Count I as paragraphs 1 through 8 of this Count II.

9. On or about June 10, 2005, and on dates thereafter better known to the

Respondent, the Respondent was conducting the renovation of the hotel portion of the Howard Johnson Express Inn by altering the facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. The Respondent had auctioned the contents and fixtures of the hotel portion in advance of its planned demolition by Koman Properties, the subsequent purchaser of the facility. The Respondent was causing and allowing his own employees and members of the public who had purchased items of the hotel's contents and fixtures to dismantle and remove such items, thereby disturbing asbestos-containing materials. In particular, interior walls of the facility were broken into and the copper plumbing lines therein were removed.

11. On July 21 and 22, 2005, the Illinois EPA inspected the facility at the request of Koman Properties. Walls throughout the hallways and within the 72 individual rooms had been damaged and the copper plumbing lines had been removed. Several elbows had been cut from the pipes and discarded on the floor. Thermal pipe insulation suspected to be asbestos-containing was present on elbows as well as discarded on the floor after having been stripped from the plumbing lines. Three samples of the insulation were subsequently analyzed and determined to contain 10% to 15% asbestos. The Illinois EPA estimated that the scrapped plumbing lines had contained 576 linear feet of RACM.

12. The Howard Johnson Express Inn is a "facility" and the Respondent is an "owner" and/or "operator" of a "renovation" as these terms are defined at 40 CFR 61.141.

13. The thermal pipe insulation in Respondent's facility was classified as "regulated asbestos-containing material" ("RACM"), as defined at 40 CFR 61.141, and therefore subject to the asbestos NESHAP work practices and other requirements.

14. The owner and operator of a renovation activity subject to the asbestos NESHAP is required by 40 CFR 61.145(a) to thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos prior to the commencement of the demolition or renovation. The Respondent did not do so, thereby violating 40 CFR 61.145(a) and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

15. The owner and operator of a renovation activity subject to the asbestos NESHAP is required by 40 CFR 61.145(b)(1) to provide to the Illinois EPA notification of renovation activity at least 10 working days prior to commencing such activity. The Respondent did not provide written notification to the Illinois EPA prior to the commencement of demolition activities at the facility, thereby violating 40 CFR 61.145(b)(1) and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

16. The Respondent also failed to collect, contain and deposit as soon as practicable all RACM and asbestos-containing waste materials generated during the removal at a site permitted to accept such waste, and thereby violated Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2006), 40 CFR 61.145(c)(6), and 40 CFR 61.150(b)(1).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, People of the State of Illinois, respectfully requests that this Board enter an Order against the Respondent:

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

B. Finding that the Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), impose a civil penalty of not more than the statutory maximum;

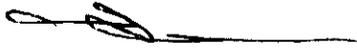
E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), award the Complainant its costs in this matter, including reasonable attorney's fees and costs; and

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

Respectfully submitted,

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

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

BY: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

Stephen J. Janasie
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 6, 2007