

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAR 17 2004

STATE OF ILLINOIS
Pollution Control Board

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

Complainant,

v.

ASBESTOS CONTROL AND
ENVIRONMENTAL SERVICES CORP.,
an Illinois corporation,

Respondent.

PCB No. 04-162
(Enforcement)

NOTICE OF FILING

TO: Daniel T. Coyne, President
Asbestos Control and Environmental
Services, Corp.
31 West 780 Poss Road
Eola, Illinois 60519

Roy D. Winn
Registered Agent
319 South Naperville Road #201
Wheaton, Illinois 60187

PLEASE TAKE NOTICE that I have today filed the Complaint with the Office of the Clerk of the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and herewith served upon you. Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to advise you that 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. Pursuant to 415 ILCS 5/31(c)(1), I am required to advise you that financing may be available through the Illinois Environmental Facilities Financing Act to correct the violations.

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

BY:

Bridget M. Carlson

BRIDGET M. CARLSON

Assistant Attorney General

Environmental Bureau

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PEOPLE OF THE STATE OF ILLINOIS,

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STATE OF ILLINOIS
Pollution Control Board

COMPLAINT

Complainant, 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"), complains of Respondent, ASBESTOS CONTROL AND ENVIRONMENTAL SERVICES CORP., as follows:

COUNT I

AIR POLLUTION

1. This Complaint 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 upon 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 (2002).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of

enforcing the Act.

3. At all times relevant to this Complaint, Respondent, Asbestos Control and Environmental Services Corp. ("ACES"), has been and is an Illinois corporation qualified to do business in the State of Illinois. ACES' principal business address is P.O. Box 945, Wheaton, Illinois.

4. ACES is a contractor licensed by the Illinois Department of Public Health to conduct asbestos abatement activities. ACES engages in the removal and disposal of regulated asbestos-contained material ("RACM") and asbestos containing waste material ("ACWM") generated during demolition and renovation at various commercial and industrial facilities.

5. On November 21, 2002, the Illinois EPA received from ACES a Notification of Demolition and Renovation informing the Illinois EPA of scheduled renovation activities at a vacant warehouse located at 816 West 47th Place, Chicago, Cook County, Illinois ("facility"). facility.

6. The notification stated that the building is vacant and owned by AB M LLC. The notification also indicated that approximately 6,500 lineal feet of RACM on pipes would be removed by ACES utilizing negative air pressure, wetting and containment to prevent the emission of asbestos.

7. The notification stated that the work at the facility was to commence on November 25, 2002 and be completed on December 2, 2002.

8. On December 19, 2002 the Illinois EPA and the City of Chicago Department of the Environment ("DOE") performed a routine compliance inspection at the facility pursuant to the notification submitted by ACES.

9. During the December 19, 2002 inspection, the Illinois EPA inspector ("inspector") entered a containment area where asbestos removal was ongoing. The inspector witnessed a worker using a wire brush to remove RACM from a pipe recently stripped of insulation. The worker then proceeded to cut off a three foot section of insulation and drop it into a disposal bag without properly wetting the materials. At this time, two workers were still in the process of erecting the containment and installing negative air pressure machines and there was no evidence of wetting.

10. Under the removal area, the inspector observed dry, friable suspect material.

11. The inspector also inspected a dumpster which was used to store all the asbestos disposal bags. The inspector observed a disposal bag not fully taped with duct tape. The inspector looked inside the bag and could tell that the material inside the bag was completely dry. The inspector then obtained samples from three separate bags in the dumpster. The samples are identified as JZ 12-19-02-01, JZ 12-19-02-02 and JZ 12-19-02-03. All three of the bags contained dry, friable suspect material. Analytical testing revealed that sample JZ 12-19-02-01 contained 18% chrysotile, sample JZ 12-19-02-02 contained 15% chrysotile and sample JZ 12-19-02-03 contained 10% chrysotile and 10% amosite asbestos.

12. The three bags of dry, friable suspect material were also witnessed by two DOE inspectors.

13. The inspector also obtained a sample of the dry, friable suspect material inside the containment near where the bags were stored. The sample is identified as JZ 12-19-02-04. Analytical testing results of the sample revealed that it contained 15% chrysotile asbestos.

14. The inspector also obtained a sample of dry, friable suspect material from the floor

of a previously cleaned area. The sample is identified as JZ 12-19-02-05. Analytical test results of the sample revealed that it contained 40% chrysotile asbestos.

15. Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), provides as follows:

No person shall:

Cause or threaten to allow the discharge of any contaminant into the environment in any state to 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 or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

17. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), contains the following definition:

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

18. Asbestos fibers are a "contaminant" as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

19. Section 3.115 of the Act, 415 ILCS 5/3.115 (2002), contains the following definition:

"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.

20. Asbestos is a known human carcinogen which can cause or threaten to cause serious health problems.

21. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), provides the following definition:

"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.

22. ACES is a corporation and is therefore a "person" as that term is defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

23. ACES caused or allowed friable RACM or ACWM to be deposited, uncontained, on the floor of the facility. Additionally, during renovation, ACES failed to follow proper emission control procedures such as wetting, and keeping the RACM and ACWM wet.

24. ACES has caused, threatened or allowed the discharge or emission of asbestos into the environment so as to cause air pollution in that dry, friable asbestos-containing material was removed, left in place and improperly bagged at the facility during and after improper removal activities.

25. By failing to wet all asbestos and allowing dry, friable asbestos to remain in a friable state, ACES has caused, threatened or allowed air pollution in Illinois, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, requests that the Board enter an order in favor of Complainant and against Respondent, Asbestos Control and Environmental Services Corp.:

1. Authorizing a hearing in this matter, at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 9(a) of the Act and Section 201.141 of 35 Ill. Adm. Code;
3. Ordering the Respondent to cease and desist from any further violations of Section 9(a) of the Act and Section 201.141 of 35 Ill. Adm. Code;
4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of continued violation;
5. Ordering the Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT II

FAILURE TO FOLLOW PROPER EMISSION CONTROL PROCEDURES

- 1-16. Complainant realleges and incorporates herein by reference paragraphs 1 through 14 and paragraphs 21 and 22 of Count I as paragraphs 1 through 16 of this Count II.
17. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002), provides in pertinent part as follows:

No person shall:

1. Violate any provisions of Sections 111, 112, 165, and 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto.

18. Pursuant to Section 112(b)(1) of the Clean Air Act ("CAA"), 42 USC 7412(b)(1), the Administrator of the United States Environmental Protection Agency ("USEPA") has listed asbestos as a hazardous air pollutant.

19. Section 112(d) of the CAA, 42 USC 7412(d), titled *Emissions Standards*, provides in pertinent part as follows:

1. The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation . . .

20. Section 112(h) of the CAA, 42 USC 7412(h), titled *Work Practice Standards and Other Requirements*, 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 . . .

21. 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 of the CAA, the USEPA has adopted National Emission Standards for Hazardous Air Pollutants (NESHAP), including asbestos, 40 CFR 61, Subpart M.

22. Section 61.141 of the USEPA's NESHAP, 40 CFR 61.141 (2002), provides in part as follows:

All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in subpart A of this part.

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.

Asbestos means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

Asbestos-containing waste materials means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this subpart. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

Cutting means to penetrate with a sharp-edged instrument and includes sawing, but does not include shearing, slicing or punching.

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.

Friable asbestos material means any material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR 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.

Grinding means to reduce to powder or small fragments and includes mechanical chipping or drilling.

Leak-tight means that solids or liquids cannot escape or spill out. It also means dust-tight.

Nonfriable asbestos-containing material means any material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy, that, when dry, cannot 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.

Planned renovation operations means a renovation operation, or a number of such operations, in which some RACM will be removed or stripped within a given period of time and that can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.

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.

Strip means to take off RACM from any part of a facility or facility components.

23. The facility located at 816 West 47th Place, Chicago, Illinois is a "facility" as that term is defined in 40 CFR 61.141.

24. The removal of asbestos at the facility constituted a "renovation" as that term is defined in 40 CFR 61.141.

25. Section 61.145(a) of USEPA's NESHAP, 40 CFR 61.145(a) (2002), titled *Standard for demolition and renovation: Applicability*, provides in pertinent part as follows:

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.

26. According to ACES Notification of Renovation the amount of RACM to be removed was approximately 6,500 lineal feet. Thus, the requirements of 40 CFR 61.145(c) apply.

27. Section 61.145(c)(3) and (c)(6) of USEPA's NESHAP for asbestos, 40 CFR 61.145(c)(3) and (c)(6) (2002), as adopted in Section 9.1(d) of the Act, 415 ILCS 5/9.1(d)(2002), titled, *Standard for demolition and renovation: Procedures for asbestos emission control*, provides in pertinent part as follows:

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

stripping operations.

* * *

- (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. On at least November 19, 2002, or on a date or dates better known to ACES, ACES failed to adequately wet all RACM in place before stripping it from facility components, in violation of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), and 40 CFR 61.145(c)(3).

29. On at least November 19, 2002, or on a date or dates better known to ACES, ACES failed to adequately wet all RACM and ensure that it remained wet until collected and contained or treated in preparation for disposal, in violation of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), and 40 CFR 61.145(c)(6).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, requests that the Board enter an order in favor of Complainant and against Respondent, Asbestos Control and Environmental Services Corp.:

1. Authorizing a hearing in this matter, at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 9.1(d)(1) of the Act and 40 CFR 61.145(c)(3) and (c)(6);
3. Ordering the Respondent to cease and desist from any further violations of Section 9.1(d)(1) of the Act and 40 CFR 61.145(c)(3) and (c)(6);

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of continued violation;
5. Ordering the Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT III

IMPROPER DISPOSAL

1-26. Complainant realleges and incorporates herein by reference paragraphs 1 through 14 and paragraphs 21 and 22 of Count I, and paragraphs 17 through 26 of Count II, as paragraphs 1 through 26 of this Count III.

27. Section 61.150 of USEPA's NESHAP, 40 CFR 61.150 (2002), as adopted in Section 9.1(d) of the Act, titled *Standard for waste disposal for manufacturing, fabricating, demolition, renovation and spraying operations*, provides as follows:

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.

28. On at least November 19, 2002, or on a date or dates better known to ACES, ACES failed to adequately wet all asbestos-contained waste material.

29. On at least November 19, 2002, or on a date or dates better known to ACES, ACES failed to adequately seal all asbestos containing material in a leak-tight container when it failed to properly seal a disposal bag stored in the dumpster.

30. ACES, by its actions and omissions as alleged herein, violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002) and 40 CFR 61.150(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, requests that the Board enter an order in favor of Complainant and against Respondent, Asbestos Control and Environmental Services Corp.:

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

2. Finding that the Respondent has violated Section 9.1(d)(1) of the Act and 40 CFR 61.150(a);

3. Ordering the Respondent to cease and desist from any further violations of Section 9.1(d)(1) of the Act and 40 CFR 61.150(a);

4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars

(\$50,000.00) for each and every violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of continued violation;

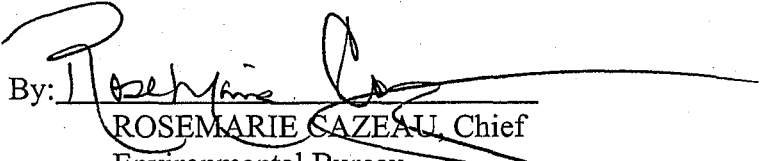
5. Ordering the Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

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: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

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Environmental Bureau North
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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Complaint was sent by certified mail with return receipt requested to each of the persons listed on the Notice of Filing on March 17, 2004.

BY: Bridget M. Carlson
BRIDGET M. CARLSON

It is hereby certified that the originals plus nine (9) copies of the foregoing were hand-delivered to the following person on March 17, 2004:

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

BY: Bridget M. Carlson
BRIDGET M. CARLSON