ILLINOIS POLLUTION CONTROL BOARD
February 17, 2000

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 95-170
	)	(Enforcement - Air)
ENVIRONMENTAL CONTROL AND ABATEMENT, INC.,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by M. McFawn):

Complainant the People of the State of Illinois (People) and respondent Environmental Control and Abatement, Inc. (ECA) each filed motions for summary judgment on September 28, 1999. The People's motion was accompanied by a "Memorandum in Support of Motion for Summary Judgment." On October 13, 1999, ECA filed "ECA's Response to Motion for Summary Judgment Filed by the Office of the Attorney General" (ECA Response). On October 27, 1999, the People filed "Complainant's Combined Response to Respondent's Motion for Summary Judgment and Respondent's Response to People's Motion for Summary Judgment" (People's Response). After considering the record and the arguments of the parties, each motion is granted in part and denied in part. Because material issues of fact exist which are not resolved by the Board's rulings on these motions, this case will proceed to hearing.

NATURE OF THE CASE

The People's amended complaint, filed on November 8, 1995, consists of three counts alleging violations of federal regulations governing asbestos removal, Section 112 of the federal Clean Air Act, 42 U.S.C. 7412, and the Illinois Environmental Protection Act (Act), 415 ILCS 5 (1998). The alleged violations of federal provisions are within the Board's jurisdiction because Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (1998), prohibits violation of Section 112 of the Clean Air Act, 42 U.S.C. 7412, or any regulation adopted pursuant to it.

This case involves five asbestos removal sites, in Alton, Centralia, Highland, Quincy and Urbana. In count I the State alleges that ECA violated 40 C.F.R. 61.145(b)(3), Section 112(c)(1)(B) of the Clean Air Act, and Section 9.1(d) of the Act, by failing to give timely notice of the asbestos removal activities in Centralia, Highland, and Quincy. In count II the State alleges that the notices ECA provided for all of the projects were incomplete, in violation of 40 C.F.R. 61.145(b)(4), Section 112(c)(1)(B) of the Clean Air Act, and Section 9.1(d) of the Act. In count III, the State alleges that ECA again violated 40 C.F.R. 61.145(b)(3), Section 112(c)(1)(B) of the Clean Air Act, and Section 9.1(d) of the Act, by failing to give timely notice of a change in the start date for the Centralia project.

REGULATIONS AT ISSUE

The provisions of 40 C.F.R. 61.145 involved in this case, as well as relevant definitions from 40 C.F.R. 61.141, are set out in an appendix to this order.

STANDARDS FOR SUMMARY JUDGMENT

The Illinois Supreme Court set forth the standards for consideration of motions for summary judgment in Jackson Jordan, Inc. v. Leydig, Voit & Mayer, 158 Ill. 2d 240, 249, 633 N.E.2d 627, 630 (1994):

> A motion for summary judgment is to be granted if "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." [735 ILCS 5/2-1005(c).] The pleadings, depositions, admissions, and affidavits on file must be construed against the movant and in favor of the opponent of the motion, although the opponent cannot rely simply on his complaint or answer to raise an issue of fact when the movant has supplied facts which, if not contradicted, entitle him to judgment as a matter of law. Summary judgment is a drastic means of disposing of litigation, so the right of the moving party to obtain summary judgment must be clear and free of doubt. Where doubt exists as to the right to summary judgment, the wiser judicial policy is to permit resolution of the dispute by a trial.

The appellate court explained the burden of each party in prosecuting or defending against a motion for summary judgment in Estate of Sewart, 236 Ill. App. 3d 1, 8, 602 N.E.2d 1277, 1281-82 (1st Dist. 1992) (citations omitted):

> The party seeking summary judgment may meet its initial burden of persuasion by presenting facts which, if uncontradicted, would entitle it to judgment as a matter of law. Once the party seeking the summary judgment produces such evidence, the burden of production shifts to the party opposing the motion, who may not rely solely on allegations in the complaint, but is required to come forth with some facts which create a material issue of fact. Although a [party] opposing a motion for summary judgment need not prove her case at this point, she must provide some factual basis which would arguably entitle her to judgment under the applicable law. If the respondent fails to produce such evidence, summary judgment is properly granted.

STATUS OF ECA'S DISCOVERY RESPONSES

We note initially that there is a dispute regarding what the "admissions on file" consist of in this case. On January 8, 1997, ECA filed a "Response to Complainant's Request for the Admission of Facts." ECA contends that these responses cannot be considered by the Board in evaluating these motions because they were stricken from the record by the hearing officer in

an order filed on February 5, 1999. ECA Response at 3. The hearing officer's order specifically provided:

> The parties also discussed an outstanding motion by the complainant to strike answers to interrogatories filed by the respondent prior to obtaining counsel. The respondent's counsel agreed that the discovery responses should be stricken. The complainant's motion to strike is therefore granted.

The People respond that the motion to which the hearing officer referred was a motion to strike ECA's discovery requests, not responses, and consequently granting of the motion did not result in striking of ECA's interrogatory answers.

The record in this case contains no motion by the People to strike any discovery responses by ECA, but it does contain "Complainant's Objection to Respondent's Request for Discovery," filed by the People on January 29, 1997. Since there was no motion to strike ECA's discovery responses pending, the hearing officer could not have granted such a motion. We conclude, therefore, that ECA's discovery responses remain a part of the record, and the Board will consider these discovery responses in its evaluation of the pending summary judgment motions. These responses are cited as "Adm. X," where X is the paragraph number of the specific admission cited.

EVIDENCE

In addition to the discovery responses discussed above, the People and ECA have submitted affidavits of Dale Halford and Betsy Kirchoff respectively, laying the requisite foundation for consideration by the Board of the documents appended to their respective motions. Additionally, ECA has submitted an affidavit of William A. Lemire, president of ECA. The Board's findings of fact which follow are based on these sources.

CLEAN AIR ACT VIOLATIONS

As a threshold matter, we address the People's allegations in each count of the complaint that ECA violated Section 112(c)(1)(B) of the federal Clean Air Act, 42 U.S.C. 7412(c)(1)(B). There is currently no "Section 112(c)(1)(B)" of the Clean Air Act, nor has there been since November 15, 1990. Prior to that date, Section 112(c)(1)(B) of the Clean Air Act contained a prohibition on exceeding emissions limits, but amendments effective on that date substantially revised Section 112, and in the current version of that statute does not contain this prohibition.

Section 9.1(d) of the Act, which brings Clean Air Act violations within the Board's jurisdiction, prohibits violation of Section 112 "as now or hereafter amended." 415 ILCS 5/9.1(d) (1998). Thus, for our purposes, the amended version of Section 112 was operative when this case was filed. The initial notices for all the projects involved in this case were given after the amendments were effective; none of the projects could have been covered by the old statute. Consequently, the Board concludes that there can have been no violation by ECA of this section, at any of the sites or under any of the three counts of the complaint. The Board

accordingly grants ECA's motion for summary judgment with respect to the alleged violations of Section 112(c)(1)(B).

ANALYSIS OF OTHER ALLEGED VIOLATIONS

This case involves five asbestos removal sites, in Alton, Centralia, Highland, Quincy and Urbana. Facts concerning each site are set forth separately in the discussion of each site.

The Alton Project

Alleged Violations

The amended complaint alleges that the notice submitted for the Alton project was incomplete (count II).

Facts

ECA was hired to remove 25 linear feet of regulated asbestos containing material (RACM) piping insulation and 800 square feet of RACM on surface areas from the Alton Mental Health Center. Adm. 5; Comp. Mot. Exh. A; Resp. Mot. Exh.Q. ECA provided the Illinois Environmental Protection Agency (Agency) with notification of the removal project by U.S. Mail, postmarked October 6, 1993. Comp. Mot. Exh. A; Resp. Mot. Exh. Q. The scheduled start date of the project was October 25, 1993. *Id.*

ECA's notification did not indicate the type of notification being submitted. It did not indicate the approximate amount of non-friable ACM not to be removed from the site. It did not include a description of the renovation work and methods to be used, nor did it describe the work practices and engineering controls that would be used to prevent emissions of asbestos. Finally, the notification did not describe the procedures to be followed in the event that unexpected ACM was found or previously non-friable ACM became friable. Comp. Mot. Exh. A; Resp. Mot. Exh. Q.

The Agency sent ECA a compliance inquiry letter (CIL) on November 24, 1993. Comp. Mot. Exh. B; Resp. Mot. Exh. R. ECA sent a response to the Agency on January 7, 1994, including a completed notification form. Comp. Mot. Exh. C; Resp. Mot. Exh. S.

Analysis

It is undisputed that the notice originally submitted by ECA (1) did not indicate whether an original or revised notification was being submitted, (2) did not indicate the approximate amount of non-friable ACM not to be removed from the site, (3) did not include a description of the renovation work and methods to be used, (4) did not describe the work practices and engineering controls that would be used to prevent emissions of asbestos, and (5) did not describe the procedures to be followed in the event that unexpected ACM was found or previously non-friable ACM became friable. The Board concludes that the second omission does not constitute a violation of the notification regulations. The specific provision in question,

contained in 40 C.F.R. 61.145(b)(4)(vi), by its terms applies only to demolitions. The notice indicates that the Alton project was to be a renovation. Consequently, the cited part of Section 61.145(b)(4)(vi) was inapplicable to ECA. The other omitted information, however, was required in the notification filed by ECA. By failing to include this information, ECA violated 40 C.F.R. 61.145(b)(4)(i), (x), (xi), and (xvi). Consequently, ECA violated Section 9.1(d) of the Act.

ECA's only argument with respect to this project is that as soon as the shortcomings in the notice were brought it its attention, it filed a revised notice with the missing information included. ECA Motion at 14. ECA's diligence in curing the defects may impact our determination of an appropriate remedy, but does not change the fact that the initial notice was deficient.

Conclusion

The Board grants the People's motion to the following extent: The Board finds that ECA violated 40 C.F.R. 61.145(b)(4)(i), (x), (xi), and (xvi), and consequently Section 9.1(d) of the Act, with respect to the Alton project. The Board reserves ruling on the issue of an appropriate remedy. The Board grants ECA's motion for summary judgment to the following extent: The Board finds that ECA did not violate 40 C.F.R. 61.145(b)(4)(vi) with respect to the Alton project.

The Centralia Project(s)[1]

Alleged Violations

The amended complaint alleges that the notice submitted for the Centralia project was both untimely (count I) and incomplete (count II), and that a revised notice was untimely (count III).

Facts

ECA was hired to remove RACM mag block straight pipe and cementious fitting insulation from the boiler house at W. G. Murray Correctional Center in Centralia. Adm. 24; Comp. Mot. Exh. M. ECA sent notice of the removal project by letter dated March 11, 1992, indicating that the project was to begin on March 16 and conclude on March 20, 1992. Comp. Mot. Exh. M. ECA did not use the form provided in 41 C.F.R. Part 61. *Id*. The project consisted of removal of approximately 30 linear feet of pipe insulation. Lemire affidavit, ¶ 7.

The notice provided by ECA did not indicate the type of notification being submitted or the type of operation performed. It did not describe the facility or affected part of the facility.

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[1] The parties dispute whether the work performed by ECA at the Centralia site constitutes one or two projects.

It did not indicate the procedure to be used to detect the presence of RACM and nonfriable ACM. It did not include estimates of the approximate amount of RACM to be removed and the approximate amount of nonfriable ACM not to be removed. It included neither a description of the work to be performed and methods to be used, nor a certification that at least one trained person would supervise stripping and removal. It did not indicate the date and hour that the emergency occurred requiring asbestos abatement, nor did it provide an explanation of how the event caused an unsafe condition or would cause equipment damage or an unreasonable financial burden. It did not describe the procedures to be followed in the event that nonfriable ACM became friable. It did not identify the waste transporter. Finally, it did not describe the work practices to be used to prevent emissions of asbestos at the site. Comp. Mot. Exh. M.

The Agency sent ECA a CIL on March 20, 1992, citing violations of Section 9.1(d) of the Act and 40 C.F.R. 61.145. Adm. 45; Comp. Mot. Exh. N. ECA responded to the CIL by letter on March 31, 1992. Comp. Mot. Exh. O. ECA blamed the lapse on a consultant, but acknowledged its responsibility for submitting proper, completed forms. *Id.*

ECA was later hired to perform additional abatement work at the Centralia site. Lemire affidavit, ¶ 9. ECA sent a second project notification to the Agency by U.S. Mail, postmarked May 15, 1992. Comp. Mot. Exh. P. The project described consisted of removal of 130 linear feet of mag block straight pipe insulation, 285 square feet of surface area materials, and 20 cubic feet of joint insulation from the W. G. Murray boiler house. *Id.* The scheduled start date for the project was May 28, 1992, and the completion date was June 2, 1992. *Id.* On June 8, 1992, ECA sent the Agency a revised notification for this project, changing the completion date from June 2 to June 9, 1992. Comp. Mot. Exh. Q.

Analysis

The People's arguments with respect to the Centralia projects are predicated on the theory that all work done at the Centralia site was part of one big project. Viewed in this way, the initial notice provided by ECA would clearly have been deficient, containing almost none of the information required under Section 61.145(b)(4). Likewise, the "revised" notification submitted in May would have been untimely.

ECA maintains that the work at the Centralia site consisted of two separate projects, and that since the amount of RACM to be removed in the first project was below the limit set in Section 61.145(a)(4)(i) the notification requirements of Section 61.145(b) did not apply. ECA also argues that the second notification and revised notification, considered independent of the first notification, were sufficient and timely.

We find no support in this record for the People's contention that all work done at the Centralia site was one project. According to the dates in the notices, the first project was completed nearly a month before the notification was provided for the second project, and nearly two months before work on the second project began. Lemire's affidavit indicates that ECA was hired for the second project "later." The mere fact that both projects took place at the same site is insufficient to establish that they were not separate removal projects.

When the two projects are considered separately, it is apparent that the first project was not subject to the notification requirements of Section 61.145(b), because the amount of RACM involved was below the threshold amount. Since the notification requirements did not apply, the notice provided by ECA cannot be considered either late or incomplete. Similarly, if the second notice is considered the initial notice of a separate project, and not a revised notice in connection with the first project, it is not untimely. The People have not alleged or argued that the second notice was insufficient.

Conclusion

The Board grants ECA's motion for summary judgment with respect to those portions of counts I and II concerning the Centralia projects, and denies the People's motion to the same extent. The Board grants ECA's motion for summary judgment with respect to count III, and denies the People's motion to the same extent.

The Highland Project

Alleged Violations

The amended complaint alleges that the notice submitted for the Highland project was both untimely (count I) and incomplete (count II).

Facts

ECA was hired to remove 2000 square feet of asbestos-containing floor tile and mastic from Highland Junior High School. Adm. 55; Comp. Mot. Exh. J; Lemire affidavit at 1. ECA provided the Agency with notification of the removal project by U.S. Mail, postmarked May 16, 1991. Comp. Mot. Exh. J. The scheduled start date for the project was May 28, 1991. *Id*. ECA's notice did not indicate the type of notice being submitted. *Id*. It did not indicate the number of floors in the facility or the facility's age. *Id*. It did not indicate the procedure to be used to detect ACM, nor did it indicate the amount of ACM not to be removed from pipes at the site. *Id*.

The Agency sent ECA a CIL on June 26, 1991, citing violations of Section 9.1(d) of the Act, Section 114 of the federal Clean Air Act, and 40 C.F.R. 61.145. Comp. Mot. Exh. K. ECA responded to the CIL by letter on July 2, 1991. Comp. Mot. Exh. L. ECA indicated that the problem was with the post office, but acknowledged its responsibility for ensuring that the notice was postmarked as required. *Id*.

Analysis

It is undisputed that the notice submitted by ECA was postmarked May 16, 1991, for a project which began on May 28, 1991. There were two weekends between May 16 and May 28 in 1991. Thus, the notice was postmarked less than 10 working days prior to the date work began. Failure to provide notice postmarked at least 10 working days prior to commencement of work is a violation of 40 C.F.R. 61.145(b)(3)(i). It is likewise undisputed

that the notice submitted by ECA did not: (1) indicate the type of notice being submitted; (2) indicate the number of floors in the facility or the facility's age; (3) indicate the procedure to be used to detect ACM; or (4) indicate the amount of ACM not to be removed from pipes at the site. Failure to include these items in a required notice violates 40 C.F.R. 61.145(b)(4)(i), (iv), and (v). Violation of these regulations would be violations of Section 9.1(d) of the Act. As is discussed above, however, the provision of the regulation that would be violated by the fourth identified omission applies only to demolitions. The Highland project was noticed as a renovation. Accordingly, this omission would not violate 40 C.F.R. 61.145(b)(4)(vi).

While the facts are not disputed, ECA argues that notification requirements did not apply to the Highland project, and that the notification provided to the Agency was a "courtesy project notification." ECA Motion at 9. ECA bases this argument on the definition of "regulated asbestos containing material" found at 40 C.F.R. 61.141, and the applicability provisions of 40 C.F.R. 61.145(a). ECA asserts that the ACM removed from the Highland facility was not RACM, and thus the notice requirements of 40 C.F.R. 61.145(b) were not triggered. In support of its position ECA cites the affidavit of William Lemire, president of ECA, in which he states that the Highland project involved removal of 2000 square feet of Category I nonfriable asbestos-containing floor tile and mastic.

The People acknowledge that floor tile is cited in the definition of Category I nonfriable ACM, but argue that just because a material is Category I nonfriable ACM does not mean that it will not become friable during removal. People's Response at 1. The People point out that the notice stated that 2000 square feet of RACM were to be removed, and that the methods listed in the notice are consistent with removal of friable asbestos. People's Response at 1-2.

Applicability of the notification requirements to ECA is the threshold issue here. The notification requirements of Section 61.145(b) do not apply unless the amount of RACM to be removed exceeds the threshold amounts listed in Section 61.145(a)(4)(i). If the material removed from the Highland facility was RACM, then the notification requirements applied; if it was not, they did not. On this record, however, we cannot determine whether the material was RACM or not. We are faced with contradictory statements by ECA in the notice (stating that 2000 square feet of RACM was to be removed) and Lemire in his affidavit (stating that the material removed was Category I nonfriable ACM). We note that the definition of Category I nonfriable ACM mentions floor coverings, but not mastic, which is also referenced in the notice provided by ECA. We have no evidence as to whether the mastic involved was RACM or not. The Board concludes that issues of material fact remain regarding the nature of material removed, and consequently whether the notification requirements applied.

Conclusion

Because issues of material fact remain, both motions for summary judgment are denied with respect to the Highland facility.

The Quincy Project

Alleged Violations

The amended complaint alleges that the notice submitted for the Quincy project was both untimely (count I) and incomplete (count II).

Facts

ECA was hired to remove 2,284 linear feet of RACM piping insulation and 60 square feet of RACM from surface areas at the Gardner-Denver main plant in Quincy. Adm. 17; Comp. Mot. Exh. G. ECA provided the Agency with notification of the removal project by U.S. Mail, postmarked December 4, 1992. Comp. Mot. Exh. G. The scheduled start date for the project was December 17, 1992. *Id*. The notification did not indicate the approximate amount of non-friable ACM not to be removed from the site. *Id*.

The Agency sent ECA a CIL on January 6, 1993, citing violations of Sections 9(a) and 9.1(d) of the Act and 40 C.F.R. 61.145. Comp. Mot. Exh. H. ECA responded to the CIL on January 19, 1993. Comp. Mot. Exh. I. In its response, ECA acknowledged that "postal delays in processing are the responsibility of the contractor and that additional time should have been allowed." *Id.*; Adm. 23.

Analysis

It is undisputed that the notice submitted by ECA was postmarked December 4, 1992, for a project which began on December 17, 1992. There were two weekends between December 4 and December 17 in 1992. Although ECA argues to the contrary, ECA Motion at 14, by our count the notice was postmarked less than 10 working days prior to the date work began. By failing to provide notice postmarked at least 10 working days prior to commencement of work, ECA violated 40 C.F.R. 61.145(b)(3)(i) and, by extension, Section 9.1(d) of the Act. Again, ECA's diligence in attempting to comply, while potentially relevant to the issue of an appropriate remedy, does not affect our determination of liability.

It is also undisputed that the notice submitted by ECA did not indicate the amount of non-friable ACM not to be removed from pipes at the site. As is discussed above, however, the provision of the regulation that would be violated by this omission applies only to demolitions. The Quincy project was noticed as a renovation. Accordingly, the Board finds no violation of 40 C.F.R. 61.145(b)(4)(vi) by ECA.

Conclusion

The Board grants the People's motion for summary judgment to the following extent: The Board finds that ECA violated 40 C.F.R. 61.145(b)(3)(i) and, consequently, Section 9.1(d) of the Act with respect to the Quincy project. The Board reserves ruling on the issue of an appropriate remedy. The Board grants ECA's motion for summary judgment to the following

extent: The Board finds that ECA did not violate 40 C.F.R. 61.145(b)(4)(vi) with respect to the Quincy project.

The Urbana Project

Alleged Violations

The amended complaint alleges that the notice submitted for the Urbana project was incomplete (count II).

Facts

ECA was hired to remove 1900 linear feet of piping insulation from the Environmental Sciences Building on the University of Illinois' Urbana campus. Adm. 12; Comp. Mot. Exh. D. ECA provided the Agency with notification of the removal project by U.S. Mail, postmarked November 16, 1992. Comp. Mot. Exh. D. The scheduled start date for the project was November 30, 1992. *Id.* ECA's notification did not indicate the procedure and analytical methods that would be used to detect the presence of ACM, nor did it indicate the approximate amount of RACM to be removed and ACM not to be removed from the site. *Id.*

The Agency sent ECA a CIL on December 1, 1992, citing violations of Sections 9(a)[2] and 9.1(d) of the Act and 40 C.F.R. Part 61. Adm. 16; Comp. Mot. Exh. E. ECA sent a response to the Agency on December 16, 1992. Comp. Mot. Exh. F. In its response, ECA took the position that the project for the University fell under the University's annual notification, and that it was not required to file a separate notification. *Id.*

Analysis

The only alleged violation arising out of the Urbana project is submission of an incomplete notice (count II of the amended complaint). It is undisputed that the notice submitted by ECA (1) failed to describe the procedure, including analytical methods, employed to detect the presence of ACM, and (2) failed to indicate the approximate amount of RACM to be removed and ACM not to be removed from the site. These omissions would, by themselves, constitute violations of 40 C.F.R. 61.145(b)(4)(v) and (vi). ECA contends, however, that the Urbana project was covered by an annual notification submitted by the University of Illinois. See 40 C.F.R. 61.145(a)(4)(iii); (b)(3)(ii). Consequently, argues ECA, it was not required to submit a notification in connection with its work.

Although the parties refer in their arguments to an annual notification submitted by the University, neither party has submitted a copy of the notification document. The only evidence regarding the notification is the statement in Lemire's affidavit that Otto Klein of the Agency

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[2] Although the CIL cited Section 9(a), the complaint filed against ECA does not allege a violation of that section.

said that an individual project notification was unnecessary because ECA's project would be covered by the University's annual notification. Lemire affidavit, ¶ 22. While this statement cannot be considered conclusive, it does infer the existence of the annual notification. The Board concludes that an issue of fact exists as to whether ECA's project was covered by an annual notification filed by the University.

We note the People's argument that the Urbana project was subject to the notification requirement because it involved 1900 linear feet of RACM. People's Response at 3-4. The issue here is not whether the project was subject to the notification requirement—clearly it was. The question is rather whether an annual notification submitted by the University covered this project, and if so, if ECA's work would be considered a specific nonscheduled operation within the noticed project. If a project (of whatever size) is covered by an annual notification, a separate notification is not required even though a specific operation may involve more than the threshold amount of RACM. See 40 C.F.R. 61.145(b)(3)(i), (ii), (iv).

Conclusion

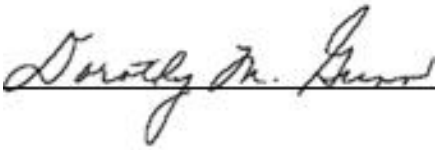
Because an issue of material fact remains, both motions for summary judgment are denied with respect to the Urbana facility.

CONCLUSION

The People's motion for summary judgment is granted to the following extent: The Board finds that ECA violated 40 C.F.R. 61.145(b)(4)(i), (x), (xi), and (xvi), and consequently Section 9.1(d) of the Act, with respect to the Alton project. The Board further finds that ECA violated 40 C.F.R. 61.145(b)(3)(i) and, consequently, Section 9.1(d) of the Act with respect to the Quincy project.. ECA's motion for summary judgment is granted with respect to all alleged violations of Section 112(c)(1)(B) of the federal Clean Air Act, the violations of 40 C.F.R. 61.145(b)(4)(vi) alleged in connection with the Alton and Quincy projects, and all violations alleged in connection with the Centralia projects. Both motions are denied with respect to the other violations alleged in the complaint. The Board reserves ruling on an appropriate remedy for the violations found today pending a hearing on (or other resolution of) the violations not resolved by this order, *i.e.*, the violation alleged in connection with the Highland and Urbana projects.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 17th day of February 2000 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

APPENDIX: REGULATIONS AT ISSUE

Several terms used in the regulations at issue are defined in 40 C.F.R. 61.141:

> Category I nonfriable asbestos-containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products 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.
>
> Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.
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> * * *
>
> 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.

Section 61.145 provides in relevant part:

> (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 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[.]

***

(iii) To determine whether paragraph (a)(4) of this section applies to planned renovation operations involving individual nonscheduled operations, predict the combined additive amount of RACM to be removed or stripped during a calendar year of January 1 through December 31.

(iv) To determine whether paragraph (a)(4) of this section applies to emergency renovation operations, estimate the combined amount of RACM to be removed or stripped as a result of the sudden, unexpected event that necessitated the renovation.

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(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.

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(3) Postmark or deliver the notice as follows:

(i) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (a) (1) and (4) (except (a)(4)(iii) and (a)(4)(iv)) of this section. ***

(ii) At least 10 working days before the end of the calendar year preceding the year for which notice is being given for renovations described in paragraph (a)(4)(iii) of this section.

(iii) As early as possible before, but not later than, the following working day if the operation is a demolition

ordered according to paragraph (a)(3) of this section or, if the operation is a renovation described in paragraph (a)(4)(iv) of this section.

(iv) For asbestos stripping or removal work in a demolition or renovation operation, described in paragraphs (a) (1) and (4) (except (a)(4)(iii) and (a)(4)(iv)) of this section . . . that will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator * * * .

(4) Include the following in the notice:

(i) An indication of whether the notice is the original or a revised notification.

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(iii) Type of operation: demolition or renovation.

(iv) Description of the facility or affected part of the facility including the size (square meters [square feet] and number of floors), age, and present and prior use of the facility.

(v) Procedure, including analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM.

(vi) Estimate of the approximate amount of RACM to be removed from the facility in terms of length of pipe in linear meters (linear feet), surface area in square meters (square feet) on other facility components, or volume in cubic meters (cubic feet) if off the facility components. Also, estimate the approximate amount of Category I and Category II nonfriable ACM in the affected part of the facility that will not be removed before demolition.

* * *

(x) Description of planned demolition or renovation work to be performed and method(s) to be employed, including demolition or renovation techniques to be used and description of affected facility components.

(xi) Description of work practices and engineering controls to be used to comply with the requirements of this subpart, including asbestos removal and waste-handling emission control procedures.

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(xiii) A certification that at least one person trained as required by paragraph (c)(8) of this section will supervise the stripping and removal described by this notification. This requirement shall become effective 1 year after promulgation of this regulation.

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(xv) For emergency renovations described in paragraph (a)(4)(iv) of this section, the date and hour that the emergency occurred, a description of the sudden, unexpected event, and an explanation of how the event caused an unsafe condition, or would cause equipment damage or an unreasonable financial burden.

(xvi) Description of procedures to be followed in the event that unexpected RACM is found or Category II nonfriable ACM becomes crumbled, pulverized, or reduced to powder.

(xvii) Name, address, and telephone number of the waste transporter.