

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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OCT 14 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS)
)
 Complainant,)
)
 vs)
 PATTISON ASSOCIATES LLC, an)
 Illinois limited liability company,)
 and 5701 SOUTH CALUMET LLC, an)
 Illinois limited liability company,)
 Respondents.)

No. PCB 05-181
(Enforcement – Air)

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, October 14, 2005, filed with the Office of the Clerk of the Illinois Pollution Control Board an original and fourteen (14) copies of the attached Respondents' Answer to Complaint, a true and correct copy of which is hereby served upon you.

DATED: October 14, 2005

Respectfully submitted,

PATTISON ASSOCIATES, LLC and
5701 SOUTH CALUMET, LLC

By 
One of Their Attorneys

Neal H. Weinfield, Esq.
Allyson L. Wilcox, Esq.
Bell, Boyd & Lloyd LLC
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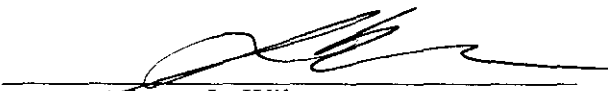
CERTIFICATE OF SERVICE

Allyson L. Wilcox, an attorney, hereby certifies that she caused a copy of the attached Respondents' Answer to Complaint to be served upon:

Paula Becker Wheeler
Office of the Attorney General
188 West Randolph, 20th Floor
Chicago, IL 60601

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 W. Randolph Street
Chicago, Illinois 60601

via regular U.S. Mail, postage pre-paid, on October 14, 2005.



Allyson L. Wilcox

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ANSWER

NOW COME respondents, PATTISON ASSOCIATES LLC and 5701 SOUTH CALUMET LLC, by its attorney, Neal H. Weinfield of the law firm Bell, Boyd & Lloyd LLC, and hereby answers the Complaint filed in the above-captioned case as follows:

COUNT I

1. This Count is brought against Respondent, PATTISON ASSOCIATES LLC (“Pattison”), an Illinois limited liability company, on behalf of 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 EPA pursuant to Section 31 of the Illinois Environmental Protection Act, 415 ILCS 5/31 (2002) (“Act”).

ANSWER: Admit.

2. This Count is brought against Respondent, 5701 SOUTH CALUMET LLC (“5701 Calumet”), an Illinois limited liability company, on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion, pursuant to Section 42(d) of the Act, 415 ILCS 5/42(d) (2002).

ANSWER: Admit.

3. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act.

ANSWER: Admit.

4. At all times relevant to this Complaint, Respondent, Pattison, was and is an Illinois limited liability company in good standing. Pattison was and is also the contractor hired to conduct renovation activities in the 18-unit apartment complex located at 5701 South Calumet Avenue, Chicago, Cook County, Illinois (“site”).

ANSWER: Pattison denies that it conducted any “renovation activities”, as such term is defined in the NESHAP regulations between March 25, 2003, when 5701 South Calumet LLC purchased the site and October 30, 2003, when contractors hired by Respondents lawfully conducted asbestos abatement and disposed activities.

5. At all times relevant to this Complaint, Respondent, 5701 Calumet, was and is an Illinois limited liability company in good standing. 5701 Calumet was and is also the owner of the 18-unit apartment complex located on the site.

ANSWER: Admit.

6. On October 15, 2003, the Illinois EPA performed an inspection of the apartment complex on the site after an interior demolition had been performed on the complex.

ANSWER: Respondents admit that the Illinois Environmental Protection Agency performed an inspection of the subject apartment complex after interior demolition had been performed on certain floors of the structure not including the basement level. Respondents deny that such interior demolition between March 25, 2003, and

October 30, 2000, came into contact with, or removed asbestos containing material, or constituted “renovation activities” as that term is defined in the NESHAP regulations.

7. On October 15, 2003, the Illinois EPA inspector observed disturbed suspect material on the floor and approximately 12 linear feet of suspect material on pipes leading from a boiler in the basement area.

ANSWER: Respondents lack personal knowledge of the veracity of the allegations contained within this paragraph and therefore deny the same.

8. On October 15, 2003, a sample of dry, friable suspect material obtained from the northeast part of the boiler room in the basement tested positive for 20% chrysotile asbestos.

ANSWER: Respondents lack personal knowledge of the veracity of the allegations contained within this paragraph and therefore deny the same.

9. On October 15, 2003, a sample of dry, friable suspect material obtained from the a pipe above the boiler tested positive for 10% chrysotile asbestos. The complex had not been inspected prior to the renovation activities.

ANSWER: Respondents lack personal knowledge of the veracity of the allegations concerning the nature of asbestos from a pipe above the boiler and therefore deny the same. Respondents deny that they conducted “renovation activities” as defined in the NESHAPs regulations. Respondents admit that to the best of their knowledge, IEPA did not inspect the apartment complex before October 15, 2003.

10. On October 15, 2003, the EPA inspector measured where approximately 350 feet of linear piping had been removed, leaving approximately 12 feet of linear piping intact in the basement of 5701 South Calumet Avenue.

ANSWER: Respondents lack personal knowledge of the veracity of the allegations contained within this paragraph and therefore deny the same.

11. On October 21, 2003, microvacuum samplings were taken at the site, two of which showed elevated levels of asbestos fibers in the basement of 5701 South Calumet Avenue.

ANSWER: Respondents lack personal knowledge of the veracity of the allegations contained within this paragraph and therefore deny the same.

12. The amount of dry, friable asbestos-containing material (“ACM”) observed in the basement exceeded 260 linear feet.

ANSWER: Respondents lack personal knowledge of the veracity of the allegations contained within this paragraph and therefore deny the same.

13. The Respondents caused or allowed friable ACM to be deposited, uncontained, throughout the basement of the complex. By such improper handling of the ACM and failure to follow appropriate emission control procedures, Respondents allowed asbestos fibers to be released to the atmosphere.

ANSWER: Denied.

14. 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.

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore, no response is required.

15. Asbestos is a known human carcinogen.

ANSWER: Denied.

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

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: The allegations contained in this paragraph constitute conclusions of law and therefore no response is required.

17. Section 201.141 of the Board's 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 . . .

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore no response is required.

18. Section 3.115 of the Act, 415 ILCS 5/3.115 (2002), defines air pollution as:

“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: The allegations contained in this paragraph constitute conclusions of law and therefore no response is required.

19. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), defines contaminant as:
“CONTAMINANT” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore no response is required.

20. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), defines person as:
“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.

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore no response is required.

21. Respondents are “persons” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore no response is required.

22. Asbestos is a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore no response is required.

23. From at least October 15, 2003, to approximately November 3, 2003, Respondents caused or allowed dry friable asbestos containing material to enter into the atmosphere.

ANSWER: Denied.

24. As the party that conducted or managed the renovation activities, the Respondent, Pattison Associates LLC, 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 materials were improperly handled.

ANSWER: Denied. Respondents further deny that they conducted renovation activities as that term is defined in the NESHAPs regulations between March 25, 2003, and October 30, 2003.

25. As the owner of the property on which the renovation activity was taking place, the Respondent, 5701 South Calumet LLC, 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 materials were improperly handled.

ANSWER: Denied. Respondents further deny that they conducted renovation activities as defined in the NESHAPs regulations between March 25, 2003, and October 30, 2003.

26. By allowing dry friable asbestos containing materials to remain in a friable state, exposed to the elements, Respondents have caused or allowed air pollution in Illinois in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2002) and 35 Ill. Adm. Code 201.141.

ANSWER: Denied.

WHEREFORE, Respondents PATTISON ASSOCIATES LLC and 5701 SOUTH CALUMET LLC respectfully requests that this Board enter an order against Complainant and in favor of Respondents and for any other relief that this Board deems just and proper.

COUNT II

1 – 17. Complaint realleges and incorporates herein by reference paragraphs 1 through 15 and 20 through 21 of Count I as paragraphs 1 through 17 of this Count II.

ANSWER: Respondents reassert and hereby incorporate their answers to paragraphs 1 through 17 of Count I as their answers to paragraphs 1 through 17 of Count II.

18. Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), provides as follows:

No person shall:

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

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore no response is required.

19. 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.

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore no response is required.

20. Section 112(d) of the CAA, 42 USC 7412(d), titled, Emission 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 . . .

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore no response is required.

21. 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 . . .

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore no response is required.

22. 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 (NESHAPs), including asbestos, 40 CFR 61, Subpart M.

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore no response is required.

23. Section 61.141 of the USEPA's NESHAPs, 40 CFR 61.141 (July 1, 1997), 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.

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

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 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.

Demolition means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

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.

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 our 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.

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore no response is required. To the extent a response is required, the allegation is denied.

24. The apartment complex as referenced herein is a "facility" as that term is defined in 40 CFR 61.141.

ANSWER: Admitted.

25. The removal of asbestos at the apartment complex constitutes a "renovation" as that term is defined in 40 CFR 61.141.

ANSWER: Denied. No asbestos was removed from the apartment by Respondents between March 25, 2003, and October 30, 2003. Further, the allegations contained in this paragraph constitute conclusions of law and therefore no response is required.

26. Respondent, Pattison Associates LLC, as the entity that operated, controlled or supervised the renovation activities, was the "operator of the, renovation activities", as that term is defined in 40 CFR 61.141.

ANSWER: Denied. No asbestos was removed from the apartment by Pattison, and no renovation activities occurred at 5701 South Calumet LLC between March 25, 2003, and October 30, 2003. Further, the allegations contained in this paragraph constitute conclusions of law and therefore, no response is required. To the extent that any response is required, Respondents deny the allegations contained within this paragraph.

27. 5701 South Calumet LLC, as the owner of the apartment complex, was the "owner of the renovation activities", as that term is defined in 40 CFR 61.141.

ANSWER: Denied. No "renovation activities" occurred at 5701 South Calumet LLC between March 25, 2003, and October 30, 2003. Further, the allegations contained in this paragraph constitute conclusions of law and therefore no response is required. To the extent that any response is required, Respondents deny the allegations contained within this Paragraph.

28. The asbestos-containing material found in the complex is "regulated asbestos-containing material (RACM)" as that term is defined in 40 CFR 61.141.

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore, no response is required. To the extent that any response is required, Respondents deny the allegations contained within this paragraph.

29. Section 61.145(a) of Title 40 of the Code of Federal Regulations, 40 CFR 61.145(a) (July 1, 1998), as adopted in Section 9.1(d) of the Act, titled Standard for demolition and renovation, provides, in pertinent part, as follows:

(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 . . .

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore no response is required.

30. Respondents, as owners and/or operators of the renovation activity, failed to thoroughly inspect the apartment complex for the presence of asbestos prior to commencement of renovation activities or at any time, in violation of the Clean

Air Act, or more specifically the NESHAP for asbestos and, therefore, are in violation of Section 9.1(d)(1) of the Act.

ANSWER: Denied. Respondents further deny that they conducted "renovation activities", as defined by NESHAP regulations between March 25, 2003, and October 30, 2003. The law cited by claimants in this paragraph is inapplicable to the case at bar because they did not conduct renovation or demolition activities to which this section applies; therefore, defendants deny the same.

31. The Respondents, by their actions or inaction as alleged herein, have violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (1) (2002) and 40 CFR 61.145(a)(2002).

ANSWER: Denied.

WHEREFORE, Respondents PATTISON ASSOCIATES LLC and 5701 SOUTH CALUMET LLC respectfully requests that this Board enter an order against Complainants and in favor of Respondents and for any other relief that this Board deems just and proper.

COUNT III

1 – 28. Complainant realleges and incorporates herein by reference paragraphs 1 through 28 of Count II as paragraphs 1 through 28 of this Count III.

ANSWER: Respondents reassert and hereby incorporate their answer to paragraphs 1 through 28 of Count II as their answers to paragraphs 1 through 28 of Count III.

29. Section 61.145(b)(1) of USEPA'S NESHAPs, 40 CFR 61.145(b)(1) (July 1, 2002), titled Notification requirements, provides as follows:

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.

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore no response is required.

30. Respondents, as owners and/or operators of a renovation activity, failed to notify the Administrator of their intent to demolish or renovate, in violation of the Clean Air Act, or more specifically the NESHAP for asbestos and, therefore, are in violation of Section 9.1(d)(1) of the Act.

ANSWER: Denied. Respondents were not owners and/or operators of a “renovation activity” as defined in the NESHAP regulations, because no renovation activity occurred at the site between March 25, 2003, and October 30, 2003.

31. The Respondents, by their actions or inactions as alleged herein, have violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (1) (2002), and 40 CFR 61.145(b) (1).

ANSWER: Denied.

WHEREFORE, Respondents PATTISON ASSOCIATES LLC and 5701 SOUTH CALUMET LLC respectfully requests that this Board enter an order against Complainant and in favor of Respondents and for any other relief that this Board deems just and proper.

COUNT IV

- 1 – 28. Complainant reassert and incorporates herein by reference paragraphs 1 through 28 of Count III as paragraphs 1 through 28 of this Count IV.

ANSWER: Respondents reassert and hereby incorporate their answer to paragraphs 1 through 28 of Count II as their answers to paragraphs 1 through 28 of Count IV.

29. Section 61.145(c) of USEPA's NESHAPs, 40 CFR 61.145(c)(July 1, 2002), titled 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:

(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 . . .

* * *

(3) When RACM is stripped from a facility component while it remains in place in the facility, adequately wet the RACM during the stripping operation.

* * *

(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 . . .

* * *

(8) Effective 1 year after promulgation of this regulation, no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one onsite representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present . . .

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore, no response is required.

30. Respondents, as owners and/or operators of a renovation activity, failed to remove all RACM from a facility being renovated or demolished before an activity began that would break up, dislodge, or similarly disturb the material or preclude access for subsequent removal in violation of the Clean Air Act, or more specifically the

NESHAP for asbestos and, therefore, are in violation of Section 9.1(d)(1) of the Act.

ANSWER: Denied. Respondents were not owners and/or operators of a renovation activity as defined in the NESHAP regulations between March 25, 2003, and October 30, 2003. Respondents did not break up, dislodge, or similarly disturb any RACM, or preclude access for subsequent RACM removal.

31. Respondents, as owners and/or operators of a renovation activity, failed to adequately wet all RACM in place before stripping it from the facility components at the facility, in violation of the Clean Air Act, or more specifically the NESHAP for asbestos and, therefore, are in violation of Section 9.1(d)(1) of the Act.

ANSWER: Denied. Respondents did not own or operate a renovation activity and did not conduct "renovation activity" as defined in the NESHAP for asbestos, and did not remove or strip asbestos.

32. Respondents, as owners and/or operators of a renovation activity, 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 the Clean Air Act, or more specifically the NESHAP for asbestos and, therefore, are in violation of Section 9.1(d)(1) of the Act.

ANSWER: Denied. Respondents did not own or operate a renovation activity and did not conduct "renovation activity" as defined in the NESHAP for asbestos between March 25, 2003, and October 30, 2003.

33. Respondents, as owners and/or operators of a renovation activity, failed to have any onsite representative trained in the provisions of the asbestos NESHAP, in

violation of the Clean Air Act, or more specifically the NESHAP for asbestos and, therefore, are in violation of Section 9.1(d)(1) of the Act.

ANSWER: Denied. Respondents did not own or operate a renovation activity and did not conduct "renovation activity" as defined in the NESHAP for asbestos between March 25, 2003, and October 30, 2003.

34. The Respondents, by their actions or inactions as alleged herein, have violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (1) (2002), and 40 CFR 61.145(c) (1) , (c) (3) , (c) (6) , and (c) (8).

ANSWER: Denied.

WHEREFORE, Respondents PATTISON ASSOCIATES LLC and 5701 SOUTH CALUMET LLC respectfully requests that this Board enter an order against Complainant and in favor of Respondents and for any other relief that this Board deems just and proper.

COUNT V

1 – 28. Complainant realleges and incorporates herein by reference paragraphs 1 through 28 of Count IV as paragraphs 1 through 28 of this Count V.

ANSWER: Respondents reassert and hereby incorporate their answer to paragraphs 1 through 28 of Count II as their answers to paragraphs 1 through 28 of Count V.

29. Section 61.150(b)(1) of USEPA's NESHAPs, 40 CFR 61.150(b)(1) (July 1, 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, in pertinent part, 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:

- * * *
- (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 Section 61.154 . . .

ANSWER: The allegations contained in this paragraph constitute conclusions of law and therefore, no response is required.

- 30. The Respondents failed to deposit regulated asbestos-containing waste material as soon as practical in an appropriate waste disposal site, in violation of the Clean Air Act, or more specifically the NESHAP for asbestos and, therefore, are in violation of Section 9.1(d) (1) of the Act.

ANSWER: Denied. Between March 25, 2003, and October 15, 2003, Respondents did not remove any asbestos from 5701 Calumet, and therefor did not generate any regulated asbestos containing material during such time.

- 31. Respondents, by their actions or inactions as alleged herein, have violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (1) (2002), and 40 CFR 61.150(b) (1) (July 1, 2002).

ANSWER: Denied.

WHEREFORE, Respondents PATTISON ASSOCIATES LLC and 5701 SOUTH CALUMET LLC respectfully requests that this Board enter an order against Complainant and in favor of Respondents and for any other relief that this Board deems just and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Complainant has failed to state a claim on which Relief can be granted.

WHEREFORE, Respondent PATTISON ASSOCIATES LLC and 5701 SOUTH CALUMET LLC respectfully request that this Board enter judgment against Complainant and in favor of Respondents; further request that this Board grant Respondent any other remedy that it deems just and proper.

SECOND AFFIRMATIVE DEFENSE

Complainant failed to follow proper testing procedures and/or utilized an inappropriate testing method in order to determine whether asbestos was released into the air in violation of state and federal regulations. As such, Complainant is unable to maintain its cause of action against Respondents.

Respectfully submitted,

PATTISON ASSOCIATES, LLC and
5701 SOUTH CALUMET, LLC

By 
One of Their Attorneys

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