

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 -vs- )  
 )  
 4832 S. VINCENNES, L.P., an )  
 Illinois limited partnership, and )  
 BATTEAST CONSTRUCTION COMPANY, )  
 INC., an Indiana corporation, )  
 )  
 Respondents. )

No. 04-7  
 (Enforcement - Air)

TO: See Attached Service List  
 (VIA ELECTRONIC FILING)

NOTICE OF FILING

PLEASE TAKE NOTICE that I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing Complainant's Motion for Summary Judgment against Respondent, 4832 S. Vincennes, L.P., a copy of which is attached herewith and served upon you.

Respectfully submitted,

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

BY: *Paula Becker Wheeler*  
 PAULA BECKER WHEELER  
 Assistant Attorney General  
 Environmental Bureau  
 188 W. Randolph St., 20<sup>th</sup> Flr.  
 Chicago, IL 60601  
 (312) 814-1511

Date: October 17, 2005

SERVICE LIST

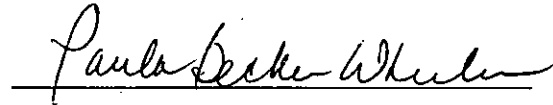
TO: Mr. Oliver Spurlock, Esq./Mr. Gregory Miller  
Attorneys for Respondent  
4832 S. Vincennes, L.P.  
9415 South State Street  
Chicago, Il. 60619

Mr. Zachary Hamilton  
Attorney for Respondent  
Batteast Const. Co., Inc.  
3340 E. Forest View Trail  
Crete, IL. 60417

Mr. Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
100 W. Randolph, Room 11-500  
Chicago, Il. 60601

CERTIFICATE OF SERVICE

I, PAULA BECKER WHEELER, an attorney, do certify that I caused to be served this 17th day of October, 2005, the foregoing Complainant's Motion for Summary Judgment against Respondent 4832 S. Vincennes, L.P. and Notice of Filing upon the persons listed on the attached Service List by depositing same in an envelope, by first class postage prepaid, with the United States Postal Service at 188 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

A handwritten signature in cursive script that reads "Paula Becker Wheeler". The signature is written in black ink and is positioned above a horizontal line.

PAULA BECKER WHEELER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
-vs-	)	
	)	No. 04-7
4832 S. VINCENNES, L.P., an	)	(Enforcement - Air)
Illinois limited partnership, and	)	
BATTEAST CONSTRUCTION COMPANY, INC.,	)	
an Indiana corporation,	)	
	)	
Respondents.	)	

COMPLAINANT'S MOTION FOR SUMMARY JUDGEMENT AGAINST RESPONDENT  
4832 S. VINCENNES, L.P.

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, through its attorney, LISA MADIGAN, Attorney General of the State of Illinois, and requests that the Illinois Pollution Control Board ("Board") grant, pursuant to 35 Ill. Adm. Code 101.516, summary judgment in favor of Complainant and against the Respondent, 4832 S. VINCENNES, L.P., ("Vincennes"). In support thereof, Complainant states as follows:

LEGAL STANDARD

Section 101.516 of the Board Procedural Rules, 35 Ill. Adm. Code 101.516, provides, in pertinent part, as follows:

\* \* \*

b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, show that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.

Section 2-1005 of the Illinois Code of Civil Procedure provides in pertinent part:

- (a) For plaintiff. Any time after the opposite party has appeared or after the time within which he or she is required to appear has expired, a plaintiff may move with or without supporting affidavits for a summary judgment in his or her favor for all or any part of the relief sought.

\* \* \*

- (c) Procedure. . . The judgment sought shall be rendered without delay 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 that the moving party is entitled to a judgment as a matter of law.

The purpose of the summary judgment procedure is to aid in expeditious disposition of a lawsuit. Gilbert v. Sycamore Municipal Hospital, 156 Ill.2d 511, 622 N.E.2d 788 (1993).

The complaint, answer and discovery pleadings filed in this cause, together with the depositions, documents and affidavits supporting this motion, establish all material facts necessary to prove liability against the Respondent, 4832 S. VINCENNES, L.P., on Counts I and II of the Complaint.

**PRELIMINARY BACKGROUND**

On July 14, 2003, the State filed its Complaint, on referral from the Illinois Environmental Protection Agency pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002). On October 6, 2003, the State filed its First Amended Complaint in this matter, containing no changes from the original Complaint other than re-naming the co-

respondent, BATTEAST CONSTRUCTION COMPANY, INC., ("Batteast"), in its correct corporate form, the paragraph numbering on both Complaints remaining the same. The State alleges that Vincennes is the owner of a renovation project in Chicago, Cook County, Illinois, and that Batteast was the contractor hired to perform the renovation. Allegations in the Complaint include violations for Air Pollution and Failure to Inspect and follow the proper emission control procedures when asbestos was discovered on the site. Vincennes has filed answers to the Complaint, to Interrogatories, to a Request for Production, and to a Request to Admit Facts. Depositions have also been taken. The following essentially track the two Counts of the Amended Complaint, with the appropriate proof of the Paragraph when necessary.

**COUNT I**  
**AIR POLLUTION**

1. This First Amended Complaint is brought 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").

2. 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.

3. At all times relevant to this Complaint, Respondent, 4832 S. Vincennes, L.P. ("Vincennes") was and is the owner of the property and building located at 4832 South Vincennes Avenue, Chicago, Cook County, Illinois ("Site"). The building is a residential four story brick apartment building, containing sixty seven(67) units. (See Vincennes Answer to Count I, par. 3 of Complainant's Complaint, ["Answer"])

4. On information and belief, at all times relevant to this Complaint, Respondent, Batteast Construction Company, Inc., ("Batteast") was the operator and manager of the renovation of the Site. Batteast is an Indiana corporation, licensed to do business in the State of Illinois. (Answer, Count I, par. 4)

5. On or about August of 2001, or a time better known to the Respondents, the Respondents began the renovation of the Site. (Answer, Count I, par. 5)

6. On or about December of 2001, or at a time better known to the Respondents, in the course of the renovation, when replacing the floors on the first floor, Batteast discovered suspect asbestos-containing material("ACM") in the basement area. (See Affidavit of Illinois EPA Inspector Joe Zappa, attached to and incorporated into this motion as Exhibit A, ["Zappa Affidavit"], the Affidavit of Margaret Guidarelli-Pelletier of Hygieneering, Inc., and exhibits thereto, attached to and incorporated into this motion as Exhibit B, ["Hygieneering

Affidavit"], and also the deposition of Greg Miller, the Vincennes representative, dated April 26, 2004, pp. 30, 63, attached to and incorporated into this motion as Exhibit C, ["Miller 2004 Dep."])

7. After the discovery, Batteast contacted two asbestos contractors to bid on the removal of 3750 linear feet of ACM thermal system insulation, and 480 square feet of ACM surface material on the boiler. (Answer, Count I, par. 7)

8. After the discovery of the suspect ACM, the Respondents continued to employ workers on the site to complete the renovation. (See Vincennes Response to Request for Admission of Facts, Request No. 4)

9. On January 31, 2002, the Illinois EPA performed an inspection of the building on the Site. ( Zappa Affidavit)

10. On information and belief, no asbestos contractors had been hired by the Respondents as of January 31, 2002.

11. On January 31, 2002, there was dry, friable suspect ACM on the pipes and on the floor of the basement. The suspect ACM appeared in very poor condition and was falling off the pipes. Demolition debris from the first floor had fallen through and disturbed a significant amount of the suspect ACM. Various samples from the basement area were later tested and were positive for 55-75% chrysotile asbestos. (Zappa Affidavit)



12. On January 31, 2002, Vincennes refused to stop work, and Respondent Batteast continued to work on the premises. (Zappa Affidavit, Vincennes Response to Request for Admission of Facts, Request No. 4, and also Miller 2004 Dep., p.66)

13. On January 31, 2002, there were several workers at the Site doing work in and around the first floor area. Most of the windows and doors were open to the atmosphere. None of the workers were wearing personal protective equipment or were utilizing any emission control measures. (Zappa Affidavit, and also Vincennes Response to Request for Admission of Facts, Request No. 8)

14. After the inspection on January 31, 2002, the City of Chicago, which was providing some of the funding for the renovation, was contacted. (Zappa Affidavit)

15. On February 5, 2002, the City of Chicago issued a stop work order and the renovation work ceased at the site. (Answer, Count I, par. 15)

16. On February 14, 2002, an approved asbestos abatement and remediation plan commenced, and was completed on February 19, 2002. (Answer, Count I, par. 16)

17. The total amount of ACM removed was 2400 linear feet of disturbed ACM, and 6000 square feet of ACM tiles. (Answer, Count I, par. 17)

18. 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;

19. 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 . . .

20. 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.

21. 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.

22. 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.

23. Respondents are "persons" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315(2002). (Answer, Count I, par. 23)

24. Asbestos is a "contaminant" as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2002). (Answer, Count I, par. 24)

25. From December of 2001, or a date better known to Respondent, through at least February 5, 2002, Respondent caused or allowed dry friable asbestos containing material to enter into the environment. (Zappa Affidavit, Hygieneering Affidavit, Miller 2004 dep., pp. 30, 63, Vincennes Response to Request for Admission of Facts, Request No. 8, Answer, Count I, par. 15, and also Answer, Count I, par. 17)

26. As the owner of the property on which the renovation activity was taking place, the Respondent, Vincennes, caused, threatened or allowed the discharge or emission of asbestos into the environment so as to cause or tend to cause air pollution in that dry, friable asbestos fibers were released into the atmosphere during the renovation activities. (Zappa Affidavit,

Hygieneering Affidavit, Miller 2004 Dep., pp. 30,63, Réponse to Request for Admission of Facts, Request No. 8, Answer, Count I, par. 15, and also Answer, Count I, par. 17)

27. By allowing dry friable asbestos containing materials to remain in a friable state, exposed to the environment, Respondent has 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.

28. There exists no genuine issue as to any material fact, and the Complainant is entitled to judgment on Count I on the pleadings, admissions on file, depositions and affidavits.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, 4832 S. VINCENNES, L.P., on this Count I:

1. Finding that Respondent has caused or allowed violations of Section 9(a) of the Act and 35 Ill. Adm. Code 201.141;

2. Ordering the Respondent to cease and desist from any further violations of Section 9(a) of the Act and 35 Ill. Adm. Code 201.141;

3. Assessing a civil penalty of \$50,000.00 against Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of \$10,000.00 per day for

each day that the violations continued, as delineated more fully in the penalty requested section below;

4. Taxing all costs in this action, including expert witness, consultant and attorneys fees, against Respondent; and

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

**COUNT II**  
**FAILURE TO INSPECT AND TO FOLLOW PROPER EMISSION CONTROL PROCEDURES**

1 - 22. Complainant restates and incorporates by reference herein paragraphs 1 through 17 and 20 through 24 of its Motion for Summary Judgment on Count I as paragraphs 1 through 22 of its Motion for Summary Judgment on Count II.

23. 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.

24. 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.

25. 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. . .

26. 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 . . .

27. 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.

28. 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.

29. The building as referenced herein is a "facility" as that term is defined in 40 CFR 61.141.

30. The replacement of the floors at the building constitutes a "renovation" as that term is defined in 40 CFR 61.141.

31. Respondent Vincennes, as the owner of the building, was the "owner" of the renovation activities, as that term is defined in 40 CFR 61.141. (Answer, Count II, par. 31)

32. Respondent Batteast, as the person 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.



33. 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.

\* \* \*

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

(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.

\* \* \*

35. Section 61.145(c)(6) of USEPA's NESHAPs, 40 CFR 61.145(c)(6) (July 1, 2002), as adopted in Section 9.1(d) of the

Act, 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:

\* \* \*

(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; . .

\* \* \*

36. Respondent, as owners and operators of a renovation activity, failed to conduct a thorough inspection of the facility for the presence and location of asbestos before commencing renovation activities in violation of the Clean Air Act, or more specifically the NESHAP for asbestos and therefore were in violation of Section 9.1(d) (1) of the Act, 415 ILCS 5/9.1(d) (1) (2002) and 40 CFR 61.145(a). (Zappa Affidavit, Hygieneering Affidavit, Miller 2004 Dep. pp. 30, 63, Answer, Count I, par. 5 and also Answer, Count I, par. 17)

37. Respondents, as owners and 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, 415 ILCS 5/9.1(d)(1) (2002) and 40 CFR 61.145(c)(1). (Zappa Affidavit, Miller 2004 Dep. pp. 30, 63, Answer, Count I, par. 5, and also Answer, Count I, par. 17)

38. Respondents 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). (Zappa Affidavit, and also Vincennes Response to Request for Admission of Facts, Request No. 8)

39. The Respondent, by the actions or inactions as alleged herein, has violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), and 40 CFR 61.145(a), (c)(1), and (c)(6).

40. There exists no genuine issue as to any material fact, and the Complainant is entitled to judgment on Count II on the pleadings, admissions on file, depositions, and affidavits.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, prays for the entry of summary judgment in its favor and against the Respondent, 4832 S. VINCENNES, L.P., on this Count II:

1. Finding that Respondent has caused or allowed violations of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2002), and 40 CFR 61.145(a), (c)(1), and (c)(6);

2. 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(a), (c)(1), and (c)(6);

3. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each and every violation of the Act and pertinent regulations, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of violation, as delineated more fully in the penalty requested section below.

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

5. Granting such other relief as this Board deems appropriate and just.

**IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE**

Section 33(c) of the Act, 415 ILCS 5/33(c)(2004), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the

health, general welfare and physical property of the people;

2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the Complainant states the following:

1. Complainant contends that human health and the environment were threatened by the release of asbestos fibers into the atmosphere, especially to the workers on site and the nearby neighborhood because of the Respondent's alleged violations.

2. Renovation and rehabilitation of poor housing stocks such as the building which is the subject of the Complaint has social and economic value.

3. The renovation site and activities that are the subject of the Complaint are suitable to the area in which they are located.

4. Compliance with the requirements of the Act, the Board Air Pollution Regulations and the applicable federally-delegated

programs and NESHAP regulations is both technically practicable and economically reasonable for the Respondent.

5. Complainant states that Respondent has subsequently complied with the Act, the Board Regulations, and the applicable federally-delegated programs and NESHAP regulations.

A civil penalty should be assessed against the Respondent because of the possibly severe impact the exposure to asbestos had on human health and environment.

**EXPLANATION OF CIVIL PENALTIES REQUESTED**

Section 2(b) of the Act, 415 ILCS 5/2(b) (2004), provides:

*It is the purpose of this Act, as more specifically described in later sections, to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.*  
(emphasis added)

The principal reason for penalties for violations of the Act is to aid in enforcement. Punitive considerations are secondary. Tri-County Landfill Company v. Illinois Pollution Control Board, 41 Ill.App.3d 249, 353 N.E.2d 316, 325 (2nd Dist. 1976).

Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), provides in pertinent part, as follows:

- a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to

exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues;

\* \* \*

If the Board finds that Vincennes violated the statutory and regulatory provisions alleged in Counts I and II, using a December 10, 2001 discovery date continuing to February 5, 2002, when the work stopped, the maximum statutory penalty that Section 42 of the Act authorizes for those violations is \$642,000, including the penalty for continuing violations of \$10,000 per day.

Penalties for violations of the Act and regulations are calculated according to the formula contained in Section 42(a). The statutory maximum is calculated as follows:

**Count I**

1 violation of Section 9(a)	\$ 50,000
1 violation of Section 201.141	50,000
2 violations continuing 57 days	114,000

**Count II**

1 violation of Section 9.1(d)(1)	50,000
1 violation of 40 CFR 61.145(a)	50,000
1 violation of 40 CFR 61.145(c)(1)	50,000
1 violation of 40 CFR 61.145(c)(6)	50,000
4 violations continuing 57 days	<u>228,000</u>

**TOTAL            \$642,000**

Section 42(h) of the Act, 415 ILCS 5/42(h)(2004), provides:

In determining the appropriate civil penalty to be imposed under ..., the Board is authorized to

consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.
6. whether the respondent voluntarily self-disclosed, in accordance with Subsection (i) of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the Complainant states as follows:



1. The violations that are the subject of the Complaint are alleged by Complainant to have occurred from approximately December 10, 2001 to February 5, 2002. After the Respondent was notified by the City to stop work, it did so, but not before when the asbestos was actually discovered. The gravity of the violations should not be minimized. Release of asbestos, a known contaminant, to the atmosphere could have caused severe health effects to the neighborhood and workers at the site.

2. Respondent was not diligent in attempting to come back into compliance with the Act, Board regulations and the applicable federally-delegated programs and NESHAP regulations, but did so once the City of Chicago issued a stop-work order, and days after the Illinois EPA had requested the work be stopped.

3. The Respondent may have accrued a nominal economic benefit by failing to abate the asbestos on the premises before starting the renovation, but did incur the costs at a later date, approximately 8 months later.

4. Complainant states that a maximum penalty payment of \$642,000 will serve to deter future violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations.

6. Self-disclosure is not at issue in this matter.

7. Respondent did not offer to perform a supplemental environmental program.

These aggravating and mitigating factors provide guidance to the Board in determining the appropriate amount of a civil penalty in an environmental enforcement case. Accordingly, the Complainant brings these factors to the Board's attention.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board grant its Motion for Summary Judgment against the Respondent, 4832 S. VINCENNES, L.P., award the relief requested herein, and take such other action as the Board believes to be appropriate and just.

Respectfully submitted,

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


By:   
PAULA BECKER WHEELER  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Fl.  
Chicago, Illinois 60601  
(312) 814-1511

Exhibit A

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 -vs- )  
 )  
 4832 S. VINCENNES, L.P., an )  
 Illinois limited partnership, and )  
 EASTWEST CONSTRUCTION COMPANY, INC )  
 an Indiana corporation, )  
 )  
 Respondents.

No. 04-7  
(Enforcement - Air)

A F F I D A V I T

I, JOSEPH W. ZAPPA, being duly sworn on oath, depose and state that I am over 21 years of age, have personal knowledge of the facts stated herein, and, if called as a witness, could competently testify to the following:

1. I am a Licensed Asbestos Inspector and a Licensed Asbestos Abatement Supervisor in the State of Illinois.

2. I am currently employed as an Environmental Associate by the Illinois Environmental Protection Agency ("Illinois EPA") and have held this position since 1999. In January of 2002, I was assigned to the Bureau of Air, Des Plaines office, Des Plaines, Illinois.

3. As an Inspector for the Illinois EPA, my duties and responsibilities include inspecting premises for alleged violations of the Environmental Protection Act and the regulations that pertain to it. I also am responsible for NESHAP compliance inspections. As part of my job duties, I testify in

hearings and in court for any violations found in cases that proceed to enforcement and a hearing.

4. On January 31, 2002, I performed an inspection of the multi-unit building located at 4832 S. Vincennes Street, Chicago, Illinois, which is the subject of the First Amended Complaint, Board Case Number PCB 04-07.

5. I have read the First Amended Complaint, and am aware of the contents thereof.

6. The factual matters set forth in the First Amended Complaint are true and correct in substance and in fact, to the best of my knowledge and belief.

7. Specifically, when I inspected the premises at the 4832 S. Vincennes site, Chicago, Cook County, Illinois, I found dry, friable suspected asbestos containing material on the pipes and on the floor of the basement area. It was in very poor condition and falling off the pipes. The material that I removed for sampling from that area tested positive for 55% to 75% chrysotile asbestos.

8. On January 31, 2002, the owner's representative, Gregory Miller, refused to stop work on the premises when requested, and the contractor continued to work. The City of Chicago was contacted and issued a stop work order on February 5, 2002.

9. On January 31, 2002, several workers were present at the Site doing work in and around the first floor area. Most of

the windows and doors were open to the atmosphere, and none of the workers were wearing personal protective equipment or utilizing any emission control measures, including failing to wet the asbestos containing material in preparation for disposal.

FURTHER, AFFIANT SAYETH NOT.

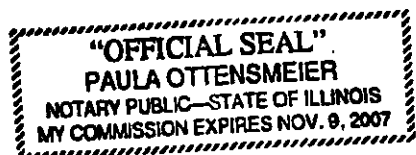
*Joseph W. Zappa*

JOSEPH W. ZAPPA

SUBSCRIBED and SWORN  
to before me this 17th day  
of October, 2005.

*Paula Ottensmeier*

NOTARY PUBLIC



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
-vs-	)	
	)	No. 04-7
4832 S. VINCENNES, L.P., an	)	(Enforcement - Air)
Illinois limited partnership, and	)	
BATTEAST CONSTRUCTION COMPANY, INC.,	)	
an Indiana corporation,	)	
	)	
Respondents.		

A F F I D A V I T

I, JOSEPH W. ZAPPA, being duly sworn on oath, depose and state that I am over 21 years of age, have personal knowledge of the facts stated herein, and, if called as a witness, could competently testify to the following:

1. I am a Licensed Asbestos Inspector and a Licensed Asbestos Abatement Supervisor in the State of Illinois.

2. I am currently employed as an Environmental Associate by the Illinois Environmental Protection Agency ("Illinois EPA") and have held this position since 1999. In January of 2002, I was assigned to the Bureau of Air, Des Plaines office, Des Plaines, Illinois.

3. As an Inspector for the Illinois EPA, my duties and responsibilities include inspecting premises for alleged violations of the Environmental Protection Act and the regulations that pertain to it. I also am responsible for NESHAP compliance inspections. As part of my job duties, I testify in

hearings and in court for any violations found in cases that proceed to enforcement and a hearing.

4. On January 31, 2002, I performed an inspection of the multi-unit building located at 4832 S. Vincennes Street, Chicago, Illinois, which is the subject of the First Amended Complaint, Board Case Number PCB 04-07.

5. I have read the First Amended Complaint, and am aware of the contents thereof.

6. The factual matters set forth in the First Amended Complaint are true and correct in substance and in fact, to the best of my knowledge and belief.

7. Specifically, when I inspected the premises at the 4832 S. Vincennes site, Chicago, Cook County, Illinois, I found dry, friable suspected asbestos containing material on the pipes and on the floor of the basement area. It was in very poor condition and falling off the pipes. The material that I removed for sampling from that area tested positive for 55% to 75% chrysotile asbestos.

8. On January 31, 2002, the owner's representative, Gregory Miller, refused to stop work on the premises when requested, and the contractor continued to work. The City of Chicago was contacted and issued a stop work order on February 5, 2002.

9. On January 31, 2002, several workers were present at the Site doing work in and around the first floor area. Most of

the windows and doors were open to the atmosphere, and none of the workers were wearing personal protective equipment or utilizing any emission control measures, including failing to wet the asbestos containing material in preparation for disposal.

FURTHER, AFFIANT SAYETH NOT.

---

JOSEPH W. ZAPPA

*SUBSCRIBED and SWORN  
to before me this 17th day  
of October, 2005.*

---

NOTARY PUBLIC



FROM :HYGIEDEERING

FAX NO. :12626424250

Oct. 17 2005 09:39AM P2

10/17/2005 08:00 FAX 630 788 9013

HYGIENEERING

+ MARGARET

@ 003/010

Oct-17-05 08:01am From: IAGO-ENVIRONMENTAL BUREAU

9129142347

T-336 P.002/006 P=119

Exhibit B

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )

Complainant, )

-vs- )

4832 S. VINCENNES, L.P., an )  
Illinois limited partnership, and )  
BATTEAST CONSTRUCTION COMPANY, INC., )  
an Indiana corporation, )

No. 04-7  
(Enforcement - Air)

Respondents.

A F F I D A V I T

I, MARGARET GUIDARELLI-PELLETIER, being duly sworn on oath, depose and state that I am over 21 years of age, have personal knowledge of the facts stated herein, and, if called as a witness, could competently testify to the following:

1. I am the President of Hygieneering, Inc., an industrial, safety and environmental consulting service, located at 7575 Plaza Court, Willowbrook, Illinois. Our company performs professional asbestos consulting and testing services and asbestos abatement.

2. Our company was contacted by Batteast Construction on or around December 10, 2001, concerning possible asbestos on the site of the multi-unit building located at 4832 S. Vincennes, Chicago, Cook County, Illinois.

3. Pursuant to that inquiry, our company performed asbestos testing, and after asbestos was found, prepared a bid for a contract to perform the abatement at the site.

FROM :HYGIENEERING

FAX NO. :12626424250

Oct. 17 2005 09:40AM P3

10/17/2005 08:30 FAX 630 789 3813

HYGIENEERING

MARGARET

004/010

Oct-17-05 08:31am From:IAQO-ENVIRONMENTAL BUREAU

+2128142347

7:38 P.003/028 F-118

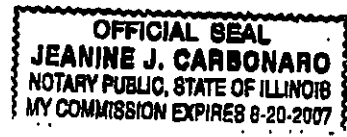
4. The attached copies of original documents were made in the regular of business at our offices, such records were routinely generated when dealing with customers and were made at the time of the act or event reflected therein, or within a reasonable time thereafter. Any stickers stating "Plaintiff's exhibit" were not part of the original documents.

5. The attached records include: a) a letter dated December 10, 2001 to Batteast Construction proposing a bid to perform an inspection at 4832 S. Vincennes to identify asbestos containing materials, b) a two-page copy of the lab results requested by Hygieneering of asbestos samples from 4832 S. Vincennes showing positive results for asbestos on the samples taken, dated Dec. 31, 2001 per the fax line notation, c) a two-page copy of the Bid Proposal for asbestos abatement sent to Batteast Construction dated January 8, 2002, d) an invoice dated January 16, 2002 to Batteast Construction requesting payment for services rendered in testing for asbestos at 4832 S. Vincennes. The copies of these records are true and accurate and reflect the record made at the time of the event.

FURTHER, AFFIANT SAYETH NOT.

*Margaret Guidarelli-Fellatier*  
MARGARET GUIDARELLI-FELLATIER

SUBSCRIBED and SWORN to before me this 17th day of October, 2005.  
*Jeanine J. Carbonaro*  
NOTARY PUBLIC



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
-vs-	)	
	)	No. 04-7
4832 S. VINCENNES, L.P., an	)	(Enforcement - Air)
Illinois limited partnership, and	)	
BATTEAST CONSTRUCTION COMPANY, INC.,	)	
an Indiana corporation,	)	
	)	
Respondents.	)	

A F F I D A V I T

I, MARGARET GUIDARELLI-PELLETIER, being duly sworn on oath, depose and state that I am over 21 years of age, have personal knowledge of the facts stated herein, and, if called as a witness, could competently testify to the following:

1. I am the President of Hygieneering, Inc., an industrial, safety and environmental consulting service, located at 7575 Plaza Court, Willowbrook, Illinois. Our company performs professional asbestos consulting and testing services and asbestos abatement.

2. Our company was contacted by Batteast Construction on or around December 10, 2001, concerning possible asbestos on the site of the multi-unit building located at 4832 S. Vincennes; Chicago, Cook County, Illinois.

3. Pursuant to that inquiry, our company performed asbestos testing, and after asbestos was found, prepared a bid for a contract to perform the abatement at the site.

4. The attached copies of original documents were made in the regular of business at our offices, such records were routinely generated when dealing with customers and were made at the time of the act or event reflected therein, or within a reasonable time thereafter. Any stickers stating "Plaintiff's exhibit" were not part of the original document.

5. The attached records include: a) a letter dated December 10, 2001 to Batteast Construction proposing a bid to perform an inspection at 4832 S. Vincennes to identify asbestos containing materials, b) a two-page copy of the lab results requested by Hygieneering of asbestos samples from 4832 S. Vincennes showing positive results for asbestos on the samples taken, dated Dec. 31, 2001 per the fax line notation, c) a two-page copy of the Bid Proposal for asbestos abatement sent to Batteast Construction dated January 8, 2002, d) an invoice dated January 18, 2002 to Batteast Construction requesting payment for services rendered in testing for asbestos at 4832 S. Vincennes. The copies of these records are true and accurate and reflect the record made at the time of the event.

FURTHER, AFFIANT SAYETH NOT.

---

MARGARET GUIDARELLI-PELLATIER

*SUBSCRIBED and SWORN  
to before me this 17th day  
of October, 2005.*

---

NOTARY PUBLIC

12/13/01 12:38 FAX 630 789 3813

HYGIENEERING



# Hygieneering, Inc.

7575 Plaza Court, Willowbrook, IL 60521  
(630) 654-2550 ■ FAX: (630) 789-3813

industrial hygiene, safety and environmental consulting services

December 10, 2001

Ms. Valerie Batteast-Fleming  
Batteast Construction  
430 E. LaSalle  
South Bend, IN 46617

4160-BMW  
via Fax: 219-289-2270

RE: To identify the services and fees associated with the Professional Asbestos Consulting and Testing Services for work associated with the property at 4832 S. Vincennes (Mayfair Apartments).

### Scope of Work

To support the above referenced project, Hygieneering will perform an on-site inspection of the property located at 4832 S. Vincennes to identify asbestos containing materials. Samples will be collected of suspect asbestos containing building materials. Bulk samples collected will be analyzed by Polarized Light Microscopy (PLM) in a NVLAP accredited laboratory. A project report of will be submitted within three weeks of the project completion.

### Associated Fees

The fixed fee for the on-site inspection, report generation and analysis for up to 3 PLM bulk samples is \$1,210.00.


If additional PLM bulk sampling is necessary, \$20.00 per bulk sample will be charged. Additional bulk sampling will not be conducted unless approved by Batteast Construction Representative.

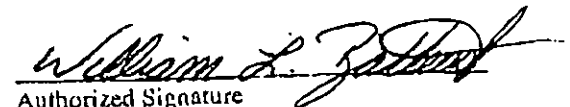
A shift is defined as up to 8 consecutive working hours. Additional time spent will be billed at a rate of \$75.00 per hour.

This document has been sent to clarify project scope and associated fees, if there are any questions please contact me at Hygieneering, Inc. We will schedule this work accordingly with Batteast Construction to meet the projects needs accordingly.

Thank you for this opportunity to assist Batteast Construction in meeting the legal and ethical standards as they apply to safety and environmental health.

### Acceptance of Proposal

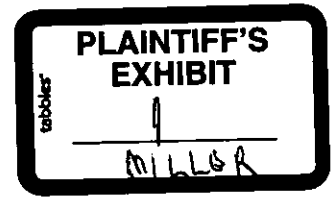
  
\_\_\_\_\_  
Authorized Signature  
Hygieneering, Inc.  
Date: 12/13/01

  
\_\_\_\_\_  
Authorized Signature  
Batteast Construction  
Date: 12/13/01

To Confirm scheduling of this work, please review the following Terms & Conditions, sign, date and fax a copy of this document to:

Jacqueline M. Cadwallader  
Hygieneering, Inc.  
FAX: 630-789-3813

CC: Brad Karich, Hygieneering, Inc.  
Proposal 259



12/31/01 10:48 FAX 630 789 3813

HYGIENEERING



002/003



**Hygieneering, Inc.**

industrial hygiene, safety and environmental consulting services

7575 Plaza Court, Willowbrook, IL 6

(630) 654-2550 ■ FAX: (630) 789-

**PLM LABORATORY REQUEST FORM**

AK

**PRIORITY**  
(CIRCLE ONLY ONE)

ASAP

24 HR.

2-4 DAYS

OTHER \_\_\_\_\_

PAGE \_\_\_\_\_

OF \_\_\_\_\_

NAME BATTEAST CONSTRUCTION  
COMPANY \_\_\_\_\_

PROJECT MAYFAIR APARTMENT  
4832 S. VINCENNES

ADDRESS \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

**PLAINTIFF'S EXHIBIT**  
3  
MILLER

SAMPLING DATE(S) 12-18-01

PHONE \_\_\_\_\_

SAMPLED BY MIKE MILLER

FAX \_\_\_\_\_

CLIENT PLEASE FILL IN SAMPLE # AND SAMPLE DESCRIPTION ↓ ↓

SAMPLE #	LAB#	HOMOGENOUS	SAMPLE DESCRIPTION	ASBESTOS PRESENT/TYPE*	OTHER FIBROUS COMPONENTS	OTHER NONFIBROUS COMPONENTS
TPA-1	46714	<input checked="" type="checkbox"/> ON	corrugated "Aircor" Pipe length Insulation	25% Chrysotile 5-10% Amosite	15% Cellulose 5% Synthetic	40% Put
		<input type="checkbox"/> ON			5% Cellulose	
TPA-2	46715	<input checked="" type="checkbox"/> ON	ICM	20-25% Chrysotile 5-10% Amosite	20% Cellulose 5% Synthetic	35% Put
		<input type="checkbox"/> ON			5% Cellulose	
TPA-3	46716	<input checked="" type="checkbox"/> ON	ICM	35-40% Chrysotile 5-10% Amosite	5% Cellulose 5% Synthetic	35% Put
		<input type="checkbox"/> ON			5% Cellulose	
		<input type="checkbox"/> ON				
		<input type="checkbox"/> ON				

\*Asbestos includes the asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthophyllite and actinolite. A substance is considered asbestos contain material if it contains > 1% asbestos.

COMMENTS: Analyze All Samples

RELIQUISHED BY Wheeler DATE 12-18-01

RECEIVED BY [Signature] DATE 12/18/01

CLIENT NUMBER 2001-4160-ENV DATE ANALYZED 12/22/01

ANALYZED BY [Signature]



**Hygieneering, Inc.**

industrial hygiene, safety and environmental consulting services

7575-Plaza Court, Willowbrook, IL

(630) 654-2550 ■ FAX: (630) 789-3813

**PLM LABORATORY REQUEST FORM**

**PRIORITY**  
(CIRCLE ONLY ONE)

ASAP

24 HR.

2-4 DAYS

OTHER \_\_\_\_\_

PAGE \_\_\_\_\_ OF \_\_\_\_\_

NAME BATTEAST CONSTRUCTION

PROJECT MAYFAIR APARTMENT

COMPANY \_\_\_\_\_

4832 S. VINCENTNES

ADDRESS \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

SAMPLING DATE(S) 12-18-01

PHONE \_\_\_\_\_

SAMPLED BY MIKE MILLER

FAX \_\_\_\_\_

CLIENT PLEASE FILL IN SAMPLE # AND SAMPLE DESCRIPTION ↓ ↓

SAMPLE #	LAB#	HOMOGENOUS	SAMPLE DESCRIPTION	ASBESTOS PRESENT/TYP*	OTHER FIBROUS COMPONENTS	OTHER NONFIBROUS COMPONENTS
TJA-1	46717	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	<u>Cementitious fitting from TPA line.</u>	<u>40-45% Chrysotile</u>	<u>10% Crocidolite</u>	<u>40%</u>
		<input type="checkbox"/> Y <input type="checkbox"/> N		<u>1.5% Amosite</u>		
TJA-2	46718	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	<u>PAV</u>	<u>35-40% Chrysotile</u>	<u>15% Crocidolite</u>	<u>40%</u>
		<input type="checkbox"/> Y <input type="checkbox"/> N		<u>1.5% Amosite</u>		
TJA-3	46719	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	<u>PAV</u>	<u>40-45% Chrysotile</u>	<u>15% Crocidolite</u>	<u>35%</u>
		<input type="checkbox"/> Y <input type="checkbox"/> N		<u>1.5% Amosite</u>		
		<input type="checkbox"/> Y <input type="checkbox"/> N				
		<input type="checkbox"/> Y <input type="checkbox"/> N				

\*Asbestos includes the asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthophyllite and actinolite. A substance is considered asbestos contain material if it contains > 1% asbestos.

COMMENTS: Analyze All Samples

RELIQUISHED BY Michael DATE 12-18-01

RECEIVED BY [Signature] DATE 12/18/01

CLIENT NUMBER 2001-4160-ENV DATE ANALYZED 12/22/01

ANALYZED BY [Signature]

COPY

January 8, 2002

Ms. Valerie Batteast-Fleming  
 Batteast Construction  
 430 E. LaSalle  
 South Bend, IN 46617



Via Fax: 219-289-2270

**RE:** A proposal to provide the needed Asbestos Abatement Project Specifications, Contractor Bid Solicitation and Project Management / Air Monitoring services to support the asbestos abatement at the Mayfair Apartments located at 4832 S. Vincennes in Chicago, IL. This work will support the removal of thermal system insulation.

### **PLANNING / DESIGNING THE ABATEMENT PROJECT**

The specification will be in compliance with IDPH, EPA, and NESHAP regulations and will include, facility decontamination, ACM waste disposal requirements and air monitoring procedures to ensure that the project is properly executed. Also included as part of the project design are the following services: pre-qualifying contractors, scheduling and attending pre-bid walk throughs, prejob construction meetings, variance requests, evaluating bids and recommending a contractor to perform the work.

Fee for the above-defined services is \$2,200.00

### **PROJECT MANAGEMENT / AIR MONITORING SERVICES**

Hygieneering, Inc. will provide On-Site Project Management Services to ensure that work progress and work plans are properly executed and conditions are documented through daily inspection and testing services. All Project Managers are dually credentialed IDPH Project Managers / Air Sampling Professionals.

#### **Project Management Services Include**

1. Establishing work zones and coordinating the abatement work within them.
2. Collecting environmental air samples and analyzing them on site by Phase Contrast Microscopy (PCM) with 24 hour T/A for results.
3. Daily documentation of the project.
4. The collection and analysis of Phase Contrast Microscopy (PCM) air samples to clear the containment system prior to tear down.
5. A final report documenting daily activity, air sample results, waste disposal records and regulatory notification. This documentation is required and crucial to protect the Batteast Construction from long-term liability or to support property transfer. In house final report project documentation services will be billed at the shift rate identified below.



**COPY**

Proposal for  
Batteast Construction  
January 8, 2002  
Page Two

Project Management / Air Sampling Services \$525.00 per shift per Project Manager \*

\*A shift is defined, as up to eight consecutive working hours, additional time spent on the project will be billed at a rate of \$75.00 per hour. Senior project management time will be billed at a rate of \$85.00 per hour to properly support the project.

At this time, Hygieneering, Inc. estimates this project cost for the air monitoring, project design, air sample analysis and report generation at \$5,460.00.

Hygieneering, Inc.'s total project cost is \$7,660.00.

Thank you for this opportunity to assist you in meeting the established ethical and legal standards as they apply to safety and environmental health.

To formally retain the services as referenced in this proposal please sign in the designated area below and forward this document back to my attention. We will then proceed accordingly in scheduling this very important project.

Please review the attached terms and conditions that will support this project.

---

Acceptance of Proposal

---

Authorized Agent  
Hygieneering, Inc.

---

Authorized Agent  
Batteast Construction

Respectfully submitted,

**Hygieneering, Inc.**

Jacqueline M. Cadwallader  
Client Services Representative  
Cc: Brad Karich, Hygieneering, Inc.  
Proposal #308



# Hygieneering, Inc.

7575 Plaza Court, Willowbrook, IL 60521

industrial hygiene, safety and environmental consulting services

(630) 654-2550 ■ FAX: (630) 789-3813

~~Invoice for Professional Services~~

**Date:** January 18, 2002

**Invoice #:** 12011471 JMC

**Purchase Order #:** 03410

**Batteast Construction**  
Valerie Batteast-Fleming

**Billing Instructions**

12000 S. Marshfield Avenue, Suite 117  
Calumet City, IL 60827



**Project #:** 2001-4160 HYG ENV

December 18, 2001 to December 23, 2001

Mayfair Apartments - Inspection

**Professional Services Description**

Asbestos consulting and testing services for work associated with the property at 4832 S. Vincennes (Mayfair Apartments), Chicago, IL. This invoice includes \$60.00 for three additional bulk samples collected on 12/18/01.

**Total - \$1,270.00**

**Please remit total amount due within 30 days**

**Thank you**

**We appreciate your business!**

We guarantee our work. We value our business relationship with you. If you are not 100% satisfied with the services delivered or the pricing on this invoice, please call 630-654-2550.

15% interest per month on account balance due over 30 days will be charged. Customer is responsible for all legal fees, if such action is taken for collection purposes.

Wednesday, January 16, 2002

Page 1 of 1

Exhibit C

Transcript of the Testimony of

**Gregory Miller**

**Date:** April 26, 2004

**Volume:** 1

**Case:** People of the State of Illinois vs. v. 4832 South Vincennes

Printed On: October 12, 2004

Toomey Reporting  
Phone: 312-853-0648  
Fax: 312-977-1333

Gregory Miller

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

PEOPLE OF THE STATE OF )  
ILLINOIS, )

Complainant, )

vs. ) PCB No. 04-7

4832 SOUTH VINCENNES, L.P., )  
an Illinois Limited )  
Partnership, and BATTEAST )  
CONSTRUCTION COMPANY, INC., )  
an Indiana Corporation, )

Respondents. )

This is the deposition of  
GREGORY V. MILLER, called by the Complainant  
for examination, taken before PEGGY A.  
ANDERSON, a Notary Public within and for the  
County of Cook, State of Illinois, and a  
Certified Shorthand Reporter of said state, at  
188 West Randolph, 20th Floor, Chicago,  
Illinois, on the 26th day of April A.D. 2004,  
at 11:00 o'clock a.m.

Gregory Miller

A P P E A R A N C E S :

1  
2  
3 THE LAW OFFICES OF:  
4 THE ILLINOIS ATTORNEY GENERAL  
5 BY: MS. PAULA BECKER WHEELER  
6 188 West Randolph Street  
7 20th Floor  
8 Chicago, Illinois 60601

9  
10 Appeared on behalf of the  
11 Complainant;  
12 THE LAW OFFICES OF:  
13 MILLER AND FERGUSON

14 BY: MR. GREGORY V. MILLER  
15 9415 South State Street  
16 Chicago, Illinois 60619

17  
18 Appeared on behalf of the  
19 Respondent, 4832 South  
20 Vincennes.

21 THE LAW OFFICES OF:  
22 ZACHARY HAMILTON  
23 BY: MR. ZACHARY HAMILTON  
24 3340 East Forestview Trail  
Crete, Illinois 60417  
Appeared on behalf of the  
Respondent, Batteast  
Construction Company.

Gregory Miller

I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

WITNESS

PAGE

GREGORY MILLER

EXAMINATION BY

MS. WHEELER:

6-68

E X H I B I T S

MARKED

PAGE

PEOPLE'S EXHIBIT NO. 1 (previously marked)

PEOPLE'S EXHIBIT NO. 2 6

PEOPLE'S EXHIBIT NO. 3 11

PEOPLE'S EXHIBIT NO. 4 57

PEOPLE'S EXHIBIT NO. 5 59

\*\*\*\*\*

1 (WHEREUPON, the witness  
2 was first duly sworn.)

3 MS. WHEELER: Good morning. It's  
4 11:05 approximately. My name is Paula  
5 Becker Wheeler, assistant attorney general.  
6 We are here on the deposition of Gregory V.,  
7 as in Victor or Vincent, Miller on the case  
8 of People versus 4832 South Vincennes, LP  
9 and Batteast Construction, Incorporated,  
10 PCB Number 0407 before the Illinois  
11 Pollution Control Board.

12 Present is Mr. Miller and myself  
13 and the court reporter. Mr. Hamilton has  
14 left with his client. Today is April 26th  
15 of 2004. We are here for the deposition of  
16 Mr. Miller. Mr. Miller, I'm not going to  
17 give you any admonitions about taking  
18 depositions. I'm quite sure you know all  
19 of it.

20 THE WITNESS: Yes, I do.

21 MS. WHEELER: However, if you do need  
22 a break, please let me know.

23 THE WITNESS: Okay.

24 MS. WHEELER: And for the record, you

1 Q Did you oversee this project?

2 A I was the owner's representative.

3 Q The owner's representative. And, in  
4 fact, in that capacity, you signed the  
5 contract; is that right?

6 A No, the owner -- The general partner  
7 actually executed the contract.

8 Q And that was Mr. Ferguson?

9 A No -- Yes, in this case, it would  
10 have been Mr. Ferguson who signed the contract  
11 on behalf of the general partner, yes.

12 Q Mayfair?

13 A Right.

14 Q Okay. Did you -- After construction  
15 began in approximately July of 2001, were you  
16 ever on site?

17 A Yes.

18 Q How often would you be on site?

19 A There was no regular schedule for me  
20 to be there. I mean, early on, I was probably  
21 there once a week.

22 Q Would you see Valerie Batteast when  
23 you were there early on?

24 A Yes.



1           A       This was a very compacted time frame.  
2       So this may have been the day before or two  
3       days prior. I just don't have any independent  
4       recollection. My memory is bad.

5           Q       Do you know where you were when you  
6       received the phone call?

7           A       At my office.

8           Q       Do you know what Mr. Batteast said to  
9       you at that time? Again, this is Mr. Bill  
10       Batteast?

11          A       That is correct. I don't remember  
12       the details of the conversation other than I  
13       believe a couple of the workers had thought  
14       that they saw asbestos in the basement, and he  
15       wanted to give me a heads up knowledge of that;  
16       and I said, well, what are we supposed to do?  
17       He said, well, if that's, in fact, the case, we  
18       need to stop work and then there is a process  
19       that we would have to go through to have it  
20       first tested and then abated. And I said,  
21       well, I mean, I have no background in getting  
22       this done. He said, well, we can handle that  
23       and that was the conversation.

          The conversation with Mr. Zappa did

1 returns?

2 A Yes.

3 Q On the front page of those tax  
4 returns, they are neither signed nor dated;  
5 those are accurate, though?

6 A Yes, they are.

7 Q When Mr. Batteast informed you before  
8 Mr. Zappa was there that there was possible  
9 asbestos contamination, you did not stop work  
10 at that time?

11 A I did not tell him to stop work at  
12 that time, no.

13 Q And, again, you were the owner's rep?

14 A That is correct.

15 Q In your mind, if he had stopped work,  
16 he would have been in violation of his contract  
17 without your direct orders; is that correct?

18 A No.

19 Q Do you know what safe levels of  
20 asbestos are in the atmosphere?

21 A No, I do not.

22 Q Do you know that there are no safe  
23 levels of asbestos in the atmosphere?

24 A No, I do not.

1 exhausted out into the atmosphere?

2 A No.

3 Q You didn't see any of the workers in  
4 protective clothing and respiratory units?

5 A On the day that I'm talking about, I  
6 did not see any of that, no.

7 Q And when you talked to Mr. Batteast  
8 on the day that he notified you that there was  
9 possible asbestos, he did not convey to you  
10 that he was going to do any of the things I  
11 just told you would be asbestos abatement?

12 A That list of items that you said that  
13 I --

14 Q (Indicating.)

15 A No, he did not tell me that.

16 MS. WHEELER: All right. I have  
17 nothing else.

18 THE WITNESS: And I have got nothing.  
19 I will waive signature.

20 FURTHER DEPONENT SAITH NOT....

STATE OF ILLINOIS )

) ss:

COUNTY OF C O O K )

I, Peggy A. Anderson, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify:

That previous to the commencement of the examination of the witness, the witness was duly sworn to testify the whole truth concerning the matters herein;

That the foregoing deposition transcript was reported stenographically by me, was thereafter reduced to typewriting under my personal direction, and constitutes a true record of the testimony given and the proceedings had;

That the said deposition was taken before me at the time and place specified;

That the said deposition was adjourned as stated herein;

That I am not a relative or employee or attorney or counsel, nor a relative or employee of such attorney or counsel for any of the parties hereto, nor interested directly or

1 indirectly in the outcome of this action.

2           IN WITNESS WHEREOF, I do hereunto set  
 3 my hand and affix my seal of office at Chicago,  
 4 Illinois, this 12<sup>th</sup> day of  
 5 October, 2004.

6  
7  
8  
9  
0  
1 Peggy A Anderson  
2

3 Peggy A. Anderson

4 Notary Public, Cook County, Illinois.

5 License No. 084-003813

