

ILLINOIS POLLUTION CONTROL BOARD

August 7, 2003

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 02-115
	)	(Enforcement – Air, Water)
BLUE RIDGE CONSTRUCTION CORP,	)	
an Illinois corporation,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by M.E. Tristano):

This matter is before the Board on a motion for partial summary judgment filed by the People of the State of Illinois (People) on June 13, 2003 against Blue Ridge Construction Corporation, (respondent). Incorporated by reference in the motion for partial summary judgment was a stipulation of facts which both parties agreed to. On February 21, 2002, the People filed a four-count complaint against the respondent for various violations of the Environmental Protection Act (Act), the Board’s regulations, and the National Emission Standards for Hazardous Air Pollutants (NESHAP). For the reasons stated below, the Board grants the People’s motion for partial summary judgment.

**BACKGROUND**

Respondent is an Illinois corporation whose officers are David L. Krubac, President; Randall J. Palmer, Vice President; and John G. Palmer, Sr., Secretary-Treasurer. On April 13, 2000, Mr. Krubac, Mr. Palmer, and Mr. Palmer, Sr., acquired the Old Bartonville Mental Facility located in Bartonville, Illinois, with the intention of converting the dining hall into a metal fabrication shop. On May 11, 2000, after being advised by Bartonville officials that permits were not necessary, respondent commenced demolition of the dining hall. Between May 11, 2000 and May 17, 2000, respondent opened approximately a 40-foot hole in the east wall, removed roofing material which had caved in, removed the rest of the roof that was near collapsing and cut off and removed steel pipe roof support columns from six locations within the dining hall. From May 11, 2000 to May 17, 2000, respondent deposited demolition debris from its demolition activities in a ravine adjacent to the facility. On May 17, 2000, Dennis Hancock, an Illinois Environmental Protection Agency inspector, inspected the facility and obtained seven samples of demolition materials, including insulation material from pipes within the facility. Analyses for four of the samples showed asbestos Chrysotile concentration ranging from 20% to 40% and asbestos amosite in concentrations ranging from 10% to 30%. Prior to starting demolition of the dining hall, respondent did not inspect the facility for the presence of asbestos, or submit a written notification of its intention to demolish the facility. Stip. Facts at 1-5.

## **STANDARD OF DECISION**

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E. 2d 358, 370 (1998). In ruling on a motion for summary judgment, the Board “must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing part.” *Id.* Summary judgment “is a drastic means of disposing of litigation,” and therefore it should be granted only when the movant’s right to the relief is clear and free from doubt.” *Id.* citing Purtill v. Hess, 111 Ill. 2d 199, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must “present a factual basis which would arguably entitle [it] to a judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

### **Count I**

Count I of the complaint alleges violation of Section 9(a) of the Act and Section 201.141 of the Board’s Air Pollution regulations in that respondent failed to utilize asbestos emission control methods, failed to properly remove, handle and dispose of RACM and other regulated asbestos-containing material during demolition activities causing, threatening or allowing the emission of asbestos into the environment. Comp. at 2.

Paragraphs 5, 6, 8, 9, 10, 11, and 13 of the stipulation establish that respondent from May 11, 200 to May 17, 2000, demolished the dining hall and that while demolishing the dining hall, respondent failed to utilize asbestos control methods, and failed to properly remove, handle and dispose of RACM and other asbestos containing material. Paragraphs 16, 17, 18, and 19; Exhibits A, B, C, D, and E establish the demolition and presence of asbestos in a powder form susceptible to becoming air borne, so as to present a threat of air pollution. Mot. at 2-3. The Board finds that the facts are sufficient to find respondent in violation of the Act and regulations. The respondent, therefore, violated Section 9(a) of the Act and Section 201.141 of the Board’s Air Pollution regulations.

### **Count II – 40 C.F.R. 61.145(a)**

Count II, paragraph 9, alleges that prior to the demolition of the dining hall, respondent failed to thoroughly inspect the facility for the presence of asbestos, including categories I and II non-friendly ACM in violation of 40 C.F.R. 61.145(a) and 9.1(d). 40 C.F.R. 61.145(a) requires the owner or operator of a demolition activity to thoroughly inspect the facility prior to commencement of demolition to determine if asbestos is present. Comp. at 7-8.

Paragraph 5 of the stipulation establishes that on May 11, 2000, respondent, as owner or operator, commenced demolition of the dining hall. Paragraph 7 of the stipulation establishes that respondent did not conduct an inspection prior to demolition for the presence of asbestos.

The Board finds that the facts are sufficient to find respondent in violation of 40 C.F.R. 61.145(a) and 9.1(d). The respondent, therefore, violated 40 C.F.R. 61.145(a) and 9.1(d).

### **Count II – 40 C.F.R. 61.145(b)(1)**

Count II, paragraph 10, alleges that respondent failed to submit a written notification of its intention to demolish the dining hall in violation of 40 C.F.R.(b)(1) and Section 9.1(d) of the Act. 40 C.F.R 61.145(a)(1) and (2) provide that for a facility being demolished the owner or operator shall provide notification as provided for in subsection (b). 40 C.F.R. 61.145(b)(1) provides that the owner or operator of a demolition activity is to provide the administrator with written notice of its intention to demolish or renovate. Comp. at 7-8.

Paragraph 8 of the stipulation provides that prior to commencing demolition, respondent did not submit a written notification to the Agency of its intention to demolish the dining hall. Complainant also notes, that in its answer to Count II, respondent admitted that it failed to provide a written notice. Mot. at 6. The Board finds that the facts are sufficient to find respondent in violation of 40 C.F.R. 61.145(b)(1). The respondent, therefore, violated 40 C.F.R. 61.145(b)(1).

### **Count III**

Count III, paragraph 6, alleges that on or before May 17, 2001, respondent caused or allowed the open dumping of demolition debris generated by the demolition activities within the former dining hall, including but not limited to wooden desk, pipe material, and other debris in or near a ravine on property owned by respondent in violation of Section 21(a), (e), (p)(1) and (p)(2) of the Act. Section 21(a), (e), (p)(1) and (p)(2) prohibits the open dumping of waste, at a site which does not meet the requirements of the Act, which results in litter or disposition of construction debris. Comp. at 9-10.

Paragraph 13 of the stipulation provides that “during the course of the renovation of the dining hall, respondent dumped splintered boards, metal wiring, insulation and other demolition debris from the collapsed roof and bricks and mortar from the east wall in or near a ravine on the property.” Paragraph 18 of the stipulation also incorporates Agency inspector James Jones’ observations of the site on May 17, 2000. Paragraph 19 of the stipulation incorporates photographs of the site taken by Mr. Jones on May 17, 2000. Mot. at 7. The Board finds that the facts are sufficient to find respondent in violation of the Act. The respondent, therefore, violated Section 21(a), (e), (p)(1) and (p)(2) of the Act.

### **Count IV**

Count IV, paragraph 6, alleges that on or about May 17, 2000, respondent caused or allowed the open dumping of demolition debris generated by its demolition activities within and adjacent to a ravine owned by respondent so as to create a water pollution hazard in violation of Section 12(d) of the Act. Section 12(d) of the Act provides that: “No person shall: deposit any contaminants upon the land in such a place and manner so as to create a water pollution hazard.” Comp. at 10-11.

Paragraph 13 of the stipulation describes the location of the dumping as “in or near a ravine on the property.” Paragraph 14 of the stipulation states that at the bottom of the ravine is an intermittent stream. Mr. Jones’ observations, which are included in paragraph 18, states:

During the investigation, Jones observed building demolition waste consistent with the make-up of the materials in the building on the property. Bricks mixed with splintered boards, metal wiring insulation, and apparent asbestos piping insulation was observed dumped in several locations on the property. The open dumped building demolition waste extended down into the ravine where a small stream traversed across the property. This is significant because it began to rain during the investigation, and the potential for water pollution to occur was increased, in that, the rain could have washed asbestos fibers down the ravine into the stream.

The Board finds that the facts are sufficient to find respondent in violation of the Act. The respondent, therefore, violated Section 12(d) of the Act.

### **CONCLUSION**

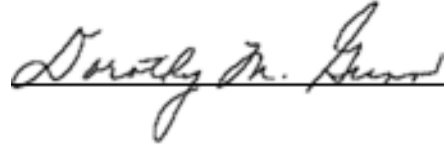
The Board grants complainant’s motion for partial summary judgment against respondent. The Board finds that respondent violated Sections 9(a), 12(d), 21(a), (e), (p)(1) and (p)(2) of the Act, 201.141 of the Board’s regulations, and 40 C.F.R. 61.145(a) and 40 C.F.R. 61.145(b)(1). The Board directs the parties to hearing as expeditiously as practicable on the specific issue of the amount of penalty amounts.

### **ORDER**

1. The Board grants complainant’s motion for partial summary judgment, and finds respondent in violation of Section 9(a), 12(d), 21(a), (e), (p)(1) and (p)(2) of the Act, 201.141 of the Board’s regulations, and 40 C.F.R. 61.145(a) and 61.145(b)(1).
2. The Board directs the parties to hearing on the specific issue of appropriate penalty amount.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 7, 2003 by a vote of 7-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board