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STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 5, 2004

The Honorable Dorothy Gunn
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Blue Ridge Construction Corporation, an Illinois corp.***
PCB No. 02-115

Dear Clerk Gunn:

Enclosed for filing please find the original and five copies of a NOTICE OF FILING and COMPLAINANT'S CLOSING BRIEF AND ARGUMENT in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Delbert D. Haschemeyer
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

DDH/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAR 0 8 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	**PCB NO. 02-56**
	)	**(Enforcement)**
BLUE RIDGE CONSTRUCTION CORPORATION, an Illinois corporation,	)	
	)	
Respondent.	)	

NOTICE OF FILING

To: William R. Kohlhase
Miller, Hall & Triggs
1125 Commerce Bank Building
416 Main Street
Peoria, IL 61602

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, COMPLAINANT'S CLOSING BRIEF AND ARGUMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: _____
DELBERT D. HASCHEMEYER
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: March 5, 2004

CERTIFICATE OF SERVICE

I hereby certify that I did on March 5, 2004, send by UPS Next Day Air, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument entitled NOTICE OF FILING and COMPLAINANT'S CLOSING BRIEF AND ARGUMENT

To: William R. Kohlhase
Miller, Hall & Triggs
1125 Commerce Bank Building
416 Main Street
Peoria, IL 61602

and the original and ten copies by UPS Next Day Air with postage thereon fully prepaid of the same foregoing instrument(s)

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by UPS Next Day Air with postage thereon fully prepaid

To: Brad Halloran
Hearing Officer
Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, IL 60601

Delbert D. Haschemeyer
Assistant Attorney General

This filing is submitted on recycled paper.

RECEIVED
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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	**PCB NO. 02-115**
	)	**(Enforcement)**
BLUE RIDGE CONSTRUCTION CORPORATION, an Illinois corporation,	)	
	)	
	)	
Respondent.	)	

COMPLAINANT'S CLOSING BRIEF AND ARGUMENT

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by LISA MADIGAN, Attorney General of the State of Illinois, and respectfully submits the following as Complainant's Brief and Closing Argument in the above-captioned matter.

INTRODUCTION

On February 21, 2002, Complainant filed the Complaint herein consisting of four counts alleging as follows:

COUNT I

Count I alleges that Respondent, "During the demolition of the former dining hall at the Old Bartonville Mental Health Facility, Respondent failed to utilize asbestos emission control methods and properly remove, handle and dispose of all RACM and regulated asbestos-containing waste material during the demolition activities causing, threatening or allowing the emission of asbestos into the environment so as to cause air pollution in violation of Section 9(a) of the Act and Section 201.141 of the Board's Air Pollution Regulations."

COUNT II

Count II alleges as follows:

Paragraph 9: Prior to demolition of the old dining hall, Respondent failed to thoroughly inspect the facility for the presence of asbestos in violation of 40 CFR 61.145 and Section 9.1 of the Act.

Paragraph 10: Prior to demolition, Respondent failed to submit a written notification of intention of demolition of the former dining hall in violation of 40 CRF 61.145(b)(1) and Section 9.1 of the Act.

Paragraph 11: During the demolition, Respondent failed to remove all RACM prior to commencing demolition activities at the old dining hall in violation of 40 CFR 61.145(c)(1) and Section 9.1(d) of the Act.

Paragraph 12: During demolition of the dining hall, Respondent failed to adequately wet and maintain as wet all RACM and regulated asbestos-containing material until collected and contained in preparation for disposal at a site permitting such waste in violation of 40 CFR 61.145 (c)(6) and Section 9.1(d) of the Act.

Paragraph 13: During demolition of the dining hall, Respondent failed to have on the site at least one representative trained in the provisions of NESHAP for asbestos and compliance methods requirements in violation of 40 CFR 61.145(c)(8) and Section 9.1(d) of the Act.

Paragraph 14: During the demolition of the dining hall, Respondent failed to adequately wet and maintain as wet asbestos-containing material, thereby causing or allowing the discharge of visible emissions to the outside air in violation of 40 CRF 61.150(a)(1) and Section 9.1(d) of the Act.

COUNT III

OPEN DUMPING VIOLATIONS

Count III 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 dining hall, including, but not limited to, wooden desks, pipe, metal and other debris in or near a ravine on property owned by Respondent in violation of Sections 21(a), (e), (p)(1) and (p)(7) of the Act.

COUNT IV

WATER POLLUTION THREAT

Count IV alleges, "On or about May 17, 2001, Respondent caused or allowed the open dumping of demolition debris generated by Respondent's 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."

MOTION FOR PARTIAL SUMMARY JUDGMENT

On August 7, 2003, the Board granted Complainant's Motion for Partial Summary Judgment finding:

COUNT I

> Paragraphs 5, 6, 8, 9,10, 11 and 13 of the stipulation establish that respondent from May 11, 2000 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 CFR 61.145(a)

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).

40 CFR 61.145(b)(1)

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. 16 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

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

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.

REMAINING ISSUES

REMAINING COUNT II VIOLATIONS

The Motion for Partial Summary Judgment did not seek summary judgment for the violations alleged in paragraphs 11, 12, 13 and 14 of Count II because as indicated in Complainant's opening statement, at the time of the filing of the Motion for Summary Judgment, Complainant was not confident that Complainant could establish with the certainty required to support a motion for summary judgment that the quantity of asbestos present could meet the NESHAP requirement necessary to require Respondent to comply with the NESHAP requirement alleged to have been violated in Paragraphs 11, 12 and 13.

40 CFR 61.145(a)(1) and (a)(2) provides:

(1) In a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section, if the combined amount of RACM 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, or

(ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

(2) In a facility being demolished, only the notification requirements of paragraphs (b)(1), (2), (3)(i) and (iv), and (4)(i) through (vii) and (4)(ix) and (xvi) of this section apply, if the combined amount of RACM is

(i) Less than 80 linear meters (260 linear feet) on pipes and less than 15 square meters (160 square feet) on other facility components, and

(ii) Less than one cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously or there is no asbestos.

Thus, to establish violations of 61.145(c)(1), 61.145(c)(6) and 61.145(c)(8) as alleged in paragraphs 11, 12 and 13 of Count II of the Complaint, the record must establish by a preponderance of the evidence, that it is more probably true than not true that there were at least 80 linear meters (260 linear feet) of RACM on pipes, or at least 15 square meters (160 square feet) on other facility components, or at least 1 cubic meter (35 cubic feet) off of facility components where the length or area could not be measured previously.

THE RECORD ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT THERE WAS AT LEAST ONE CUBIC METER (35 CUBIC FEET) OF RACM OFF OF FACILITY COMPONENTS WHERE THE LENGTH OR AREA COULD NOT BE MEASURED PREVIOUSLY.

The condition of the facility precluded measurement of the RACM at the site during Mr. Hancock's inspection of May 17, 2000, because demolition had commenced and, in fact, as indicated by Mr. Palmer, demolition debris had been pushed adjacent to and into the ravine in the back of the property (p. 2, Mr. Hancock's inspection memo; Stip., Exh. A).

Further, as testified to by Mr. Hancock, at the time of his May 17, 2000, visit, it was impossible to measure the pipe containing insulation because a portion of it had been deposited in the ravine and the material in the ravine was too unstable to walk on. (pp. 2-3 trans.) In addition, as noted by Mr. Hancock and Mr. Palmer, a portion of the roof has collapsed. Consequently, it is clear that at least as of the date of inspection by Mr. Hancock on May 17, 2000, the length or area could not be measured. Mr. Hancock did, based on the engineering drawing of the building, testify that, in his opinion, there was 160 feet of pipe which contained asbestos insulation in the facility. (p. 27 trans.) Since 160 linear feet of pipe does not meet threshold amount of 260 linear feet of RACM so as to provide for the application of Section 61.145(c), the question then becomes whether there was at least 1 cubic meter of facility components.

The only evidence in the record addressing that issue is Exhibit 2, the Notification of Demolition and Renovation filed by Respondent's asbestos contractor, Sentry, a division of Williams Power Corp. That notification states that there was 1,000 cubic feet of RACM at the site. Mr. Hancock testified that 1,000 cubic feet equals well in excess of 1 cubic meter. In fact, anyone can conclude, based on Exhibit 2, that there was well in excess of 1 cubic meter of RACM, simply by dividing 1,000 by 35, which equals 28+ cubic meters. Thus, it is clear that 61.145(c) applies.

Since Respondent in his Answer responded to paragraphs 11, 12, 13 and 14 of Count II of the Complaint filed herein as follows:

> 11. It admits that it failed to remove all RACM before it commenced its activities, but otherwise denies the allegations of paragraph 11.
>
> 12. It admits that during its activities in the dining hall it failed to wet and maintain as wet all RACM and regulated asbestos-containing waste material, but otherwise denies the allegations of paragraph 12.
>
> 13. It admits that during its activities in the dining hall it did not have a representative trained in the provisions of the NESHAP, but otherwise denies the allegations of paragraph 13.
>
> 14. It admits that during its activities in the dining hall, it failed to wet, and maintain as wet, asbestos-containing material, but otherwise denies the allegations of paragraph 14.

Further, paragraphs 9, 11 and 12 of the Stipulation provide as follows:

> 9. Prior to commencing demolition of the dining hall at the facility, Respondent did not remove any regulated ACM.
>
> * * *
>
> 11. During the demolition of the dining hall at the facility up to May 17, 2000, the date of an inspection by Dennis Hancock, an IEPA inspector, Respondent did not wet, or maintain as wet, regulated ACM.
>
> 12. During the demolition of the dining hall at the facility up to May 17, 2000, the date of an inspection by Dennis Hancock, an IEPA inspector, Respondent did not have on site any representative trained in the provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos.

Consequently, since Exhibit 2 establishes there was in excess of 1 cubic meter of RACM at the site, it is clear Respondent violated the following:

> 40 CFR 61.145(c)(1) and Section 9.1(d) of the Act by failing to remove all RACM prior to commencing demolition activities as alleged in paragraph 11 of Count II of the Complaint;
>
> 40 CFR 61.145(c)(6) and Section 9.1(a) of the Act by failing to adequately wet and maintain as wet all RACM and regulated asbestos containing material until collected and contained in preparation for disposal at a site permitted to accept such waste as alleged in paragraph 12 of Count II of the Complaint; and
>
> 40 CFR 61.145(c)(8) and Section 9.1(d) of the Act by failing to have on site during demolition activities one representative trained in the provisions of the NESHAP for asbestos as alleged in paragraph 13 of Count II of the Complaint.
>
> 40 CFR 61.150(a)(1) and Section 9.1(d) of the Act by failing to adequately wet and maintain as wet asbestos-containing material during collection thereby discharging visible emissions.

SECTION 33(c) FACTORS

Section 33(c) of the Act, 415 ILCS 5/33(c) (2000), provides, in relevant part:

> (c) 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:
>
> (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
>
> (ii) the social and economic value of the pollution source;
>
> (iii) 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;
>
> (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
>
> (v) any subsequent compliance.

SECTION 33(c)(i):

> the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of people;

The instant case presents a two-prong threat to the public health, a potential endangerment to the public health posed by the threat of air pollution from contaminants from the site, including asbestos and the threat of water pollution arising from the dumping of demolition debris, including asbestos piping in the ravine.

SECTION 33(c)(ii):

> the social and economic value of the pollution source;

The record indicates the building being demolished was old, abandoned and partially collapsed. Thus, the site at the time of the demolition, aside from the value of the underlying property, would have had very little value. Although undefined, it is assumed that upon the completion of a metal fabrication shop on the site, if ever completed, the site would have some social and economic value.

SECTION 33(c)(iii):

> 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;

The record indicates the site was part of an old State mental institution. Thus, it was a pre-existing site and the question of suitability or unsuitability of the site is moot.

SECTION 33(c)(iv):

> the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting frm the pollution source;

It is clear that it was technically practical and economically reasonable to comply with the applicable requirements, thereby reducing or completely eliminating the threat of emissions or discharges of asbestos and other pollutants from the site.

SECTION 33(c)(v):

any subsequent compliance.

Following notice, Respondent implemented measures to properly contain, remove and dispose of all regulated asbestos-containing waste and refuse.

SECTION 42(h) FACTORS

Section 42(h) of the Illinois Environmental Protection Act, 415 ILCS 5/42(h) (2000), provides, in relevant part, as follows:

> (h) In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3) or (b)(5) of this Section, 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 violator 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;
>
> (4) the amount of monetary penalty which will serve to deter further violations by the violator 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 respondent;

Applying the Section 42(h) factors to the present case, Complainant initially notes that subsection (5) is not applicable to the present case. The record does not indicate there are any prior adjudicated violations against the Respondent.

SECTION 42(h)(1):

the duration and gravity of the violations;

The record establishes that Respondent commenced demolition of the dining hall on May 11, 2000, and the demolition continued until it was halted in response to a request by an Agency inspector, Dennis Hancock on May 17, 2000. (Stip., para. 6, Exh. G) Thus, it appears the following violations occurred during the period May 11, 2000, to April 16, 2001..

Count I:

Violation of Section 9(a) of the Act, causing or threatening air pollution continuing until the date of cleanup, 340 days.

Violation of 35 Ill. Adm. Code 201.141, causing or threatening the release of a contaminant into the environment so as to cause or threaten air pollution, continuing 340 days.

Count II:

Violation of 40 CFR 61.145(a) and 9.1(d) of the Act, failure to inspect for RACM prior to commencing demolition.

Violation of 40 CFR 61.145(b) and 9.1(d) of the Act, failure to submit written notification prior to commencing demolition.

Violation of 40 CFR 61.145(c)(1) and 9.1(d) of the Act, failure to remove all RACM prior to commencing demolition.

Violation of 40 CFR 61.145(c)(6) and 9.1(d) of the Act, failure to adequately wet all RACM and regulated asbestos-containing material during demolition continuing until the date of the cleanup, 340 days.

Violation of 40 CFR 61.145(c)(8) and 9.1(d) of the Act, failure to have on site during demolition a trained representative, continuing until the date of the cleanup, 340 days.

Violation of 40 CFR 61.150(a)(1) and 9.1(d) of the Act, commencing on or bout May 11, 2000, and continuing through at least May 17, 2000.

The record establishes, commencing on or about May 11, Respondent caused or allowed the open dumping of demolition debris in or adjacent to a ravine adjacent to the dining hall, and that waste remained in or adjacent to that ravine until on or about April 16, 2001. Thus, it appears the following violations occurred during the period May 11, 2000, to April 16, 2001.

Count III:

Violations of Section 21(a) of the Act, open dumping continuing until the date of the cleanup, 340 days.

Violation of Section 21(e) of the Act, dispose, . . . store, abandon waste except at a facility which meets requirements of the Act continuing until the date of the cleanup, 340 days.

Violation of Section 21(p)(1) of the Act, litter continuing until the date of the cleanup, 340 days.

Violation of Section 21(p)(7) of the Act, deposition of demolition waste continuing until the date of the cleanup, 340 days.

Count IV:

Violation of Section 12(d) of the Act, open dumping of demolition debris within and adjacent to a ravine so as to create a water pollution hazard continuing until the date of the cleanup, 340 days.

Assuming Complainant has counted correctly, the record establishes Respondent committed the following:

Violation of 3 separate NESHAP requirements;

Violation of 2 separate NESHAP requirements continuing for 7 days each;

Violation of 1 separate NESHAP requirement continuing for 7 days;

Violation of Section 9 and 9.1 of the Act for 340 days each;

Violation of the Board's Air Pollution Regulations continuing for 340 days;

Violation of 4 requirements of Section 21 of the Act continuing for 340 days each; and

Violation of Section 12(d) of the Act continuing for 340 days.

Thus, there are a total of 14 separate violations continuing for a total of 3,110 days. Accordingly, pursuant to Section 42(a) which provides for a maximum penalty of $50,000.00 per violation and $10,000.00 for each day the penalty continues, it appears the maximum penalty which could be imposed in the present case is as follows:

Separate violations, 13 x 50,000 =	$ 700,000.00
Days the violation continued, 3,156 x 10,000 =	$30,156,000.00
Total penalty -	$30,850,000.00

If each day for some of the violations is considered a separate violation, the total penalty would be even higher.

Complainant, of course, is not seeking a penalty anywhere near the maximum exposure in the instant case; nonetheless, Complainant believes the calculation of the maximum penalty as provided for by the Illinois Environmental Protection Act is a useful exercise as a measure of the duration and gravity of the violations. Further, Complaint believes it is important to note that the primary pollutant of concern in the instant case is asbestos, a pollutant which, by definition under the terms of the Federal Clean Air Act, is defined as a "hazardous" pollutant. Consequently, it is clear the violations were serious and some continued for a lengthy time frame.

SECTION 42(h)(2):

> the presence or absence of due diligence on the part of the violator in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by the Act;

In order to determine the presence or absence of due diligence on the part of the Respondent, it appears useful to divide the time frames present in the instant case to the time before May 17, 2000, and the time after.

Before May 17, 2000:

It is clear that before May 17, 2000, there was a complete absence of due diligence on the part of the Respondent. This absence of due diligence is particularly disturbing because this is a Respondent who, if it did not know there were requirements applicable to asbestos, should have known. After all, this Respondent is not some "John Doe" off the street. This Respondent is a construction company. While the record does not describe the type of construction company Blue

Ridge Construction Company is, it is, nonetheless, clear that it is a construction company from its name, the activities described in the inspection reports, and the equipment depicted in the photographs (*see,* Stip., Exhs. A and B). Further, it is clear that Mr. Palmer inspected the building prior to the commencement of the demolition (Trans. pp 62-63) and was well aware of the condition of the building, and the location and condition of the pipes in the building.

Respondent will likely argue that due diligence was shown by its inquiry to the Village of Bartonville, and the fact that the Mayor, the Building Commissioner, and the Village Clerk indicated no permits were required. Respondent's attempt to hide behind the Village officials should be summarily ignored. It is not the Village's officials' responsibility to advise Respondent of State and Federal environmental requirements. It is not the Village officials doing the demolition. Respondent cannot avoid its responsibility and guilt by pointing the finger at some third party and saying, "they made me do it." The simple truth is it is Respondent's obligation to exercise due diligence and, prior to May 17, 2000, it simply did not.

The picture with regard to whether Respondent exercised due diligence after May 17, 2000, is less clear. While it is correct, following May 17, 2000, Respondent did retain the necessary expertise and, ultimately, the site was clean in accordance with applicable requirements. It is also clear that after May 17, 2000, Respondent had little choice but to comply with the applicable requirements. Failure to comply with the applicable requirements after May 17, 2000, would have exposed Respondent to very serious sanctions, including possible criminal penalties. Further, it is clear that it took too long for the site to be cleaned up in compliance with the applicable standards, just a few days short of a year. While it may be that a part of the delay may have been due to actions or inactions on the part of the Agency, the ultimate responsibility for the violations and the fact that the asbestos-containing demolition waste laid exposed in that ravine for 340 days, or almost a full year, rests with the Respondent, 340 days cannot be described as "due diligence."

SECTION 43(h)(3):

any economic benefits accrued by the violator because of delay in compliance with requirements;

The record in the instant case does not define, in any precise terms, any economic benefit accrued by the Respondent because of the delay in compliance. What the record does define is the total cost of compliance, $59,965.67, and the breakdown of the total as follows:

$10,265.31 to Clark Engineers;
$14,220.00 to N. E. Finch (trucking and excavating);
$15,446.00 to Sentry Asbestos;
$1,055.00 to Bodine Environmental; and
$18,979.00 to Tazewell County Landfill.

(Stip., para. 29, Exh. M)

Further, the record establishes that the Village of Bartonville reimbursed Respondent $56,000.00 for expenses associated with the cleanup, except for expenses directly related to asbestos on the pipes (Stip. para. 30), although the minutes of the Village meeting authorizing the payment indicated a payment of $59,965.67 was approved by the Village. (Stip., Exh. M) Either way, it is clear that the Respondent was able to shift most of, if not all of, the financial burden for Respondent's non-compliance with the law to the Village. Thus, it appears that Respondent has managed to escape relatively unscathed as a result of its noncompliance. While it may be true there was some debris in the ravine prior to Respondent's demolition of the facility, it is also clear that the cost of cleaning up the pre-existing debris was rendered much more expensive by Respondent's co-mingling of the asbestos waste. Further, it is clear that Respondent's demolition activities were responsible for co-mingling the asbestos waste with the demolition waste generated by the demolition of the building. It was not the Village's actions which contaminated the demolition debris, it was the Respondent. It was not the Village's actions which resulted in the cleanup, it was the Respondent's. This is simply inconsistent with one of the basic principles of the Act. Section 2(b) of the Act provides:

(b) 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.

In the instant case, it is the Respondent who created the damage to the environment. It is the Respondent who should pay for correcting the damage. Respondent should not be rewarded for shifting the cost to the Village.

SECTION 42(h)(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 respondent and other persons similarly subject to the Act;

Complainant believes, based on the facts in this case, that a substantial penalty is necessary to deter future violations by the Respondent and to otherwise aid in enhancing voluntary compliance with the Act by the Respondent and other persons similarly situated.

SUMMARY

For the foregoing reasons, Complainant requests the Board impose a minimum penalty of $70,000.00: $56,000.00 to assure that the cost of compliance Respondent shifted to the Village does not, in fact, end up a financial windfall for the Respondent; and $16,000.00 because Respondent is guilty of a large number of violations, some of which continued for a long time, Respondent, a construction company, failed to exercise due diligence and because Complainant believes a minimum of $16,000.00, in addition to the $56,000.00, is necessary to deter further

violations by Respondent and other persons similarly subject to the Act, all as more completely set forth in the foregoing discussion of the Section 42(h) factors.

Respectfully submitted,

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

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: _____
DELBERT D. HASCHEMEYER
Environmental Bureau
Assistant Attorney General

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Dated: 3/5/04