

ILLINOIS POLLUTION CONTROL BOARD  
October 1, 1998

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 96-261  
) (Enforcement - Air)  
G.M. DEMOLITION CORPORATION, an )  
Illinois Corporation, )  
)  
Respondent. )

ORDER OF THE BOARD (by N.J. Melas):

This action was initiated by a complaint filed on June 24, 1996. The Illinois Attorney General's Office, on behalf of the People of the State of Illinois (complainant) alleges that G.M. Demolition Corporation (GMDC) violated Section 9.1(d) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/9.1(d) (1996)) and 40 C.F.R. § 61.145 (1997) by failure to timely and completely file notices of demolition for several buildings in Cook County and one in Kankakee County. In count I of the complaint, complainant alleges that GMDC failed to provide timely notice to the Illinois Environmental Protection Agency (Agency) for the demolition sites. In count II, complainant alleges that GMDC failed to provide complete notice of the demolitions to the Agency.

This matter comes before the Board on cross motions for summary judgment filed by complainant on January 27, 1998 (comp. mot.), and GMDC on April 9, 1998 (resp. mot.). On May 7, 1998, complainant filed complainant's response to motion for partial summary judgment and a supporting memorandum. (response) On July 15, 1998, GMDC filed a reply memorandum in opposition to complainant's motion for summary judgment and in support of respondent's motion for partial summary judgment (reply).

For the reasons below, the Board grants the complainant's motion for summary judgment in part and denies it in part. The Board also grants GMDC's motion for partial summary judgment in part and denies it in part. The remaining issues and penalty matters are directed to hearing.

BACKGROUND

There is little dispute as to the background facts in this case, as established by the pleadings and motions. GMDC is a demolition contractor whose principal place of business is 122 S. Wolcott Avenue in Thornton, Cook County, Illinois. The demolitions in question took place at various times from 1993 to 1996. The structures that GMDC demolished are listed in the following table. Structures are located in Cook County unless otherwise noted.

Structure Name	Location	Count
Good Humor	10 N. 1st Ave., Maywood	II
Good Humor Garage (Garage)	20 Lake St., Maywood	I
LaGrange Water Treatment Plant (LaGrange)	131 S. Brainerd, LaGrange	I
1617-1611 S. Karlov / 4055-57 W. 16th St. (Karlov)	Chicago	II
Marquette National Bank (Marquette)	6336 S. Western, Chicago	I, II
Silo	17511 S. Halsted, Homewood	I
21625 Oak St. (21625)	Matteson	II
Whiskey A Go-Go (Go-Go)	7-9 State St., Calumet City	I, II
AKC Haunted House (AKC)	231 E. Broadway, Bradley, Kankakee County	I

Complainant alleges that GMDC has repeatedly violated Section 9.1(d) of the Act. That Section provides that “no person shall . . . (v)iolate any provisions of Sections 111, 112, 165, or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto.” 415 ILCS 5/9.1(d) (1996). Pursuant to Section 112 of the Clean Air Act, asbestos is listed as a hazardous air pollutant. 42 U.S.C. § 7412(b)(1) (1997). The National Emission Standards for Hazardous Air Pollutants (NESHAPs) covers asbestos, and the asbestos NESHAP requires demolition companies and contractors to provide proper and timely notice to federal and state officials regarding demolition activities. 40 C.F.R. § 61.141 and § 61.145 (1997). Notice information is recorded on a “Notification of Demolition and Renovation” form (notification form) submitted to the United States Environmental Protection Agency (USEPA) and the Agency.<sup>1</sup>

As mentioned above, on June 24, 1996, complainant filed a two-count complaint alleging that GMDC violated Section 9.1(d) of the Act when it failed to comply with the asbestos NESHAP. 415 ILCS 5/9.1(d) (1996), 40 C.F.R. § 61.145 (1996). On July 29, 1996, GMDC filed an answer and affirmative defenses. The complainant filed a response to GMDC’s affirmative defenses on August 19, 1996. Complainant then filed an amended complaint on February 7, 1997, and GMDC filed an answer and affirmative defenses to the amended complaint on March 5, 1997. On March 12, 1997, complainant filed a response to GMDC’s answer and affirmative defenses to the amended complaint. On March 24, 1997, complainant filed a first set of interrogatories to GMDC.

### STANDARD

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,

<sup>1</sup> The asbestos NESHAP requires demolition companies to provide notice to the Administrator of the USEPA. This program has been delegated to the State of Illinois. Although the notification forms are sent to both USEPA and the Agency, complainant’s allegations concern notification to the Agency only.

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 party”. *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 229, 240, 489 N.E.2d 867 (1986).

### DISCUSSION

In its motion for summary judgment, complainant alleges several violations of the asbestos NESHAP at each of the various demolition sites. In order to address each allegation in an organized manner, the Board will address the allegations according to legal subject matter. The Board will first address what a “facility” is according to the asbestos NESHAP. The Board will then address timely notice, description of facilities, asbestos, and miscellaneous topics.

#### “Facility” as defined by the Asbestos NESHAP

##### 21625 Structure and the Definition of “Facility”

In count II, complainant alleges that GMDC demolished the 21625 structure without providing complete notice. Comp. mot. at 16-17, Klein aff. at attachment 5. Arguing that the 21625 structure is not a “facility” as defined by the asbestos NESHAP, GMDC responds that the demolition and renovation regulations in the asbestos NESHAP are not applicable to the 21625 structure and that no notice needs to be filed. Resp. mot. at 3.

The term “facility” is defined in the asbestos NESHAP as “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).” (Emphasis added.) 40 C.F.R. § 61.141 (1997). The notice provisions in the asbestos NESHAP only apply to the “owner or operator of a demolition or renovation activity” who demolishes or renovates “a facility”. 40 C.F.R. § 61.145(a) (1997).

GMDC claims that the 21625 structure was a single-family residence. Resp. mot. at 3, Martin aff. at 12. In response, complainants cite to a *Federal Register* provision from 1990 which states

“EPA does not consider residential structures that are demolished or renovated as part of a commercial or public project to be exempt from this rule. For example, the demolition of one or more houses as part of an urban renewal project, a highway construction project, or a project to develop a shopping mall, industrial facility, or other private development, would be subject to the NESHAP”. 55 Fed. Reg. 48,412 (1990).

Complainant states that the 21625 structure was demolished as part of a commercial project and thus was subject to the asbestos NESHAP. Response at 3; comp. mot., Klein aff. at attachment 5. GMDC argues that only the language from the NESHAP should control. It states that the preamble language above is not applicable because it is merely a non binding statement to a revision of the NESHAP. Reply at 3-7.

When analyzing regulations, the Board applies rules used in the construction of statutes as those rules apply to regulations promulgated by an administrative agency; if the language of the statute is clear and unambiguous, the Board (like a court) need not look to other language. People v. Clark Refining & Marketing, Inc. (September 17, 1998), PCB 95-163, slip op. at 3; citing People v. Kilpatrick, 216 Ill. App. 3d 875, 576 N.E.2d 546, 551 (2d Dist. 1991) and In re Marriage of Logston, 103 Ill. 2d 266, 469 N.E.2d 167 (1984). The exclusion for residences with four or fewer units is unambiguous. The language above from the Federal Register is merely USEPA's response to comments it received when it redrafted the definition of "facility" in 1990. 55 Fed. Reg. 48,412 (1990).

Accordingly, the Board grants GMDC's motion for summary judgment with respect to the 21625 structure, and the Board denies complainant's motion for summary judgment here. GMDC need not have notified the Agency regarding the demolition of the 21625 facility because it was exempt from the asbestos NESHAP.

#### Notice of the Demolition for the Garage Facility

In count I, complainant alleges that GMDC did not submit notification of the Garage facility demolition. Comp. mot. at 11, Klein aff. at attachment 3. GMDC responds that it considered the Garage and Good Humor demolitions to be "a single job" and that the notice it filed for the Good Humor demolition was also notice for the Garage demolition. Resp. mot. at 4-5.

Complainant maintains that the Garage and Good Humor facilities, although adjacent, have separate addresses. Comp. mot. at 4; response at 6. Although GMDC states that the facilities were on the same parcel of property, it never denies complainant's assertion regarding the different addresses.

GMDC filed a separate notification for the Garage demolition with the Cook County Department of Environmental Control because Cook County requested it. Comp. mot. at Balkin aff.; resp. mot. at 4. However, GMDC still considered the Garage and Good Humor demolitions to be one job and thus did not file a separate notification form for the Garage with the Agency. Resp. mot. at 4.

In the Good Humor notification form, GMDC describes the Good Humor facility as a warehouse, but it does not mention the Garage. Comp. mot., Klein aff. at attachment 3. The Good Humor notification form did not alert the Agency to the fact that the Garage was to be demolished. In other words, the Agency was not notified that GMDC was demolishing the Garage.

The Board finds in favor of complainant's motion for summary judgment with respect to the Garage. The Board denies GMDC's motion for summary judgment on the same point.

### Timeliness of Notice

#### Late Notice

In count I, complainant alleges that GMDC failed to provide timely notice for the Marquette, AKC, and Go-Go demolitions. Comp. mot. at 11-12, Klein aff. at attachments 4, 6, and 7. The asbestos NESHAP provides that owners or operators of demolition or renovation activities shall postmark or deliver the notice "10 working days before the demolition begins." 40 C.F.R. § 61.145(b)(3)(i) (1997). Working day is defined as "Monday through Friday and includes holidays that fall on any of the days Monday through Friday." 40 C.F.R. § 61.141 (1997).

Complainant alleges that there was only eight working days notice for the Marquette demolition and nine days for the Go-Go demolition. Comp. mot. at 11, Klein aff. at attachments 4 and 7. GMDC claims that the date of the Go-Go demolition was beyond its control because Calumet City officials scheduled the demolition without consulting GMDC. Resp. mot. at 11. GMDC claims that the notice for Marquette was late as a result of clerical error. *Id.* The Board finds in favor of complainant's summary judgment motion with respect to untimely notice at the Marquette and Go-Go facilities. GMDC's excuses do not exempt it from noncompliance with the NESHAP.

Complainant also alleges that there was only eight working days notice for the AKC demolition. Comp. mot. at 11-12, Klein aff. at attachment 6. At the request of the Agency, GMDC claims that it agreed to postpone the AKC demolition for two working days. Resp. mot. at 10, Martin aff. at 3. Complainant does not dispute GMDC's claim. As a result, complainant had ten days notice prior to the GMDC demolition, not eight as it claims. The Board denies complainant's motion for summary judgment on this point.

#### Revised Notice

In count I, complainant alleges that GMDC failed to provide revised notice of the AKC demolition. Comp. mot. at 12, Klein aff. at attachment 6. Complainant also alleges that GMDC failed to provide timely revised notice for the LaGrange demolition. Comp. mot. at 12, Klein aff. at attachments 8-11. The asbestos NESHAP provides that demolition contractors must "(p)rovide the Administrator with a written notice of the new start date as soon as possible before, and no later than, the original start date." 40 C.F.R. § 61.145(b)(3)(iv) (A)(2) (1997). Delivery of the updated notice by the U.S. Postal Service, commercial delivery service, or hand delivery is acceptable."

Complainant alleges that GMDC failed to submit a revised notification specifying that the AKC demolition would begin October 10, 1995, two working days after the original start date of

October 6, 1995. Comp. mot. at 12. GMDC submitted a letter, dated October 24, 1995, informing the Agency of the date change. Resp. mot. at exhibit 3; comp. mot. at 12.

The Board finds that the Agency was notified in writing that the revised demolition date was October 10, 1995. The asbestos NESHAP says nothing about the form of the revised written notice, only that the owner of the demolition company provide it in a timely manner. In this instance, GMDC did not provide notice of the revised demolition date prior to the original demolition date as mandated by the asbestos NESHAP. However, complainant does not allege late notice in this instance, it alleges no notice. Therefore, the Board denies the complainant's motion for summary judgment regarding the revised notice for AKC.

Complainant also alleges that GMDC filed the first revised notice for the LaGrange facility (specifically the well garage within LaGrange) demolition stating that the originally scheduled demolition date had been changed to October 19, 1995. Comp. mot. at 12, Klein aff. at attachments 8 and 9. GMDC then submitted a second revised notification postmarked October 24, 1995, three working days after the first revised date of October 19. Comp. mot. at 12, Klein aff. at attachments 10 and 11.

In order to timely file revised notification, GMDC must provide written notice of the new start date before the original start date. 40 C.F.R. 61.145 § (b)(3)(iv)(A)(2) (1997). GMDC's second revised notification form was filed after the first revised start date, in violation of the asbestos NESHAP. GMDC points out that the Agency had the revised notice for the second demolition prior to the start of the demolition, but this does not excuse GMDC from noncompliance with the asbestos NESHAP. Resp. mot. at 11. The Board finds in favor of the complainant's motion for summary judgment regarding the LaGrange facility.

### Missing Demolition Dates

In count I, complainant alleges that GMDC failed to include scheduled starting and completion dates for the Silo demolition. Comp. mot. at 10, Klein aff. at attachments 1 and 2. In count II, complainant alleges that GMDC failed to include scheduled dates for the Good Humor demolition. Comp. mot. at 16, Klein aff. at attachment 3.<sup>2</sup> The asbestos NESHAP provides that "(s)cheduled starting and completion dates of demolition or renovation" be included in the notice. 40 C.F.R. § 61.145(b)(4)(ix) (1997).

There are two notification forms for Silo attached to complainant's motion for summary judgment. There is a great deal of missing information in attachment 1, and attachment 2 appears to be a duplicate of attachment 1 with added facility descriptions and scheduled demolition dates. Comp. mot., Klein aff. at attachments 1 and 2. It is not clear from the record who filled in the missing information from attachment 1 that appears in attachment 2. Moreover, it is not clear

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<sup>2</sup> Complainant alleges the violation of section 61.145(b)(4)(ix) but does not list that particular section of the asbestos NESHAP in the motion for summary judgment. The Board assumes that complainant inadvertently left out this section of the asbestos NESHAP.

when the missing information was filled in; the date received and postmark date on each attachment is the same. This makes it difficult to determine when the Agency had actual notice of the demolition dates. As a result, the Board directs this matter to hearing.

For Good Humor, GMDC states that the missing dates were provided via a letter at the Agency's request. Resp. mot. at 7 and exhibit 3. Complainant responds that a violation of the Act and the asbestos NESHAP cannot be corrected by subsequent notification. Response at 9. The Board finds in favor of the complainant's motion for summary judgment with respect to dates on the Good Humor notification form.

### Description of Facilities

#### Location of Facilities

The asbestos NESHAP provides that the owner or operator of a demolition activity must include "(l)ocation and street address (including building number or name and floor or room number, if appropriate), city, county, and state" for the facility. 40 C.F.R. § 61.145(b)(4)(vii) (1997).

In count I, complainant alleges that GMDC did not mention the name, address, city, county, and state for the Silo facility in the notification form. Comp. mot. at 10, Klein aff. at attachments 1 and 2. As discussed above, attachment 1 is an incomplete Silo notification form, and attachment 2 is a copy of the same form with additional information filled in. Comp. mot., Klein aff. at attachments 1 and 2. GMDC admits that it did not include the name of the Silo facility, that address information was supplied although not in the correct spot, and, generally, that other information regarding the building was missing. Resp. mot. at 7, 10. GMDC also states that Agency personnel called GMDC to obtain the missing information. Resp. mot. at 10. Gordon Martin from GMDC claims that the missing information was provided to the Agency prior to the Silo demolition. Resp. mot., Martin aff. at 2.

Although GMDC provided the missing information, it is not clear how far in advance it was provided. Thus, it is not clear from the record when the Agency had one day's notice or ten days' notice regarding the address information for the Silo facility. The Board directs this matter to hearing.

In count II, complainant alleges that GMDC did not provide the building name nor the city for the Karlov facility. Comp. mot. at 1, Klein aff. at attachment 12. GMDC responds that the Karlov facility had no name and that "it would be absurd to require demolition contractors to make up names for buildings just to fill in a blank on a form." Resp. mot. at 7.

The asbestos NESHAP requires only that the demolition contractor provide the "building number *or* name". (Emphasis added.) 40 C.F.R. § 61.145(b)(4)(vii) (1997). (The Board notes that the notification form requests the contractor to include both the building number and name.) The Board denies complainant's motion for summary judgment on the name of the Karlov facility and finds in favor of GMDC's motion for summary judgment on this matter.

Regarding the “no city” allegation, GMDC responds that, at the time of demolition, the building owner was the City of Chicago which is indicated on the notification form. Resp. mot. at 9; comp. mot., Klein aff. at attachment 12. GMDC states that the Agency should have been able to figure out that the Karlov facility was located in Chicago because the City of Chicago was the owner. Resp. mot. at 9. Although this is a logical conclusion, it does not excuse GMDC from noncompliance with the asbestos NESHAP. Listing the city for the facility to be demolished is a requirement, not an option. See 40 C.F.R. § 61.145(b)(4)(vii) (1997). The Board finds in favor of the complainant’s motion for summary judgment on this point.

#### Physical Characteristics of a Facility

In count I, complainant alleges that GMDC did not include the size, the number of floors, age in years, nor the present and prior use for the Silo facility. Comp. mot. at 10, Klein aff. at attachments 1 and 2. The asbestos NESHAP provides that the notification must provide a “description of the facility or affected part of the facility including the size (square meters [square feet] and number of floors), age, and present and prior use of the facility.” 40 C.F.R. § 61.145(b)(4)(iv) (1997).

As in the previous section, GMDC admits that it did not include the description of the facility and then states that Agency personnel called GMDC to obtain the missing information. Resp. mot. at 10. And, again, it appears that the missing information that was not included in attachment 1 was subsequently added to attachment 2. It is not clear when the information was added, and therefore it is not clear when the agency had notice of the description of Silo. The Board directs this matter to hearing.

#### Asbestos

##### Estimating the Amount of Asbestos to be Removed / Not to be Removed Prior to Demolition

In count II, complainant alleges that GMDC failed to estimate the amount of nonfriable Regulated Asbestos Containing Material (“RACM”) to be removed from the Go-Go facility. Comp. mot. at 17, Klein aff. at attachment 7.

The asbestos NESHAP provides that a demolition contractor shall include an “(e)stimate of the approximate amount of RACM to be removed from the facility” in the notice. 40 C.F.R. § 61.145(b)(4)(iv) (1997). Nonfriable asbestos containing material is, “any material containing more than 1 percent asbestos . . . that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.” 40 C.F.R. § 61.141 (1997). Certain types of nonfriable asbestos are included in the definition of RACM. *Id.*

In counts I and II, the complainant also alleges that GMDC failed to estimate the amount of asbestos containing material (ACM) *not* to be removed prior to demolition activities at the Silo, Good Humor, Marquette, Go-Go, and Karlov facilities. Comp. mot. at 10, 15-18, Klein aff. at attachments 1-4, 7, and 12.



The asbestos NESHAP provides that each owner or operator of a demolition or renovation facility shall “estimate the approximate amount of Category I and Category II nonfriable ACM in the affected part of the facility that will not be removed prior to demolition” . 40 C.F.R. § 61.145(b)(4)(iv) (1997). Category I nonfriable ACM is “asbestos-containing packings, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos”, while Category II nonfriable ACM is “any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos . . . that, when dry, cannot be crumbled pulverized, or reduced to powder by hand pressure.” 40 C.F.R. § 61.141 (1997).

GMDC states that in section IV of each notification form it wrote that there was no asbestos in the facilities in question. Resp. mot. at 3-4. GMDC argues that it should not have to estimate the amount of asbestos to be removed or not to be removed when it states that there is none present in a prior section of the form. *Id.*

Although GMDC’s argument is logical, it does not excuse noncompliance with the asbestos NESHAP. GMDC only had to write “none” in the spaces on the form for the estimates of asbestos to be removed and not to be removed. GMDC did not, and it violated the asbestos NESHAP. The Board finds in favor of complainant’s summary judgment motion with respect to failure to indicate the amount of asbestos to be removed and not to be removed from the facilities in question. The Board denies GMDC’s motion for summary judgment on these same matters (with the exception of the Good Humor facility which GMDC does not mention).

### Analytical Method

In counts I and II, complainant alleges that GMDC fails to include the analytical method employed to detect asbestos for the Silo, Good Humor, and Go-Go facilities. Comp. mot. at 10, 16, 17, Klein aff. at attachments 1-3 and 7. The asbestos NESHAP provides that the “(p)rocedure, including analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM” must be included in the notice. 40 C.F.R. § 61.145(b)(4)(v) (1997).

GMDC responds that at section IX of the notification form, the regulated entity must include the “analytical method, if appropriate, used to detect the presence of asbestos material” (emphasis in original) Resp. mot. at 5; GMDC believes that the use of the term “appropriate” is vague and that the regulated entity must guess if it should include the analytical method. *Id.* For each facility, GMDC determined that it was not appropriate to describe the analytical method and left section IX of the form blank. *Id.*

It appears that GMDC has violated this section of the NESHAP by not including the analytical method. However, GMDC argues that section IX of the notification form is misleading in that it appears to give the regulated entity the option to comply with or violate the asbestos NESHAP. The Board denies complainant’s motion for summary judgment with respect to Silo, Good Humor, and Go-Go on this point. The Board finds in favor of GMDC’s summary judgment motion here regarding Silo and Go-Go.

### Work Practices to Prevent Asbestos Emissions

In count I, complainant alleges that GMDC failed to provide a description of work practices to prevent asbestos emissions from the Silo facility. Comp. mot. at 11, Klein aff. at attachments 1 and 2. The asbestos NESHAP provides that demolition contractors must describe “work practices and engineering controls to be used . . . including asbestos removal and waste handling emission control procedures.” 40 C.F.R. § 61.145(b)(4)(xi) (1997).

The requirements in section 61.145(b)(4)(ix) of the asbestos NESHAP apply if the combined amount of RACM at the facility is, “(i) At least 80 linear meters (260 linear feet) 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.” 40 C.F.R. § 61.145 (a)(2) (1997).

GMDC maintains that, at the time of demolition, the Silo facility was only six years old. Resp. mot. at 6. GMDC was confident that “there was no asbestos at the site, at the time of demolition or ever . . . . There was no need to include a description of work practices and engineering controls utilized to prevent emissions of asbestos at the demolition site.” *Id.*

Although GMDC states that there was no asbestos at the Silo facility, GMDC offers no proof of this assertion. The Board finds that there is a lack of evidence in the record regarding the amount of asbestos (if any) removed from the Silo facility. The Board directs this matter to hearing.

### Procedures to be Followed if ACM is Found Unexpectedly

Complainant alleges that GMDC failed to provide a description of procedures to be followed if ACM is found unexpectedly at Silo. Comp. mot at 11, Klein aff. at attachments 1 and 2. The asbestos NESHAP provides that demolition contractors must describe “procedures to be followed in the event that unexpected RACM is found or Category II nonfriable ACM becomes crumbled, pulverized, or reduced to powder.” 40 C.F.R. § 61.145 (b)(4)(xvi) (1997). GMDC responds as it did immediately above, alleging that there was no asbestos at Silo and that it is not necessary to follow section 61.145(b)(4)(xvi) of the asbestos NESHAP. Resp. mot. at 6.

In response, complainant states that it is irrelevant how little asbestos is present at the demolition site and that GMDC must follow this section of the asbestos NESHAP. Response at 8. Demolition contractors must follow Section 61.145(b)(4)(xvi) no matter what amount of asbestos is present at the demolition site - even if no asbestos is present at all. 40 C.F.R. § 61.145(a) (1997). The Board therefore finds in favor of complainant’s motion for summary judgment on this point.

### Miscellaneous Topics

### Demolition Order

In count II, complainant alleges that GMDC failed to provide a copy of the demolition order with the notification form for the Go-Go and Karlov facilities. Comp. mot. at 17-18, Klein aff. at attachments 7 and 12. Notification requirements vary somewhat depending on the type of demolition taking place. A copy of the demolition order must be attached to the notification form only “(i)f the facility is being demolished under an order of a state or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse.” 40 C.F.R. § 61.145(a)(3) (1997).

The parties do not dispute the fact that the City of Chicago ordered the demolition of the Karlov facility; similarly there is no dispute about Calumet City’s demolition order for the Go-Go facility. Comp. mot. at 17-18; resp. mot. at 8-9. GMDC admits that it did not file demolition orders because it alleges that section 61.145 (a)(3) of the asbestos NESHAP does not apply to Go-Go and Karlov. Resp. mot. at 8-9.

The Board finds that, although Go-Go and Karlov were demolished pursuant to municipal demolition orders, it is not clear from the record if the municipalities ordered the demolitions because Go-Go and Karlov were “structurally unsound and in danger of imminent collapse.” 40 C.F.R. § 61.145(a)(3) (1997). Therefore the Board directs this matter to hearing.

### Type of Notice

In count II, complainant alleges that GMDC failed to provide the type of notification for the Marquette facility. Comp. mot. at 16, Klein aff. at attachment 4. The asbestos NESHAP provides that a demolition contractor must include, “an indication of whether the notification is the original or a revised notification” in the notice. 40 C.F.R. § 61.145(b)(4)(i) (1997).

GMDC admits to the violation but claims that it is *de minimis*. Resp. mot. at 9. Even though GMDC may be correct about the *de minimis* nature of the violation, it is a violation nonetheless. The Board finds in favor of complainant’s summary judgment motion on this point.

### Penalties, Costs, and Attorney Fees

Complainant requests that the Board order GMDC to pay a civil penalty of \$50,000, and pay costs (including attorney fees) pursuant to Section 42(f) of the Act. See 415 ILCS 5/42(f) (1996). Response at 14. The Board will reserve ruling on this part of complainant’s request at this time and allow these issues to be addressed at hearing, as more fully described below.

### ORDER

1. The Board finds that GMDC violated Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (1996)) by failing to abide by the demolition notice provisions of the asbestos NESHAP at 40 C.F.R. § 61.145 (1997). The specific violations, listed by facility, are:

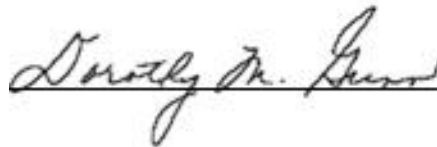
- A. Good Humor
  - i. Omitted demolition dates
  - ii. Omitted ACM not to be removed from the facility
- B. Garage
  - i. No notice
- C. LaGrange
  - i. No revised notice
- D. Karlov
  - i. Omitted city for the facility
  - ii. Omitted ACM not to be removed from the facility
- E. Marquette
  - i. Late notice
  - ii. Omitted ACM not to be removed from the facility
  - iii. Omitted type of notice
- F. Silo
  - i. Omitted ACM not to be removed from the facility
  - ii. Omitted procedure to be followed if ACM is found unexpectedly.
- G. Go-Go
  - i. Late notice
  - ii. Omitted ACM to be removed from the facility
  - iii. Omitted ACM not to be removed from the facility

2. The Board orders the following alleged violations to hearing, consistent with the Board's resources:

- A. Karlov
  - i. Neglected to include demolition orders with notice
- B. Silo
  - i. Omitted scheduled starting and completion dates.
  - ii. Omitted name, address, city, county, and state for the facility.
  - iii. Omitted number of floors, age in years, present use, and prior use for the facility.
  - iv. Omitted description of work practices to prevent asbestos emissions.
- C. Go-Go
  - i. Neglected to include demolition orders with notice
- D. All facilities except 21625 and AKC
  - i. Penalties, costs, and attorney fees

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 1st day of October 1998 by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board