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OCT 15 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
by LISA MADIGAN, Attorney General )

Complainant, )

v. )

ASBESTOS CONTROL AND )  
ENVIRONMENTAL SERVICES CORP., )  
an Illinois corporation, )

Respondent. )

PCB 04-162

(Enforcement)

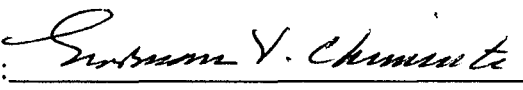
NOTICE OF FILING

To: Bridget M. Carlson, Esq.  
Assistant Attorney General  
Environmental Bureau North  
188 W. Randolph Street, 20<sup>th</sup> Floor  
Chicago, Illinois 60601

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

PLEASE TAKE NOTICE that on October 14, 2004 I mailed Respondent's Answer to Complaint by certified mail to the Office of the Clerk of the Illinois Pollution Control Board for filing with the Board, a true and correct copy of which is attached hereto and herewith served upon you.

ASBESTOS CONTROL AND ENVIRONMENTAL  
SERVICES CORP., Respondent

By:   
Norman V. Chimenti

Norman V. Chimenti, Esq.  
Martin, Craig, Chester & Sonnenschein  
2215 York Road  
Suite 550  
Oak Brook, Illinois 60523  
(630) 472-3408



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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
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 Complainant, )  
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 an Illinois corporation, )  
 )  
 Respondent. )

ANSWER TO COMPLAINT

Respondent, ASBESTOS CONTROL AND ENVIRONMENTAL SERVICES CORP., by its attorney, Norman V. Chimenti, as its Answer to Complaint filed herein by Complainant, PEOPLE OF THE STATE OF ILLINOIS, states the following:

COUNT I

AIR POLLUTION

1. Respondent admits the allegations contained in paragraph 1 of the Complaint, except Respondent is without sufficient information to form a belief as to whether the Complaint is brought upon the request of Illinois EPA, and, therefore, denies the same..

2. Respondent admits the allegations contained in Paragraph 2 of the Complaint.

3. Respondent admits the allegations contained in Paragraph 3 of the Complaint.

4. Respondent admits the allegations contained in Paragraph 4 of the Complaint.

5. Respondent admits that it sent an initial Notification of Demolition and Renovation to Complainant (the "Notification") informing Complainant of scheduled renovation activities at a vacant warehouse located at 816 W. 47<sup>th</sup> Place, Chicago, Cook County, Illinois ("facility"), but is



without sufficient information to form a belief as to whether Complainant received said Notification on November 21, 2002, and, therefore, denies the same as alleged in paragraph 5 of the Complaint.

6. Respondent admits the allegations contained in paragraph 6 of the Complaint as to the initial Notification.

7. Respondent admits that the initial Notification alleged in paragraph 7 of the Complaint stated that the work at the facility was to commence on November 25, 2002 and to be completed on December 2, 2002, and denies all remaining allegations contained in said paragraph.

8. Respondent admits that on December 19, 2002, Complainant performed an inspection of the facility and that City of Chicago Department of the Environment ("DOE") was present during a portion of said inspection. Respondent denies all remaining allegations contained in paragraph 8 of the Complaint.

9. Respondent denies the allegations contained in paragraph 9 of the Complaint.

10. Respondent denies the allegations contained in paragraph 10 of the Complaint.

11. Respondent denies the allegations contained in paragraph 11 of the Complaint.

12. Respondent denies the allegations contained in paragraph 12 of the Complaint.

13. Respondent denies the allegations contained in paragraph 13 of the Complaint.

14. Respondent denies the allegations contained in paragraph 14 of the Complaint.

15. Respondent admits that Section 9(a) of the Act contains the provision alleged by Complainant in paragraph 15 of the Complaint, and denies all remaining allegations contained in said paragraph.



16. Respondent admits that Section 201.141 of the Illinois Pollution Control Board ("Board") Air Pollution Regulations contains the provision alleged in paragraph 16 of the Complaint, and denies all remaining allegations contained in said paragraph.

17. Respondent admits that Section 3.165 of the Act contains the definition alleged in paragraph 17 of the Complaint, and denies all remaining allegations contained in said paragraph.

18. Respondent admits that asbestos fibers are defined as a "contaminant" by Section 3.165 of the Act, and denies all remaining allegations contained in paragraph 18 of the Complaint.

19. Respondent admits that Section 3.115 of the Act contains the definition alleged in paragraph 19 of the Complaint, and denies all remaining allegations contained in said paragraph.

20. Respondent is without sufficient information to form a belief as to the allegations contained in paragraph 20 of the Complaint, and, therefore, denies the same.

21. Respondent admits that Section 3.315 of the Act contains the definition alleged in paragraph 21 of the Complaint, and denies all remaining allegations contained in said paragraph.

22. Respondent admits the allegations contained in paragraph 22 of the Complaint.

23. Respondent denies the allegations contained in paragraph 23 of the Complaint.

24. Respondent denies the allegations contained in paragraph 24 of the Complaint.

25. Respondent denies the allegations contained in paragraph 25 of the Complaint.

Respondent denies that Complainant is entitled to the order of the Board requested by Complainant in sub-paragraphs 2-6, inclusive, of the unnumbered paragraph located at the end of Count I of the Complaint.



## **COUNT II**

### **FAILURE TO FOLLOW PROPER EMISSION CONTROL PROCEDURES**

1. - 16. Respondent restates and incorporates herein by reference its answers to paragraphs 1 through 14, and paragraphs 21 and 22 of Count I of the Complaint as its answers to paragraphs 1 through 16 of Count II of the Complaint.

17. Respondent admits that Section 9.1(d) of the Act contains the provision alleged in paragraph 17 of Count II of the Complaint, and denies all remaining allegations contained in said paragraph.

18. Respondent admits the allegations contained in paragraph 18 of Count II of the Complaint.

19. Respondent admits that Section 112(d) of the CAA contains the provision alleged in paragraph 19 of Count II of the Complaint, and denies all remaining allegations contained in said paragraph.

20. Respondent admits that Section 112(h) of the CAA contains the provision alleged in paragraph 20 of Count II of the Complaint, and denies all remaining allegations contained in said paragraph.

21. Respondent is without sufficient information to form a belief as to the allegations contained in paragraph 21 of Count II of the Complaint, and, therefore, denies the same.

22. Respondent admits that Section 61.141 of the USEPA's NESHAP for asbestos contains the provisions alleged in paragraph 22 of Count II of the Complaint, and denies all remaining allegations contained in said paragraph.



23. Respondent is without sufficient information to form a belief as to the allegations contained in paragraph 23 of Count II of the Complaint, and, therefore, denies the same.

24. Respondent is without sufficient information to form a belief as to the allegations contained in paragraph 24 of Count II of the Complaint, and, therefore, denies the same.

25. Respondent admits that Section 61.145(a) of USEPA's NESHAP for asbestos contains the provisions alleged in paragraph 25 of Count II of the Complaint, and denies all remaining allegations contained in said paragraph.

26. Respondent admits that its initial Notification stated that the amount of RACM to be removed was approximately 6,500 lineal feet as alleged in paragraph 26 of the Complaint, and denies all remaining allegations contained in said paragraph.

27. Respondent admits that Section 61.145(c)(3) and (c)(6) of USEPA's NESHAP for asbestos contain the provisions alleged in paragraph 27 of the Complaint, and denies all remaining allegations contained in said paragraph.

28. Respondent denies the allegations contained in paragraph 28 of the Complaint.

29. Respondent denies the allegations contained in paragraph 29 of the Complaint.

Respondent denies that Complainant is entitled to the order of the Board requested by Complainant in sub-paragraphs 2-6, inclusive, of the unnumbered paragraph located at the end of Count II of the Complaint.



### **COUNT III**

#### **IMPROPER DISPOSAL**

1. - 26. Respondent restates and incorporates herein by reference its answers to paragraphs 1-14, and paragraphs 21 and 22 of Count I of the Complaint, and paragraphs 17 through 26 of Count II of the Complaint, as its answers to paragraphs 1 through 26 of Count III of the Complaint.

27. Respondent admits that Section 61.150 of USPEPA's NESHAP for asbestos contains the provisions alleged in paragraph 27 of Count III of the Complaint, and denies all remaining allegations contained in said paragraph.

28. Respondent denies the allegations contained in paragraph 28 of Count III of the Complaint.

29. Respondent denies the allegations contained in paragraph 29 of Count III of the Complaint.

30. Respondent denies the allegations contained in paragraph 30 of the Complaint.

Respondent denies that Complainant is entitled to the order of the Board requested by Complainant in sub-paragraphs 2-6, inclusive, of the unnumbered paragraph located at the end of Count III of the Complaint.

#### **AFFIRMATIVE DEFENSES**

As affirmative defenses to the Complaint, Respondent asserts the following:

1. At the time of the inspection alleged in the Complaint, and before and after said alleged inspection, the temperature at the point of wetting was below 32° F. Accordingly, Respondent was not required to comply with Sections 61.145(c)(2)(i) and/or (c)(3) of USEPA's NESHAP for asbestos, pursuant to Section 61.145(c)(7)(i) of said NESHAP for asbestos. Therefore, Respondent

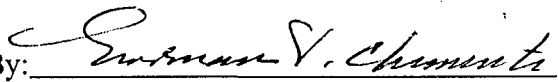


requests that the Board enter an order in favor of Respondent and against Complainant dismissing the Complaint in its entirety, and granting such other relief as the Board deems appropriate and just.

2. The alleged violations contained in Counts I and II of the Complaint are duplicitous. The statutory and regulatory framework alleged by Complainant in those Counts of the Complaint recite an alleged legislative and rule-making history as the alleged basis for what amounts to a single alleged work practice standard violation of failing to "adequately wet" RACM prior to disposal. Without in any way limiting, contradicting or negating its denial of the allegations of the Complaint or its first affirmative defense set forth above, Respondent asserts that if proven by Complainant, the violations alleged by Complainant in Counts I and II comprise a single violation and should be treated as such by the Board in all respects.

Respectfully submitted,

ASBESTOS CONTROL AND  
ENVIRONMENTAL SERVICES CORP.,  
Respondent

By: 

Norman V. Chimenti  
Attorney for Respondent

Norman V. Chimenti, Esq.  
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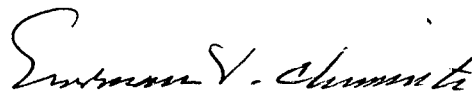


### CERTIFICATE OF SERVICE

It is hereby certified that on October 14, 2004, a true and correct copy of the foregoing Answer to Complaint was sent by First Class Mail to each of the persons shown below and listed in the Notice of Filing, by depositing same in the U.S. Mail depository located at 2215 York Road, Oak Brook, Illinois in an envelope with sufficient postage prepaid.

Bridget M. Carlson, Esq.  
Assistant Attorney General  
Environmental Bureau North  
188 W. Randolph Street, 20<sup>th</sup> Floor  
Chicago, Illinois 60601  
Attorney for Complainant

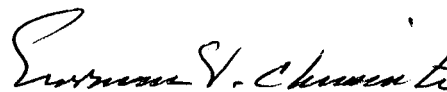
Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601



Norman V. Chimenti

It is further certified that on October 14, 2004 the originals and nine (9) copies of the foregoing Answer to Complaint and the Notice of Filing were sent by certified mail in the aforesaid manner for filing with the Illinois Pollution Control Board to the following person:

Dorothy M. Gunn  
Clerk of the Illinois Pollution Control Board  
100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601



Norman V. Chimenti