

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB NO.</b>
	)	<b>(Enforcement-Air)</b>
	)	
<b>CHARLES COWELL,</b>	)	
	)	
<b>Respondent.</b>	)	

**NOTICE OF ELECTRONIC FILING**

To: See Attached Service List

PLEASE TAKE NOTICE that on November 29, 2011, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601 a COMPLAINT and ENTRY OF APPEARANCE, copies of which are attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2010), to correct the pollution alleged in the Complaint filed in this case.

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: \_\_\_\_\_

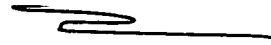
THOMAS DAVIS, Chief  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031

Dated: November 29, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I did on November 29, 2011, cause to be served by Certified Mail, Return Receipt Requested, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, COMPLAINT and ENTRY OF APPEARANCE upon the persons listed on the Service List.



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THOMAS DAVIS, Chief  
Assistant Attorney General

This filing is submitted on recycled paper.

**SERVICE LIST**

Charles Cowell  
c/o Richard Cooper  
Attorney at Law  
P.O. Box 99  
Red Bud, IL 62278

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>PCB No.</b>
	)	<b>(Enforcement-Air)</b>
<b>CHARLES COWELL,</b>	)	
	)	
<b>Respondent.</b>	)	

**ENTRY OF APPEARANCE**

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, THOMAS DAVIS, Assistant Attorney General of the State of Illinois, hereby enters his appearance as attorney of record.

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: \_\_\_\_\_  
THOMAS DAVIS, Chief  
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<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>No. PCB 11-</b>
	)	<b>(Enforcement-Air)</b>
<b>CHARLES COWELL,</b>	)	
	)	
<b>Respondent.</b>	)	

**COMPLAINT**

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 ENVIRONMENTAL PROTECTION AGENCY, complains of the Respondent, CHARLES COWELL, as follows:

**GENERAL ALLEGATIONS**

1. Each count is brought on behalf of the People of the State of Illinois, by Lisa Madigan, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2010), and charged, inter alia, with the duty of enforcing the Act.

3. Charles Cowell is a developer doing business in Sparta, Randolph County, Illinois.

4. Between November 9, 2009 and December 31, 2009, on dates better known to the Respondent, the Respondens caused or allowed the demolition of buildings located in Sparta.

The commercial buildings located at 206 West Broadway formerly contained a business known as "Elwyn's Cleaners" and were owned at the time of demolition by City of Sparta. The commercial buildings located at 200 and 202 West Broadway and 221 South St. Louis Street formerly contained a business known as "Duvardo's Furniture" and were owned at the time of demolition by Charles and Rebecca Cowell. The residential building located at 205 West Jackson was owned at the time of demolition by the City of Sparta. The Respondent is an "owner" or "operator" of a "demolition" as these terms are legally defined below.

5. On November 9, 2009, Charles Cowell applied for a building removal permit from the City of Sparta for the demolition of the "Duvardo's Furniture" building located at the corner of St. Louis Street and Broadway.

6. Charles Cowell deposited 1.51 tons of waste at the CWI of Illinois, Inc., Sparta Transfer Station on November 23, 2009 and an additional 1.89 tons of waste on December 1, 2009.

7. On or about November 24, 2009, Charles Cowell submitted a request document to Republic Services, Inc., for the disposal of two cubic yards of friable asbestos, representing that such asbestos-containing waste materials would be generated from the building at 221 South St. Louis Street. On or about December 4, 2009, according to the receipt and manifest documents, Charles Cowell transported to the Southern Illinois Regional Landfill approximately 180 pounds of asbestos-containing waste materials.

8. On December 9, 2009, Illinois EPA Inspector Alan Grimmatt conducted an inspection of the facilities being demolished in Sparta and collected one sample of suspected asbestos-containing waste material from a pile of debris at the installation. Laboratory analysis subsequently revealed the sample to contain at least 10 % chrysotile asbestos.

9. On information and belief, on a date better known to the Respondent, Charles Cowell determined or suspected that the thermal insulation on pipes within the installation contained asbestos. However, despite this effort, the Respondent failed to perform a thorough inspection of the entire installation for the presence of asbestos prior to commencing demolition activities.

10. On information and belief, on a date better known to the Respondent, Charles Cowell then removed the suspect thermal insulation from the pipes at the installation that he was able to reach, placed it in plastic bags and hauled it to the landfill, and then demolished the remaining portions of the installation still containing RACM that were unreachable due to partial collapse of those portions of the installation.

#### **APPLICABLE LAW**

11. Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010), prohibits violations of the Clean Air Act or associated federal regulations.

(d) No person shall:

(1) violate 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;

12. The regulations on the National Emission Standards for Hazardous Air Pollutants ("NESHAP") governing asbestos, 40 CFR Part 61, Subpart M, were adopted pursuant to Section 112 of the Clean Air Act, 42 U.S.C. §7412. Asbestos is regulated as a hazardous air pollutant because it is a carcinogen.

13. The following pertinent terms are defined at 40 CFR § 61.141:

*Asbestos-containing waste materials* means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this subpart. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing material waste



and materials contaminated with asbestos including disposable equipment and clothing.

*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 E, subpart E, 40 CFR part 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.

*Installation* means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

*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 out 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.

*Waste generator* means any owner or operator of a source covered by this subpart whose act or process produces asbestos-containing waste material.

14. 40 CFR § 61.145(a) provides the asbestos standards for demolitions and states in pertinent part:

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.

15. 40 CFR § 61.145(b) provides the asbestos notification requirements and states in pertinent part:

Notification requirements. Each owner or operator of a demolition or renovation activity to which this section applies shall:

(1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

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(3) Postmark or deliver the notice as follows:

(i) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (a) (1) and (4) (except (a)(4)(iii) and (a)(4)(iv)) of this section. If the operation is as described in paragraph

(a)(2) of this section, notification is required 10 working days before demolition begins.

16. 40 CFR § 61.145(c) provides the procedures for asbestos emission control and states in pertinent part:

Procedures for asbestos emission control. 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. . . .

\*\*\*

(8) Effective 1 year after promulgation of this regulation, no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. . . .

17. 40 CFR § 61.150 provides the asbestos standards for waste disposal and states in pertinent part:

Each owner or operator of any source covered under the provisions of §§ 61.144, 61.145, 61.146, and 61.147 shall comply with the following provisions:

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(b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

(1) A waste disposal site operated in accordance with the provisions of § 61.154.

**COUNT I**

**NOTIFICATION AND INSPECTION VIOLATIONS**

1-17. Complainant realleges and incorporates herein by reference paragraphs 1 through 17 as paragraphs 1 through 17 of this Count I.

18. The Illinois EPA had not been notified prior to the commencement of demolition activities.

19. By failing to submit a notification of demolition to the Illinois EPA ten working days prior to commencing demolition activities, the Respondent violated Section 61.145(b) of the NESHAP, 40 CFR § 61.145(b), and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010).

20. By failing to perform a thorough inspection for the presence of asbestos prior to commencing demolition activities, the Respondent violated Section 61.145(a) of the NESHAP, 40 CFR § 61.145(a), and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010).

**PRAYER FOR RELIEF**

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board grant the following relief:

A. Find that the Respondent has violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010);

B. Find that the Respondent has violated Sections 61.145(a) and (b) of the NESHAP, 40 CFR §§ 61.145(a) and (b);

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), impose upon the Respondent a monetary penalty of not more than \$50,000 for individual violations of the Act and

Board Regulations, and no more than \$10,000 for each day during which the violations continued; and

D. Grant such other and further relief as the Board deems appropriate.

**COUNT II**

**REMOVAL AND DISPOSAL VIOLATIONS**

1-17. Complainant, PEOPLE OF THE STATE OF ILLINOIS, realleges and incorporates by reference herein Paragraphs 1 – 17 as Paragraphs 1 – 17 of this Count II.

18. The Respondent failed to utilize workers trained in the provisions of the asbestos NESHAP to remove RACM.

19. By failing to utilize workers trained in the provisions of the asbestos NESHAP to remove RACM, Respondent violated Section 61.145(c)(8) of the NESHAP, 40 CFR § 61.145(c)(8), and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010).

20. The Respondent failed to remove all RACM prior to demolition activities.

21. By failing to properly remove all RACM prior to demolition activities, the Respondent violated Section 61.145(c)(1) of the NESHAP, 40 CFR § 61.145(c)(1), and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010).

22. The Respondent failed to deposit, as soon as practical, all asbestos-containing waste material generated during demolition activities at a site permitted to accept such waste.

23. By failing to deposit, as soon as practical, all asbestos-containing waste material generated during renovation and demolition activities at a site permitted to accept such waste, the Respondent violated Section 61.150(b) of the NESHAP, 40 CFR § 61.150(b) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010).

**PRAYER FOR RELIEF**

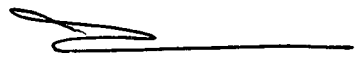
WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board grant the following relief:

- A. Find that the Respondent has violated Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010);
- B. Find that the Respondent has violated Sections 61.145(c) and 61.150(b) of the NESHAP, 40 CFR §§ 61.145(c) and 61.150(b);
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), impose upon the Respondent a monetary penalty of not more than \$50,000 for individual violations of the Act and Board Regulations, and no more than \$10,000 for each day during which the violations continued; and
- D. Grant such other and further relief as the Board deems appropriate.

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:   
THOMAS DAVIS, Chief  
Assistant Attorney General  
Environmental Bureau

Of Counsel  
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500 South Second Street  
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Dated: 11/29/11