

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
L.G. Kienast Utility)	FINDING OF VIOLATION
Construction)	
Oshkosh, Wisconsin)	EPA-5-99-WI-39
)	
Proceedings Pursuant to)	
the Clean Air Act,)	
42 U.S.C. §§ 7401 <u>et seq.</u>)	

Finding of Violation

The United States Environmental Protection Agency (U.S. EPA) hereby notifies the State of Wisconsin and L.G. Kienast Utility Construction (Kienast) that U.S. EPA finds that Kienast, located at 765 North Washburn Road, Oshkosh, Wisconsin, is in violation of the Clean Air Act (Act), 42 U.S.C. §§ 7401 et seq. Kienast is in violation of Section 112 of the Act, 42 U.S.C. § 7412, and regulations setting forth the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for asbestos, at 40 C.F.R. Part 61, Subpart M, as follows:

Regulatory Authority

1. The NESHAPs for asbestos apply to the owner and/or operator of demolition operations at facilities, among other operations.
2. The NESHAPs, at 40 C.F.R. § 61.145(a), require the owner and/or operator of a demolition operation to inspect the facility for the presence of asbestos, prior to starting the demolition operation.
3. The NESHAPs, at 40 C.F.R. § 61.145(b)(3)(i), require the owner and/or operator of a demolition operation to postmark a demolition notice at least 10 working days prior to the start of the demolition operation.
4. The NESHAPs, at 40 C.F.R. § 61.145(b)(4), specify the information which an owner and/or operator of a demolition operation is required to submit in a complete demolition notice.

5. The NESHAPs, at 40 C.F.R. § 61.145(c)(1), require the owner and/or operator of a demolition operation to remove all regulated asbestos-containing materials (RACM) from the facility to be demolished before conducting activities which would disrupt the RACM.

6. The NESHAPs, at 40 C.F.R. § 61.145(c)(6)(i), require the owner and/or operator of a demolition operation to adequately wet all RACM at the facility.

7. The NESHAPs, at 40 C.F.R. § 61.150(b), require the owner and/or operator of a demolition operation to dispose of certain asbestos-containing waste material at: (1) a waste disposal site operated in accordance with the provisions of § 61.154, or (2) an EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free material) according to the provisions of § 61.155.

Factual Background

8. Kienast was the owner and operator of a demolition operation conducted at the former H.D. Hudson Manufacturing Building, located at 106 East Tennessee Avenue, Oshkosh Wisconsin.

9. Kienast is subject to the notice, work practice, and disposal regulations at 40 C.F.R. Part 61, Section M.

Violations

10. The Wisconsin Department of Natural Resources (WDNR) conducted inspections of the Kienast demolition operation and other Kienast owned properties on various dates between September 23, 1998, and December 17, 1998.

11. During an October 1, 1998, WDNR inspection of the Kienast demolition operation, Kienast informed WDNR that Kienast had not inspected the H.D. Hudson Manufacturing facility for the presence of asbestos, prior to starting the demolition operation.

12. Kienast's failure to inspect the H.D. Hudson Manufacturing facility for the presence of asbestos, prior to starting the demolition operation, is a violation of 40 C.F.R. § 61.145(a).

13. During a September 23, 1998, WDNR inspection of the Kienast demolition operation, WDNR collected samples of demolition debris found at the H.D. Hudson Manufacturing

facility. The Wisconsin Occupational Health Laboratory determined that the samples contained RACM.

14. Kienast's failure to remove RACM from the H.D. Hudson Manufacturing facility before conducting activities which disrupted it is a violation of 40 C.F.R. § 61.145(c)(1).

15. During an October 1, 1998, WDNR inspection of the Kienast demolition operation, Kienast informed WDNR that Kienast was not wetting RACM at the H.D. Hudson Manufacturing facility.

16. Kienast's failure to adequately wet RACM at the H.D. Hudson Manufacturing facility is a violation of 40 C.F.R. § 61.145(c)(6)(i).

17. During an October 19, 1998, WDNR inspection of two other Kienast owned properties, WDNR determined that Kienast had improperly disposed of asbestos-containing waste material at these two sites.

18. Kienast's failure to properly dispose of asbestos-containing waste material is a violation of 40 C.F.R. § 61.150(b).

19. Kienast submitted a demolition notice for the demolition operation at the H.D. Hudson Manufacturing facility, postmarked September 2, 1998. According to the demolition notice, the demolition operation began on September 10, 1998, 8 days later.

20. Kienast's failure to submit a demolition notice postmarked at least 10 working days before the demolition operation began is a violation of 40 C.F.R. § 61.145(b)(3)(i).

21. The demolition notice submitted by Kienast did not include: a description of the facility including the size, age, and present and prior use of the facility; the procedure used to detect the presence of RACM and nonfriable ACM; an estimate of the amount of RACM to be removed, and an estimate of the amount of nonfriable asbestos which is not to be removed; scheduled starting and completion dates for asbestos removal; the final date of demolition; a description of the planned demolition work to be performed; a description of the work practices and engineering controls to be used to comply with the asbestos NESHAP; a complete description of the demolition order, and; procedures to follow if RACM is encountered during the activity.

22. Kienast's failure to submit a complete notice is a violation of 40 C.F.R. § 61.145(b)(4).

4/29/99
Date

Margaret M. Guerriero
Margaret M. Guerriero, Acting Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Shanee Rucker, certify that I sent a Finding of Violation by Certified Mail, Return Receipt Requested, to:

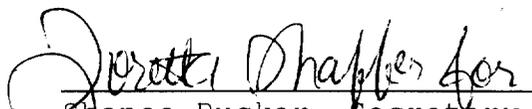
L.G. Kienast, President
L.G. Kienast Utility Construction
765 North Washburn Road
Oshkosh, Wisconsin 54904

I also certify that I sent copies of the Finding of Violation by first class mail to:

Bill Baumann, Chief-Combustion
Bureau of Air Management
Wisconsin Department of Natural Resources
101 South Webster Street
P.O. Box 7921 (AM/7)
Madison, Wisconsin 53707

Rick Wulk, Supervisor-North Team
Northeast Region
Wisconsin Department of Natural Resources
1125 North Military Avenue, Box 10448
Green Bay, Wisconsin 54307

on the 30th day of September, 1999.


Shanee Rucker, Secretary
AECAS, (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER:

P 140 777 346