

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA : **CRIMINAL NO. 13-_____**
v. : **DATE FILED: August 27, 2013**
DAVID MERMELSTEIN : **VIOLATION:**
: **42 U.S.C. § 7413(c)(1) (illegal removal of**
: **asbestos – 5 counts)**
: **18 U.S.C. § 2 (aiding and abetting)**

INDICTMENT

COUNTS ONE THROUGH FIVE

THE GRAND JURY CHARGES THAT:

At all times relevant to this Indictment:

The Defendant and the Property

1. On April 3, 2001, defendant DAVID MERMELSTEIN purchased a large, old-furniture warehouse in Philadelphia, Pennsylvania, known as 10175 Northeast Avenue (the "Property").
2. When defendant DAVID MEMERLSTEIN purchased the Property, it contained insulated pipes that ran throughout the building. The pipes were covered with insulation made of or containing asbestos.

The Clean Air Act and Asbestos

3. The Clean Air Act was enacted by Congress to protect and enhance the quality of the Nation's resources so as to promote the public health and welfare. 42 U.S.C. §§ 7401 et seq.
4. The Clean Air Act authorizes the United States Environmental Protection Agency (EPA) to identify hazardous air pollutants and to establish standards to prevent or limit the emission of hazardous air pollutants into the atmosphere. Those standards established by EPA are known as

National Emission Standards for Hazardous Air Pollutants (NESHAP). 42 U.S.C. § 7412.

5. Where it is not feasible to prescribe and enforce emission standards for a hazardous air pollutant, as is the case with asbestos, EPA may publish work practice standards requiring that certain procedures be followed when dealing with those substances. 42 U.S.C. § 7412(h).

6. Pursuant to the Clean Air Act, asbestos has been designated as a hazardous air pollutant since 1971. 42 U.S.C. §§ 7412(a)(6) and (b), 40 C.F.R. § 61.01(a).

7. EPA regulates the removal and disposal of "regulated asbestos containing material" above certain threshold quantities from commercial, industrial, public, institutional, and certain multi-unit residential facilities. In the City of Philadelphia, the Department of Public Health, Air Management Services Asbestos Control Unit also regulates the removal and disposal of asbestos.

8. Asbestos is "friable" when it can be crumbled by hand pressure. Asbestos fibers from friable asbestos material can become airborne and can be inhaled into the lungs. "Friable asbestos material" is defined in the regulations at 40 C.F.R. § 141.

9. "Regulated asbestos containing material" (RACM) means friable asbestos material and also other kinds of nonfriable asbestos material that has become or is likely to become friable in the course of a demolition or renovation. 40 C.F.R. § 61.141.

10. Asbestos work practice standards apply to any owner or operator of a facility who conducts a renovation operation, when the combined amount of RACM stripped, removed, dislodged, cut, drilled, or similarly disturbed is at least 260 linear feet on pipes, 160 square feet on facility components, or 35 cubic feet off facility components where the length or area of the RACM could not be previously measured. 40 C.F.R. § 61.145(a)(4). The Property contained RACM in excess of the threshold, making its renovation subject to EPA regulation.

11. EPA requires that the owner or operator of a regulated site ensure the removal of

asbestos in accordance with work practice standards that are set out in federal regulations. 40 C.F.R., Subpart M, § 61.140, et seq. Among other things, under the work practice standards, the owner and operator of a site where asbestos is being removed must:

- a. Notify the EPA at least ten working days before beginning the removal project, and update the notice if the amount of asbestos affected changes by at least 20%.
- b. Unless an alternative method of containing asbestos fibers has been approved in writing by the EPA, adequately wet the regulated asbestos-containing material during the removal operation and carefully lower to the ground any item with asbestos on it, without disturbing or damaging the asbestos.
- c. Ensure that regulated asbestos-containing material remains wet until collected and contained or treated in preparation for disposal.
- d. Discharge no visible emissions to the outside air during collection, wetting, packaging, transporting and handling operations.
- e. Deposit all asbestos-containing waste material as soon as practical at a site that meets the requirements for accepting asbestos-containing waste.

12. The Clean Air Act makes it a criminal offense to knowingly violate any of the above described work practice standards set by EPA pursuant to Title 42, United States Code, § 7413(c)(1).

13. Defendant DAVID MERMELSTEIN, after learning the cost of proper asbestos removal, hired day laborers, including Persons #1, #2, #3 and #4, known to the grand jury, to rip out the insulated pipes at the Property in a manner that did not comply with asbestos work practice standards.

MERMELSTEIN directed the workers to remove asbestos insulated pipes that were present at the Property, using techniques that included cutting, breaking and ripping the dry asbestos, allowing it to drop to the floor, sweeping asbestos containing dust and debris, and disposing of asbestos in the trash

and in a dumpster.

14. Defendant DAVID MERMELSTEIN withheld from Persons #1, #2, #3, and #4 and likely other workers, the information that they were removing asbestos, thereby endangering their lives.

15. Defendant DAVID MERMELSTEIN did not supply required safety equipment to the workers.

16. Defendant DAVID MERMELSTEIN failed to dispose properly of regulated friable asbestos containing material. For example, friable asbestos containing material at the Property was, among other things, put in a dumpster for regular trash pick up, hauled to unknown sites, and left strewn about the inside and outside of the Property.

17. Defendant DAVID MERMELSTEIN continued to direct removal of regulated asbestos containing material from the Property after he had been ordered by the City of Philadelphia to stop the illegal removal of asbestos, on or about March 4, 2010.

18. From in or about September 2009, and continuing to in or about April 2010, in the Eastern District of Pennsylvania and elsewhere, defendant

DAVID MERMELSTEIN

knowingly violated, and aided and abetted and knowingly caused the violation of, applicable work practice standards enacted pursuant to the Clean Air Act governing removal of regulated asbestos containing materials, by being an owner and operator of a demolition activity that was subject to federal regulation on a property at 10175 Northeast Avenue, Philadelphia, Pennsylvania, and by failing to comply with the regulations as set forth below, as required by work practice standards enacted pursuant to the Clean Air Act, Title 42, United States Code, Sections 7413(c)(1) and 7412, each violation constituting a separate count as follows:

Count	Violation	Regulation Violated
1	failure to provide EPA with written notice of intent to demolish the Property	40 C.F.R. § 61.145(b)
2	failure to adequately wet and carefully lower to the ground any facility components being removed that contain, or are covered or coated with regulated asbestos containing material	40 C.F.R. § 61.145(c)(2)
3	failure to ensure that the regulated asbestos containing material remained wet until collected and contained in preparation for disposal	40 C.F.R. § 61.145(c)(6)(i)
4	discharging visible emissions to the outside air during the collection, processing, packaging, or transporting of any regulated asbestos containing material	40 C.F.R. § 150(a)
5	failure to deposit regulated asbestos containing material in an appropriate disposal site as soon as practical	40 C.F.R. § 150(b)

In violation of Title 42, United States Code, Section 7413(c)(1) and 18 U.S.C. § 2.

A TRUE BILL:

GRAND JURY FOREPERSON

ZANE DAVID MEMEGER
UNITED STATES ATTORNEY