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MAY - 4 2006
STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 3, 2006

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Passavant Area Hospital***
PCB No. 03-183

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,


Jennifer Bonkowski
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JB/pp
Enclosures

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAY - 4 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
PASSAVANT AREA HOSPITAL,)
an Illinois not-for-profit corporation,)
)
Respondent.)

PCB No. 03-183
(Enforcement - Air)

NOTICE OF FILING

To: Babette P. Salus
Schwing & Salus, P.C.
1100 South Fifth Street
Springfield, IL 62703

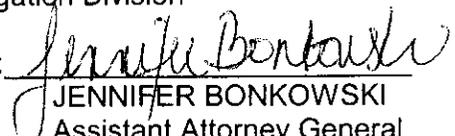
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, a copy of which is attached hereto and herewith served upon you.

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: 
JENNIFER BONKOWSKI
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: May 3, 2006

CERTIFICATE OF SERVICE

I hereby certify that I did on May 3, 2006, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: Babette P. Salus
Schwing & Salus, P.C.
1100 South Fifth Street
Springfield, IL 62703

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794


JENNIFER BONKOWSKI
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
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MAY - 4 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 PASSAVANT AREA HOSPITAL,)
 an Illinois not-for-profit corporation,)
)
 Respondent.)

PCB No. 03-183
(Enforcement - Air)

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2004), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2004). In support of this motion, Complainant states as follows:

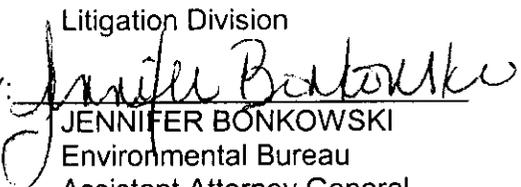
1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2004).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
JENNIFER BONKOWSKI
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: May 3, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY - 4 2006
STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
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Complainant,)
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v.)
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)
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PASSAVANT AREA HOSPITAL, an Illinois)
not-for-profit corporation,)
)
Respondent.)

PCB No. 03-183
(Enforcement - Air)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and PASSAVANT AREA HOSPITAL ("Respondent" or "Passavant"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony that would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2002).

II. AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

III. STATEMENT OF FACTS

A. Parties

1. On April 8, 2003, the Complainant filed a Complaint on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31(2002), against the Respondent. On November 20, 2003, the Complainant filed a Second Supplemental and Amended Complaint on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002).

3. At all times relevant to the Complaint, Respondent was and is an Illinois not-for-profit corporation in good standing and authorized to transact business in the State of Illinois.

B. Site Description

1. At all times relevant to the Complaint, Respondent owned and operated a medium hospital/medical/infectious waste incinerator (hereinafter "HMIWI") at its hospital located at 1600 West Walnut Street, Morgan County, Illinois.

2. On September 5, 2001, the Illinois EPA inspected Passavant to determine compliance with the Act, Clean Air Act Permit Program Permit ("CAAPP") permit no. 00090039 and 35 Ill. Adm. Code Part 229 ("HMIWI regulations")

3. On or about September 25 and 26, 2001, Passavant conducted an annual performance test to determine compliance with the Act, its CAAPP permit and the HMIWI regulations.

C. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

- Count I: **Air Pollution and Permit Violations, in violation of Sections 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9(a) and 39.5(6)(a) (2002), and 35 Ill. Adm. Code 201.141 and 35 Ill. Adm. Code 229.125(b) and CAAPP permit condition 7.1.8.**
- Count II: **Operating Violations, in violation of Sections 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9(a) and 39.5(6)(a) (2002), and 35 Ill. Adm. Code 229.146, 229.148, 229.152(a), 229.166(a), 229.170(a) and CAAPP permit conditions 7.1.6(a), 7.1.9(g), 7.1.9(i), and 7.1.10(a) and (d).**
- Count III: **Record-keeping Violations, in violation of Sections 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9(a) and 39.5(6)(a) (2002), and 35 Ill. Adm. Code 229.182(a)(3), (a)(7), and (g) and CAAPP permit conditions 5.6.1, 5.6.2(a), 7.1.10(d)(iv), 7.1.11(b), and 7.1.11(a)(iii).**
- Count IV: **Annual Compliance Certification Violations, in violation of Section 39.5(6)(a) of the Act, 415 ILCS 5/39.5(6)(a) (2002), and CAAPP permit condition 9.8.**

- Count V: **Annual Emission Report Violations, in violation of Sections 9(a) and 39.5(6)(a) of the Act, 415 ILCS 5/9(a) and 39.5(6)(a) (2002), and 35 Ill. Adm. Code 254.203 and 254.204 and CAAPP permit condition 9.7.**
- Count VI: **Construction Permit Violations, in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) and 35 Ill. Adm. Code 201.142.**

D. Admission of Violations

The Respondent admits to the violations alleged in the Complaint filed in this matter and referenced within Section III.C herein.

E. Compliance Activities to Date

On November 20, 2001, at the request of the Illinois EPA, Passavant ceased operation of its HMIWI. Subsequently, Passavant attempted to comply with the HMIWI regulations by installing and modifying a control device, but was never successful. On December 20, 2004, the Passavant Board of Directors signed a Resolution to Discontinue Operation of Hospital Incinerator, and on February 8, 2005, Passavant submitted a letter to the Illinois EPA seeking withdrawal of its CAAPP permit.

F. Value of Settlement and Resulting Benefits

Passavant's commitment to permanently discontinue operation of the HMIWI will help ensure that the hospital's medical waste disposal does not pose any unacceptable risks to human health or the environment.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or

assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation and Proposal for Settlement. In the event of any conveyance of title, easement or other interest in the facility, the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation.

In the event that the Respondent proposes to sell or transfer any real property or operations subject to any Order accepting and adopting the terms of this Stipulation and Proposal for Settlement, including the incinerator at issue in this matter, the Respondent shall notify the Complainant 30 days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondent shall make the prospective purchaser or successor's compliance with any Order accepting and adopting the terms of this Stipulation a condition of any such sale or transfer and shall provide a copy of this Stipulation and any Order accepting and adopting the terms of this Stipulation to any such successor in interest. This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

VI. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c)(2002), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties state the following:

1. Complainant contends that the injury to, or interference with, the protection of the health, general welfare, and physical property of the People would be characterized as air pollution. However, Passavant abated the threat to human health and the environment by agreeing to cease operation of the HMIWI once aware of emissions exceedances and by agreeing to permanently cease operation of its HMIWI.
2. The parties agree that Respondent's not-for-profit hospital is of social and economic benefit to the area.
3. Respondent's hospital is suitably located in Jacksonville, Morgan County, Illinois.
4. The parties agree that complying with the Act and regulations is technically practicable and economically reasonable; and

5. Respondent has subsequently complied with the Act and the Board Regulations by permanently ceasing operation of its HMIWI.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2002), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties state as follows:

1. From at least September 25, 2001, until November 20, 2001, Passavant operated in non-compliance with the emission limitations for at least PM, HCl, Cd, and dioxins/furans. Passavant also operated in non-compliance with the emissions limitations on the limited days

that it conducted testing from November 2001 until the present. From at least April 2001 until September 26, 2001, Passavant's HMIWI operators were not certified. Passavant's HMIWI operators were also required to maintain their certification in the years 2002, 2003, and 2004. From at least September 15, 2001, until November 20, 2001, Passavant failed to successfully complete the HMIWI annual compliance test (i.e., demonstrate compliance with the emission limitations). Passavant also failed to complete an annual performance test in 2002, 2003, and 2004. From at least April 18, 2000, (date of initial performance test) until at least August 27, 2001, (date CEM was operational and calibrated) Passavant failed to continuously monitor CO concentrations and maintain proper CEM calibration records.

2. Since learning of the Illinois EPA's concerns, Passavant has been reasonably diligent in addressing the violations alleged in the Complaint. Specifically, at the request of the Illinois EPA, Passavant ceased operation of its HMIWI in November 2001 and thereafter operated on limited dates solely for purposes of demonstrating compliance via compliance testing. On December 20, 2004, the Passavant Board of Directors signed a Resolution to Discontinue Operation of Hospital Incinerator.

3. Passavant expended substantial financial resources (in excess of \$416,000.00) in an attempt to properly control emissions from its HMIWI. Ultimately, Passavant decided to permanently cease operation of the HMIWI.

4. Complainant has determined that a penalty is not warranted in this matter, as Passavant is an Illinois not-for-profit health care provider. In addition, Passavant has agreed to permanently cease operation of its HMIWI.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.

6. Passavant did not voluntarily self-disclose the non-compliance to the Illinois EPA.

7. The settlement of this matter does not include a supplemental environmental project.

VIII. TERMS OF SETTLEMENT

A. Compliance Plan

Passavant has committed to permanently cease operation of its HMIWI. To that end, Passavant shall continue to take necessary actions to dispose of all hospital/medical/infectious waste. Passavant shall remove the HMIWI or render it inoperable.

B. Future Use

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.F, below, the Respondent hereby agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h)(2002). Further, Respondent agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

C. Cease and Desist

The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C (“Allegations of Non-Compliance”) of this Stipulation.

D. Release from Liability

In consideration of the Respondent’s completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.C and upon the Pollution Control Board’s acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Second Supplemental and Amended Complaint herein, filed on November 20, 2003. In addition to matters expressly specified in Complainant’s Second Supplemental and Amended Complaint, the release set forth above also extends to any matters involving the incinerator at issue herein, through the date of the Board’s entry of this Stipulation. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent’s failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in

law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

E. Right of Entry

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

F. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Sections VIII.A ("Penalty Payment") and C ("Stipulated Penalties") of this Stipulation shall be submitted as follows:

As to the Complainant

Jennifer Bonkowski
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62702

Chris Pressnall
Assistant Counsel
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondent

Babette P. Salus
Schwing & Salus, P.C.
1100 S. Fifth St.
Springfield, Illinois 62703

G. Modification of Stipulation

The parties may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.F. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

H. Enforcement of Board Order

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, that Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced as such through any and all available means.

2. Respondent agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: 4/12/06

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 4/24/06

PASSAVANT AREA HOSPITAL

BY: 
Name: Babette P. Salus

DATE: April 6, 2006

Title: Counsel for Passavant Area Hospital