



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

**RECEIVED**  
CLERK'S OFFICE  
JUL 25 2006  
STATE OF ILLINOIS  
Pollution Control Board

July 21, 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. Walter F. Deemie**  
**PCB No. 02-79**

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,

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

PM/pp  
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE

JUL 25 2006

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
WALTER F. DEEMIE, d/b/a River City )  
Demolition, )  
 )  
Respondent. )

No. 02-79

**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: 

PHILLIP McQUILLAN  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: July 21, 2006

## CERTIFICATE OF SERVICE

I hereby certify that I did on July 21, 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:

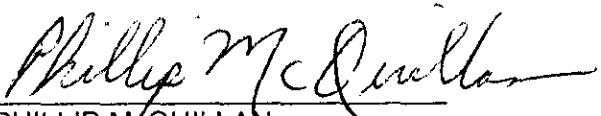
To: Walter F. Deemie  
P.O. Box 726  
Peoria, IL 61652

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

  
PHILLIP McQUILLAN  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
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STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF )  
ILLINOIS, )

Complainant, )

vs. )

WALTER F. DEEMIE, d/b/a River City )  
Demolition, )

Respondent. )

No. 02-79

NOTICE OF FILING

To: Walter F. Deemie  
P.O. Box 726  
Peoria, IL 61652

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, copies of which are 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:

  
PHILLIP McQUILLAN  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: July 21, 2006

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**PEOPLE OF THE STATE OF ILLINOIS,**

**Complainant,**

**vs.**

**WALTER F. DEEMIE, d/b/a River City  
Demolition,**

**Respondent.**

**PCB No. 02-79**

**(Enforcement - Air)**

**STIPULATION AND PROPOSAL FOR SETTLEMENT**

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STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

WALTER F. DEEMIE, d/b/a River City  
Demolition,

Respondent.

PCB No. 02-79

(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 WALTER F. DEEMIE, d/b/a River City Demolition ("Respondent") 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.* (2004).

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 December 14, 2001, a Complaint was filed on behalf of the People of the State of Illinois by the Attorney General of the State of Illinois, on the Attorney General's motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31, against the Respondent.

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.

3. At all times relevant to the Complaint, Respondent was and is Walter F. Deemie, an individual, doing business as River City Demolition, P.O. Box 726, Peoria, Illinois 61652.

4. At all times relevant to the Complaint, Respondent was the "operator" of a demolition activity as defined by the NESHAP for asbestos.

**B. Site Description**

1. At all times relevant to the Complaint, Respondent contracted with the Capitol Development Board to perform demolition activities upon a building at a former Central Management Services power plant facility, located at 1920 10 ½ Street, Springfield, Sangamon County, Illinois ("site").

2. At this site, Respondent demolished a structure that was a "facility" as that term is defined by the NESHAP for asbestos.

3. At this site, Respondent caused, threatened or allowed the discharge or emission of asbestos, a contaminant and hazardous substance, into the environment in sufficient quantities and of such characteristics and duration so as to cause or threaten air pollution during demolition of the power plant building, and has thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a).

4. At this site, Respondent failed to adequately wet and maintain wet regulated asbestos-containing material ("RACM") and regulated asbestos-containing waste material generated during demolition activities upon the power plant building until collected and contained in preparation for disposal at a permitted waste disposal site, and has thereby violated 40 CFR 61.145(c)(6) and Section 9.1(d) of the Act, 415 ILCS 5/9.1 (d).

5. At this site, Respondent failed to adequately wet and properly contain and properly dispose of all RACM and regulated asbestos containing waste material during and after demolition and removal, in violation of 40 CFR 61.145(c)(3) and 61.150(a)(1) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1).

**C. Allegations of Non-Compliance**

Complainant alleges that the Respondent has violated the following provisions of the National Emission Standards for Hazardous Air Pollutants ("NESHAP"), the Act, and Board regulations:

Count I: Section 9(a) of the Act, 415 ILCS 5/9(a), and 35 Ill. Adm. Code 201.141.

Count II: Section 9.1(d) of the Act, 415 ILCS 5/9.1(d); 40 CFR 61.145(c)(3); 40 CFR 61.145(c)(6); and 40 CFR 61.150(a)(1).

**D. Admission of Violations**

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

**IV.**

**APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, employee or servant 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 or agents to take such action as shall be required to comply with the provisions of this Stipulation.

**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 NESHAP for asbestos, 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), 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:

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- (ii) the social and economic value of the pollution source;
- (iii) 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;
- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- (v) any subsequent compliance.

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

1. The failure by Respondent to properly remove, handle, and dispose of dry friable RACM significantly threatened public health and the environment.
2. There is social and economic value to Respondent's activities.
3. The issue of location and suitability of the former CMS power plant to the area is not disputed. Notwithstanding, demolition activities performed by Respondent, at the site, in

violation of the NESHAP for asbestos and the Act, were not suitable to the area given such activities caused a significant threat to public health and the environment.

4. Adequate wetting, handling, containment, and disposal of the regulated asbestos containing material in compliance with the NESHAP for asbestos, the Act, and Board regulations is both technically practicable and economically reasonable and facilitates the proper disposal of all RACM at the site.

5. Respondent promptly implemented measures to control asbestos emissions at the request of the Illinois EPA.

## VII.

### **CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2004), provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), or (b)(5) of 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 determining the appropriate civil penalty to be imposed under subsection (a) or paragraph (1), (2), (3), or (5) of subsection (b) of this Section, the Board shall ensure, in all cases, that the penalty is at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship. However, such civil penalty may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent.

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

1. The Respondent failed to ensure compliance with the NESHAP for asbestos and the Act by not adequately wetting, properly containing and disposing of RACM. The violations began on or around May 1, 1999; work temporarily ceased on or about May 3, 1999, at the request of the Illinois EPA; a violation notice was sent to respondent on May 13, 1999; and, remediation of all asbestos contamination was completed.
2. In response to the notice of noncompliance issued by the Illinois EPA, Respondent was diligent in attempting to comply with the Act, Board regulations, and the NESHAP for asbestos.
3. The economic benefit derived by Respondent resulting from the failure to operate in compliance with the Act and the NESHAP for asbestos is the savings realized by avoiding the cost of adequately wetting the regulated asbestos containing material and utilizing work practices and procedures necessary to properly handle and dispose of all regulated asbestos-containing material. Respondent contends that he received no economic benefit as a result of the failure to implement asbestos removal and emission control methods and procedures as alleged in the complaint.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Eight Thousand Dollars (\$8,000.00) will serve to deter further violations, and to aid in future voluntary compliance with the Act, Board regulations, and the NESHAP for asbestos.

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

6. Self-disclosure is not at issue in this matter.

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

## **VIII.**

### **TERMS OF SETTLEMENT**

#### **A. Penalty Payment**

1. The Respondent shall pay a civil penalty in the amount of Eight Thousand Dollars (\$8,000.00) in twelve (12) installments as follows: the first installment of \$666.67 shall be due within thirty (30) days after the date the Board adopts and accepts this Stipulation; the remaining installments, each in the amount of \$666.66, shall be due each month thereafter on the 15<sup>th</sup> day of the month. The penalty described in this Stipulation shall be paid by certified check, money order, or wire transfer payable to the "Illinois EPA for deposit into the EPTF" which designates the payment to the Illinois Environmental Protection Trust Fund ("EPTF"); and, payments shall be sent to:

Illinois Environmental Protection Agency  
Fiscal Services Section  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

The name and number of the case and Respondent's Social Security Number, (SSN), shall appear on the check. A copy of the certified check or money order and the transmittal letter shall be sent to:

Phillip McQuillan  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003. Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payments owed shall be paid by certified check or money order, payable to the "Illinois EPA for deposit into EPTF" which designates the payment to the Illinois Environmental Protection Trust Fund ("EPTF") and delivered to the address and in the manner described above.

3. For purposes of payment and collection, Respondent may be reached at the following address:

Walter F. Deemie  
P. O. Box 726  
Peoria, IL 61652

4. In the event of default of this Section VIII. A., the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

5. In the event of default of this Section VIII. A. as to any payment, all unpaid payments become immediately due and owing.



**B. Future Use**

Notwithstanding any other language in this Stipulation to the contrary, the Respondent agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action 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). Further, Respondent agrees to waive any rights to contest, in any subsequent enforcement action, any allegations that these alleged violations were adjudicated.

**C. Correspondence, Reports and Other Documents**

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments, shall be submitted as follows:

As to the Complainant

Phillip McQuillan  
Assistant Attorney General (or other designee)  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706

Dennis Brown  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

#### **G. Release from Liability**

In consideration of the Respondent's commitment to comply with the NESHAP for asbestos, the Act, the Board's regulations, payment of the \$8,000.00 penalty, and any accrued unpaid interest, and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for violations of the NESHAP for asbestos, the Act, and Board regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on December 14, 2001. 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.

#### **H. Enforcement of Board Order**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, 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 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, 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 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.

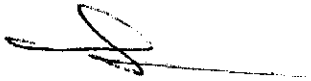
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:



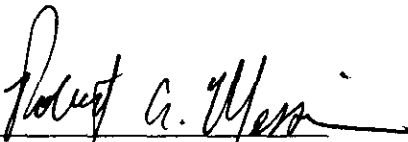
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

DATE:

6 July 06

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

BY:



ROBERT A. MESSINA  
Chief Legal Counsel

DATE:

7/14/06

WALTER F. DEEMIE, Respondent

BY:



WALTER F. DEEMIE

DATE:

7/5/06