

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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OCT 08 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. JAMES E. RYAN, Attorney)
General of the State of Illinois,)
Complainant,)
vs.)

PCB No. 02-5
(Enforcement - Land)

ENVIRONMENTAL MANAGEMENT AND)
ABATEMENT, INC., a California)
corporation, and DANNY G. KOHRDT,)
individually and as president of)
Environmental Management and)
Abatement, Inc.,)
Respondent.)

NOTICE OF FILING

TO: Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

Michael J. Maher
Elizabeth S. Harvey
Swanson, Martin & Bell
One IBM Plaza
330 N. Wabash Avenue
Chicago, Illinois 60611

PLEASE TAKE NOTICE that I have today filed a Stipulation and Proposal for Settlement, a copy of which is attached and herewith served upon you.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

By: Mitchell L. Cohen
Mitchell L. Cohen
Assistant Attorney General
Environmental Bureau
188 West Randolph, Suite 2001
Chicago, IL 60601
312-814-5282

Dated: October 8, 2003

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant,)
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 ENVIRONMENTAL MANAGEMENT &)
 ABATEMENT, INC., a California)
 corporation, and DANNY G. KOHRDT,)
 individually and as president of)
 Environmental Management &)
 Abatement, Inc.)
)
 Respondents.)

PCB 02-05

(Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, ENVIRONMENTAL MANAGEMENT & ABATEMENT, INC. ("EMA"), a California corporation, and DANNY G. KOHRDT, individually and as president of Environmental Management & Abatement, Inc., 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 which would be introduced by the parties if a trial 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 not to contest its validity in any subsequent proceeding to implement or enforce its terms. Insolvency of the Respondent by filing a petition for bankruptcy shall not be deemed a proceeding to contest the validity of this Stipulation.

I.

JURISDICTION

The Board has jurisdiction over 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 Agreement and to legally bind them to it.

III.

STATEMENT OF FACTS

A. Parties

1. On July 18, 2001, a Complaint was filed on behalf of the People of the State of Illinois by James E. Ryan, Attorney General of the State of Illinois, on his 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.

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, including November 23, 1998, through April 13, 2000, Respondent, EMA, was and is a California corporation that is authorized to transact business in the State of Illinois, and Danny G. Korhdt was and is the owner, operator, and President of EMA.

B. Business and Site Description

1. At all times relevant to this Complaint, Respondents were contractors engaged in, among other things, the demolition of buildings.

2. Before November 23, 1998, Respondents demolished buildings at the Joliet Army Ammunition Plant located at 29401 South Route 53, Wilmington, Will County, Illinois ("Site").

3. In doing so, Respondents crushed large pieces of concrete near an on-site gravel pit and filled the same gravel pit with concrete containing rebar, dirt, bricks and small amounts of wood and miscellaneous waste. Respondents generated and placed into

the gravel pit approximately two hundred thousand (200,000) cubic yards of waste.

C. Allegations of Non-Compliance

1. Complainant contends that the Respondent has violated the following provisions of the Act and Board Regulations:

Count I: Open Dumping

Violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2002);

Count II: Failure to File Reports and Information Relating to the On Site Disposal of Waste

Violation of Section 21(d) of the Act, 415 ILCS 5/12(f) (2002); and Section 815.101(a) of the Illinois Pollution Control Board Waste Disposal Regulations, 35 Ill. Adm. Code 815.101(a).

D. Admission of Violations

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

The Respondent represents that it has entered into this Stipulation and Proposal for Settlement for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and Proposal for Settlement and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint, and this Stipulation shall not be interpreted as including any admission of liability.

E. Compliance Activities to Date

1. Before abandoning the Site, Respondents performed some remediation, including removing material from the gravel pit, shipping some of the rebar for recycling, and disposing of the miscellaneous waste.

2. Upon abandoning the Site, Respondents, with the help of other companies, made arrangements for the Site to be completely remediated. The Site was completely remediated by July 20, 2000.

IV.

IMPACT ON THE PUBLIC RESULTING FROM 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:

1. The Parties state that the impact to the public resulting from Respondent's non-compliance was that harm to human health and the environment was threatened by Respondents' open dumping and failure to comply with reporting requirements.

2. The Parties agree that Respondent's business is of social and economic benefit.

3. The parties agree that Respondents work performed at the site was suitably located for the demolition of existing buildings at the site, but that the disposal of waste from the demolition was not suitably located for the site.

4. The parties agree that complying with the requirements of the Act is both technically practicable and economically reasonable.

5. The parties state that Respondents helped remediate the site and arranged for complete remediation including all waste removal from the on-site gravel pit.

V.

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 violator 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 violator because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors, the parties state:

1. The Parties state that the duration of the violation for open dumping and failing to follow proper reporting requirements for on-site waste disposal occurred at least from ~~Fall, 1998 until July 20, 2000.~~

2. The parties agree that Respondents demonstrated some diligence in regard to these violations: Respondents performed some remediation at the site and helped make arrangements for complete remediation.

3. The Parties agree Respondents received economic benefit by not complying with the statutes in a timely manner.

4. The Parties agree that the appropriate penalty which

will serve to deter future violations of the Act and enhance voluntary compliance is \$50,000.00.

5. The Parties agree that Respondents have no prior adjudications for violations of the Act.

VI.

APPLICABILITY

A. This Stipulation Agreement 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 Agreement the failure of any of its officers, directors, agents, or employees to take such actions as shall be required to comply with the provisions of this Stipulation.

B. No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the

Respondent under this Stipulation. 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 appropriate circumstances, however, the Respondent and a contemplated future owner or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed

purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondent.

VII.

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.

VIII.

TERMS OF SETTLEMENT

A. Penalty

1. a. The Respondent shall pay a civil penalty of Fifty Thousand Dollars (\$50,000.00). Within thirty (30) days after the date on which the Board adopts a final order approving this Stipulation, Respondent shall pay \$25,000.00. Respondent shall pay the final \$25,000.00 within 60 days of the date on which the Board adopts a final order approving this Stipulation. Payments shall be made as follows:

b. Payments shall be made by certified check or money order, payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF") and shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East

P.O. Box 19276
Springfield, IL 62794-9276

c. The name, case number, and the Respondent's Federal Employer Identification Number ("FEIN"), _____, shall appear on the face of the certified checks or money orders.

~~A copy of the certified checks or money orders and the~~
transmittal letter shall be sent to:

Mitchell L. Cohen
Assistant Attorney General
Environmental Bureau
188 West Randolph, Suite 2001
Chicago, Illinois 60601

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

Michael J. Maher
Swanson, Martin & Bell
One IBM Plaza, Suite 2900
Chicago, Illinois 60611

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

~~Environmental Management & Abatement, Inc.~~
c/o Danny Korhdt, President
26715 Diagonal Road
Elwood, Illinois 60421

5. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

B. Interest on Penalties

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42 (g) (2002), interest shall accrue on any penalty amount owed by

the Respondent not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002).

2. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Illinois EPA.

3. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. All interest on penalties owed the Complainant shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF at the above-indicated address. The name, case number, and the Respondent 's FEIN shall appear on the face of the certified check or money order. A copy of the certified check or money order and the transmittal letter shall be sent to:

Mitchell L. Cohen
Assistant Attorney General
Environmental Bureau
188 West Randolph St., Suite 2001
Chicago, Illinois 60601

C. Future Use

Notwithstanding any other language in this Stipulation Agreement to the contrary, this Stipulation may be asserted against the Respondent in any subsequent enforcement action as evidence of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder, for purposes of

Sections 39(i) and/or 42(h) of the Act, 415 ILCS 5/39(i) and/or 5/42 (h) (2002).

D. Cease and Desist

The Respondent shall cease and desist from all future violations of the Act and Board Regulations, including, but not limited to those violations that are outlined in Section III.C. of this Stipulation.

E. Release from Liability

In consideration of the Respondents' payment of a \$50,000.00 penalty, the Complainant releases, waives and discharges the Respondent from further liability or penalties for any violations of 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 July 18, 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 resource 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 Agreement.

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 3.26 of the Act, 415 ILCS 5/3.26 (2002), or entity other than the Respondent.

F. Retention of Jurisdiction

The Board shall retain jurisdiction of this matter for the purpose of interpreting and enforcing the terms and conditions of the Stipulation.

G. Enforcement of Stipulation

1. Upon the entry of this Stipulation, any party hereto, upon motion, may reinstate these proceedings solely for the purpose of enforcing the terms and conditions of this Stipulation. This Stipulation is a binding and enforceable order of the Board and may be enforced by the Illinois Circuit Court through any and all available means.

2. Respondent agrees that notice of any subsequent proceeding to enforce this Stipulation may be made by mail and waives any requirement of service of process.

WHEREFORE, the parties, by their representatives, enter into this Stipulation and submit it to the Board that it may be approved and entered.

AGREED:

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
JOSEPH E. SVOBODA
Chief Legal Counsel

DATE: _____

DATE: _____

FOR THE RESPONDENTS:
ENVIRONMENTAL MANAGEMENT & ABATEMENT, INC.

BY: *Danny G. Korhdt*
Danny G. Korhdt
Its President

DATE: June 3-2003

DANNY G. KORHDT

BY: *Danny G. Korhdt*
Danny G. Korhdt

DATE: June 3-2003

WHEREFORE, the parties, by their representatives, enter into this Stipulation and submit it to the Board that it may be approved and entered.

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FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division
BY: Rosemarie Cazeau
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY
BY: Joseph E. Svobeda
JOSEPH E. SVOBODA
Chief Legal Counsel

DATE: 9/22/03

DATE: 9/16/03

FOR THE RESPONDENTS:
ENVIRONMENTAL MANAGEMENT & ABATEMENT, INC.

BY: _____
Danny G. Korhdt
Its President

DATE: _____

DANNY G. KORHDT

BY: _____
Danny G. Korhdt

DATE: _____

CERTIFICATE OF SERVICE

I, MITCHELL L. COHEN, an Assistant Attorney General, do certify that I caused to be mailed this 8th day of October, 2003, a copy of the **Stipulation and Proposal for Settlement, Notice of Filing, and Certificate of Service** upon the persons listed below:

Mike Maher
Elizabeth Harvey

Swanson, Martin & Bell
One IBM Plaza, Suite 2900
330 North Wabash
Chicago, Illinois 60611

Bradley P. Halloran
Hearing Officer

Pollution Control Board
JRTC, Suite 11-500
Chicago, IL 60601


MITCHELL L. COHEN