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JUN 14 2004

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 10, 2004

PCB04-218

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

Re: ***People v. Brickyard Disposal and Recycling, Inc.***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT, COMPLAINT, and STIPULATION AND PROPOSAL FOR SETTLEMENT in regard to the above-captioned matter. Please file the originals and return file-stamped copies of the documents to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas Davis", is written over a horizontal line.

Thomas Davis, Chief
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

TD/pp
Enclosures

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JUN 14 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 BRICKYARD DISPOSAL AND)
 RECYCLING, INC., an Illinois)
 corporation,)
)
 Respondent.)

PCB No. 04-218

NOTICE OF FILING

To: Deborah Frank Feinen
Attorney at Law
P.O. Box 227
Champaign, IL 61824-0227

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 COMPLAINT, 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: _____

THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 10, 2004

CERTIFICATE OF SERVICE

I hereby certify that I did on June 10, 2004, 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, COMPLAINT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: Deborah Frank Feinen
Attorney at Law
P.O. Box 227
Champaign, IL 61824-0227

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



Thomas Davis, Chief
Assistant Attorney General

This filing is submitted on recycled paper.

JUN 14 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 BRICKYARD DISPOSAL AND)
 RECYCLING, INC., an Illinois)
 corporation,)
)
 Respondent.)

PCB No. 04 218
 (Enforcement)

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) (2002), 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) (2002). In support of this motion, Complainant states as follows:

1. Complainant is filing, contemporaneously with this motion, a Complaint with the Board, alleging waste disposal violations by the Respondent.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. 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) (2002).

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.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: _____
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-7968
Dated: 6/10/04

RECEIVED
CLERK'S OFFICE
JUN 14 2004
STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
BRICKYARD DISPOSAL AND)
RECYCLING, an Illinois corporation,)
)
Respondent.)

PCB No. 04-218
(Enforcement)

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of the Respondent, BRICKYARD DISPOSAL AND RECYCLING, as follows:

COUNT I

HAZARDOUS WASTE DISPOSAL AT A
NON-HAZARDOUS WASTE DISPOSAL SITE

1. This Complaint is brought on behalf of the People of the State of Illinois, by Lisa Madigan, the Attorney General of the State of Illinois, by her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. Respondent, Brickyard Disposal and Recycling, ("Brickyard") is an Illinois corporation in good standing. Its Registered Agent is CT Corporation System, 208 South LaSalle Street, Chicago, Illinois 60604-1136.

4. The Respondent is a permitted, municipal solid waste landfill located in Danville,

Vermillion County, Illinois.

5. The Respondent's facility is an existing municipal solid waste and non-hazardous special waste landfill operating pursuant to Illinois EPA approved operating permit number 1994-419-LFM.

6. On September 15, 2000, the Illinois EPA conducted a multi-media RCRA inspection at Alloy Engineering and Casting in Champaign, Illinois ("Alloy"). During the inspection, the Illinois EPA inspectors collected samples of bag-house dust from seven dust collectors in the facility.

7. Additional samples were taken on September 28, 2000, (at Alloy's Counter Gravity Casting bag-house), and also on October 6, 2000, and October 19, 2000.

8. Sample results indicated two of the seven waste streams were hazardous for heavy metals. Results indicate that these waste streams exceeded the TCLP limits for selenium, as well as the TCLP regulatory threshold for lead.

9. Subsequent to the September 28, 2000, inspection, Alloy identified 19 waste streams generated at the facility. Alloy had analysis completed and made hazardous waste determinations on all 19 of them at the point of generation. The dust from the same two bag-houses again tested TCLP hazardous.

10. The following table identifies various sample results taken from the two bag-houses:

Date		Sample No.	Constituent	Sample results	Regulatory Lev.*
09/15/00	IEPA	X 104 -TCLP (1)	Lead	33.0 MG/L	5.0 MG/L
09/15/00	IEPA	X 107 -TCLP (2)	Selenium	1.2 MG/L	1.0 MG/L
09/15/00	IEPA	X 104 -TCLP ** (1)	Lead	45.3 MG/L	5.0 MG/L
09/15/00	IEPA	X 107 -TCLP ** (2)	Selenium	1.12 MG/L	1.0 MG/L
09/28/00	IEPA	X 101 -TCLP (1)	Lead	17 MG/L	5.0 MG/L
09/28/00	IEPA	X 101-2-TCLP** (1)	Lead	32.9 MG/L	5.0 MG/L
10/06/00	Alloy	108395-9 TCLP (2)	Selenium	.529 MG/L	1.0 MG/L

10/19/00	Alloy	001020F-TCLP (2)	Selenium	1.10 MG/L	1.0 MG/L
10/19/00	Alloy	0010201-TCLP (1)	Lead	54.7 MG/L	5.0 MG/L

*35 Ill. Adm. Code 721

**Split sample analyzed by Prairie Analytical; (1)=Arc Furnace, (2)-CGC bag-house

11. During the September 28, 2000, inspection, the Illinois EPA discovered that the waste from all processes in the facility (19 separate waste streams), including the hazardous bag-house dust, were being placed in common dumpsters and disposed of as non-hazardous, special wastes at Brickyard. The waste was all manifested as foundry sand. A waste profile created by Alloy indicated that the waste was non-hazardous. The waste profile had been generated by taking a composite sample from one of the dumpsters and not from the point of generation of each waste as required by regulations.

12. After being first notified of the sample results, Alloy immediately began segregating the hazardous waste dust and began managing it as a hazardous waste. Since September 26, 2000, Alloy has manifested the waste generated off-site as a hazardous waste and has sent it to a hazardous waste landfill near Peoria, Illinois.

13. Since September 26, 2000, Alloy's records indicate that as much as 3/4 ton per month of hazardous waste bag-house dust has been produced. Based on information obtained from Alloy, the processes producing this dust have not basically changed since March of 1999. Consequently, as much as 3/4 ton per month of hazardous waste bag-house dust has been improperly disposed of each month since March 1999. A majority of the 3/4 ton per month of hazardous waste was disposed of at Brickyard.

14. For calendar year 1999, manifests indicate that Brickyard accepted waste from Alloy on January 6 through 29; February 1 through 26; March 1 through 31; April 1 through 30; May 2 through 30; June 1 through 30; July 1 through 30; August 2 through 31; September 1 through 30; October 1 through 25; November 1 through 30; and December 1 through 31.

15. Manifests further indicate that Brickyard accepted waste from Alloy daily in 2000 and following March 2000, Brickyard became the exclusive landfill for disposal of the Alloy wastes.

16. Section 21 of the Act, 415 ILCS 5/21 (2002), provides in relevant part:

No person shall:

d. Conduct any waste-storage, waste-treatment, or waste-disposal operation:

1. without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; provided, however, that, except for municipal solid waste landfill units that receive waste on or after October 9, 1993, no permit shall be required for (i) any person conducting a waste-storage, waste-treatment, or waste-disposal operation for wastes generated by such person's own activities which are stored, treated, or disposed within the site where such wastes are generated, or (ii) a facility located in a county with a population over 700,000, operated and located in accordance with Section 22.38 of this Act, and used exclusively for the transfer, storage, or treatment of general construction or demolition debris;

e. Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulation and standards thereunder.

f. Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:

1. without a RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act, or in violation of any condition imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; or

2. in violation of any regulations or standards adopted by the Board under this Act; or

17. By permitting the disposal of hazardous waste bag-house dust from Alloy at Brickyard Disposal and Recycling, a site that does not meet the requirements of the Act and of the regulations and standards thereunder for the storage and disposal of hazardous waste, the Respondent has violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent, Brickyard Disposal and Recycling:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of up to fifty thousand dollars (\$50,000.00) for each violation that occurred on or after July 1, 1990, and an additional penalty of ten thousand (\$10,000.00) for each day during which such violations continued;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), award to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT II

PERMIT VIOLATIONS

1-16. Complainant realleges and incorporates herein by reference paragraphs 1 through

16 of Count I as paragraphs 1 through 16 of this Count II.

17. Permit Number 1994-419-LFM, Modification 29, provides in relevant part:

Condition I

* * *

- 9(f) The operator of this solid waste facility shall not conduct the operation in a manner which results in acceptance of hazardous waste.

* * *

- 9(33) This facility is authorized to accept non-hazardous special waste that meets the definition of industrial process waste or pollution control waste as found in Section 3.17 and 3.27, respectively, of the Act.

* * *

18. Section 3.17 of the Act, 415 ILCS 5/3.17 (2002) provides the following definition:

“INDUSTRIAL PROCESS WASTE” means any liquid, solid, semi-solid, or gaseous waste generated as a direct or indirect result of the manufacture of a product or the performance of a service. Any such waste which would pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means is an industrial process waste. “Industrial Process Waste” includes but is not limited to spend pickling liquors, cutting oils, chemical catalysts, distillation bottoms, etching acids, equipment cleanings, paint sludges, incinerator ashes (including but not limited to ash resulting from the incineration of potentially infectious medical waste), core sands, metallic dust sweepings, asbestos dust, and off-specification, contaminated or recalled wholesale or retail products. Specifically excluded are uncontaminated packaging materials, uncontaminated machinery components, general household waste, landscape waste and construction or demolition debris.

19. By accepting hazardous industrial process waste without proper authorization included in the permit, the Respondent has violated Condition I 9(33) of Permit Number 1994-419-LFM Modification 29.

20. By conducting the operation of the Brickyard Disposal and Recycling in a manner that results in acceptance of hazardous waste, the Respondent has violated Condition I 9(f) of Permit Number 1994-419-LFM Modification 29.

21. By conducting a waste-storage, waste-treatment, or waste-disposal operation in

violation of any conditions imposed within its operating permit, the Respondent has violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent, Brickyard Disposal and Recycling:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of up to fifty thousand dollars (\$50,000.00) for each violation that occurred on or after July 1, 1990, and an additional penalty of ten thousand (\$10,000.00) for each day during which such violations continued;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), award to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT III

FAILURE TO ATTAIN REQUIRED PERMITS

1-16. Complainant alleges and incorporates herein by reference paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count III.

17. Section 703.121 of the Board's Waste Disposal regulations, 35 Ill. Adm. Code 703.121, provides, in relevant part:

- a. No person shall conduct any hazardous waste storage, hazardous waste treatment, or hazardous waste disposal operation:

1. Without a RCRA permit for the HWM (hazardous waste management) facility;

* * *

- b. Owners and operators of HWM units shall have permits during the active life (including the closure period) of the unit. Owners and operators of surface impoundments, landfills, land treatment units and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 35 Ill. Adm. Code 725.215) after January 26, 1983, shall have post-closure care permits, unless they demonstrate closure by removal *or decontamination*, as provided under Sections 703.159 and 703.160, *or obtain* enforceable documents containing *alternative requirements, as provided under Section 703.161*. If a post-closure care permit is required, the permit must address applicable 35 Ill. Adm. Code 724 groundwater monitoring, unsaturated zone monitoring, corrective action, and post closure care requirements.

* * *

18. By conducting a hazardous waste storage, hazardous waste treatment or hazardous waste disposal operation without a RCRA permit for the facility, the Respondent has violated Section 21(f)(1) of the Act, 415 ILCS 5/21(f)(1) (2002) and Section 703.121 of the Board's Waste Disposal regulations, 35 Ill. Adm. Code 703.121.

19. By conducting a hazardous waste storage, hazardous waste treatment or hazardous waste disposal operation in violation of regulations or standards adopted by the Board, the Respondent has violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the People of the State of Illinois, respectfully requests that the Board enter an order against the Respondent, Brickyard Disposal and Recycling:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and

associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose a civil penalty of up to fifty thousand dollars (\$50,000.00) for each violation that occurred on or after July 1, 1990, and an additional penalty of ten thousand (\$10,000.00) for each day during which such violations continued;


E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), award to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

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: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 5/10/04

JUN 14 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
BRICKYARD DISPOSAL AND)
RECYCLING, INC.,)
An Illinois Corporation,)
)
Respondent.)

PCB No. 04-218

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, Brickyard Disposal and Recycling, Inc., ("Brickyard") by its attorneys, Nally, Haasis, & Bauer, P.C., do hereby agree to this Stipulation and Proposal for Settlement. 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 full hearing were held. The parties agree that this Settlement is a compromise of a disputed claim. 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 this or any other proceeding except to enforce the terms of this agreement by the parties hereof. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement and any Illinois Pollution Control Board ("Board") order accepting same may be used as a matter of record in any future permitting or enforcement actions to be considered for purposes of Section 39(i) and 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/39(i), 5/42 (h) (2000). This

agreement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 through 56.6. (2000).

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 Proposal for Settlement and to legally bind them to it.

III.

APPLICABILITY

This Stipulation and Proposal for Settlement shall apply to and be binding upon the Complainant and Respondent, and on any officer, director, agent, employee or servant of Respondent, as well as any successors and assigns of Respondent. Respondent shall not raise as a defense to any enforcement action taken pursuant to this Settlement the failure of its officers, directors, agents, servants, employees, successors or assigns to take such action as shall be required to comply with the provisions of this settlement.

IV.

STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois, brings this action on her own motion, as well as at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the statutory authority vested under Section 31 of the Act, 415 ILCS 5/31 (2000).

2. The Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2000), which is charged, inter alia, with the duty of enforcing the Act.

3. Respondent, Brickyard Disposal and Recycling, Inc, is an Illinois corporation in good standing. Its registered agent is CT Corporation System, 208 South LaSalle Street, Chicago, IL 60604-1136.

B. Facility Description

Brickyard Disposal and Recycling, Inc. operates a permitted municipal solid waste and non-hazardous special waste landfill located in Danville, Vermillion County Illinois. Respondent operates under Illinois EPA permit no. 1994-419-LFM.

C. Noncompliance

Complainant alleges that the Respondent has violated the following provisions of the Act, Board Regulations and Permit Conditions:

1. Count I: By permitting the disposal of hazardous waste bag-house dust from Alloy Engineering and Casting in Champaign, IL at Brickyard Disposal and Recycling, Inc., a site that does not meet the requirements of the Act or the Board regulations and standards thereunder for the storage and disposal of hazardous waste, the Respondent has violated Section 21(e) of the Act, 415 ILCS 5/21(e)(2000).

2. Count II: a. By accepting hazardous industrial process waste without proper authorization included in its permit, the Respondent has violated Condition I 9(33) of Permit Number 1994-419-LFM Modification 29;

b. By conducting the operation of Brickyard Disposal and Recycling, Inc. in a manner that results in the acceptance of hazardous waste, the Respondent has violated Condition I 9(f) of Respondent's Permit Number 1994-419-LFM Modification 29; and

c. By conducting waste storage, waste treatment, or waste disposal operation in violation of Brickyard Disposal and Recycling, Inc.'s operating permit, the Respondent has violated Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2000).

3. Count III:

a. By conducting a hazardous waste storage, hazardous waste treatment or hazardous waste disposal operation without a RCRA permit for the facility, the Respondent has violated Section 21(f)(1) of the Act, 415 ILCS 5/21(f)(1) (2000) and Section 703.121 of the Board's Waste Disposal regulations, 35 Ill. Adm. Code 703.121.

b. By conducting a hazardous waste storage, hazardous waste treatment or hazardous waste disposal operation in violation of regulations or standards adopted by the Board, the Respondent has violated Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2000).

V.

FUTURE PLANS OF COMPLIANCE

Respondent shall cease and desist from future violations of the Act and Board regulations, including but not limited to, those Sections of the Act and Board regulations that were the subject matter of the complaint as outlined in Section IV. C. of this Stipulation and Proposal for Settlement.

VI.

IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2000), 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 purpose of excluding hazardous waste from the landfill and compliance with permit conditions is to protect the public from the threat of or actual land and water pollution. In this case, the Respondent contends that the alleged amounts of hazardous waste accepted at the landfill, if any were, de minimis.

2. The parties agree that Respondent's landfill operation is of social and economic benefit.

3. The parties agree that Respondent's landfill operation is located in a suitable area.

4. It was practical and economically reasonable for Respondent to exclude the alleged hazardous waste from the landfill.

5. Respondent implemented preventative measures subsequent to the alleged violations that are the subject of the Complaint in this matter; Respondent implemented screening procedures for special waste customers, conducted employee training, and continues to randomly check loads in accordance with special condition 32 of its permit.

VII.

CONSIDERATION OF SECTION 42 (h) FACTORS

Section 42 (h) of the Act, 415 ILCS 5/42(h) (2000), provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b) (1), (b) (2), or (b) (3) 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 response to these factors, the parties state as follows:

1. The Complainant alleges that the Respondent accepted hazardous waste in the form of bag house dust since at least March 1999 and continuing through dates better known to the Respondent.

2. Respondent implemented preventative measures subsequent to the alleged violations that are the subject of the Complaint in this matter; Respondent implemented screening procedures for special waste customers, conducted employee training, and continues to randomly check loads in accordance with special condition 32 of its permit.

3. The Complainant alleges that the economic benefit accrued by the Respondent's noncompliance is the savings realized by accepting the hazardous waste. The Respondent claims the economic benefit will be offset through the supplemental environmental project.

4. The supplemental environmental project credit is reasonable amount based on the violations alleged in the Complaint, will serve to deter further violations of the Act and will aid in enhancing voluntary compliance with the Act.

5. In the past five years Respondent Brickyard Disposal and Recycling, Inc. has had one other violation, an administrative citation issued by the Vermillion County Health Department resulting in a \$500.00 fine.

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

7. The settlement of this matter includes a supplemental environmental project as set forth in Section VIII.2 of this Stipulation.

VIII.

TERMS OF SETTLEMENT

1. NON-ADMISSION:

Respondent Brickyard Disposal and Recycling, Inc., denies that it violated Sections 21(d)(1),(e), (f)(1) and (2) of the Act, 415, ILCS 5/21(d)(1),(e), (f)(1) and (2), or Section 703.121 of the Board Waste Disposal Regulations, 35 Ill. Admin. Code 703.121. Respondent Brickyard Disposal and Recycling, Inc. further denies that it violated Condition I 9(33), (f) or Permit Number 1994-419 LFM Modification 29.

2. SUPPLEMENTAL ENVIRONMENTAL PROJECT:

In order to promote the goals of the Act to restore, protect and enhance the quality of the environment, Respondent shall perform the following supplemental environmental project ("SEP"). The value of the SEP is Forty Thousand Dollars (\$40,000.00). The parties agree that this SEP consists of disposal and hauling costs that shall be credited toward the \$40,000 total SEP value and specifically includes the following:

a. Respondent will provide hauling to Complainant for the disposal of waste from property located in the SW ¼ of Section 8, T. 12 S., R. 2 W., Richwood Township, west of Batchtown, Illinois, from property located on Route 10 in Easton, Illinois, and from property located at the Southeast corner of 2nd and Mason Streets in Easton, Illinois (Hereinafter "Sites"). The Sites were previously identified by the Illinois EPA as needing clean-up. The Respondent will provide containers to the three Sites. Separate containers shall be provided to the Batchtown site for waste and scrap metal. The containers provided to the Batchtown site shall hold approximately 4 ½ tons each; Respondent shall be credited \$160.00 per container for each container or part thereof hauled from the Batchtown site. At the Easton sites, the Respondent shall provide semi-trailers that hold approximately 20-21 tons for hauling; Respondent shall be

credited \$400.00 per semi-load for each load or part thereof hauled from the Easton site. The credits shall be deducted from the \$40,000.00 total SEP value.

b. Respondent will also provide the Complainant with landfill capacity for the disposal of not more than 1,142 tons of waste. The landfill capacity as calculated below, of municipal solid waste and non-hazardous special waste shall be at the landfills noted below provided said landfills are permitted to dispose of said waste ("Landfill Capacity"). The landfills where the Landfill Capacity will be provided to Complainant are: 1) ADS McLean, Bloomington, IL; and/or 2) Sangamon Valley Landfill, Springfield, IL; and/or 3) RCS Landfill, Edwardsville, IL; and/or 4) Brickyard, Danville IL. (collectively "Designated Landfills")

c. The parties agree that the present value of the Hauling and Landfill Capacity is approximately \$40,000.00 based on a current hauling rate of \$160.00 per Batchtown container, \$400.00 per Easton semi-trailer load and an average gate rate of \$35.00/ton of waste for all landfills listed in paragraph b. above with the exception of Sangamon Valley Landfill which shall be credited at an average gate rate of \$37.00 ton of waste. Hauling credits from subparagraph a. above and landfill capacity from this subparagraph c. shall not equal more than \$40,000.00 even if the Respondent has not used all the landfill capacity. All waste will be handled consistent with regulations for regulated asbestos containing material.

d. Respondent represents that it is currently the owner and operator of the Designated Landfills and that there is sufficient remaining disposal capacity at the Designated Landfills to provide the Landfill Capacity; however, if prior to the time Complainant uses all of the Landfill Capacity, Respondent ceases to own or operate any of the Designated Landfills or if the Respondent determines that there is not sufficient disposal capacity at any of the Designated Landfills to dispose of the Landfill Capacity, then the Landfill Capacity shall be

utilized at the remaining Designated Landfills that are owned and operated by Respondent and that have sufficient disposal capacity;

e. Complainant shall notify Respondent that it intends to utilize all or a portion of the Hauling and/or Landfill Capacity at least 3 business days prior to the date the Hauling and/or Landfill Capacity will be needed and may request which of the Designated Landfills Complainant would prefer to utilize for disposal of the Waste. Respondent shall take into consideration Plaintiff's preferred Designated Landfill and shall designate which of the Designated Landfills will be utilized to provide the Landfill Capacity. Thereafter, the Respondent shall direct Complainant to transport the Waste to that Designated Landfill(s). With respect to Subparagraph a. above the parties acknowledge that the hauling rates are based in part upon waste being hauled to the landfill closest to the Sites and acknowledge that waste will be directed to Sangamon Valley. With the exception of the projects defined in Subparagraph a. above, in no event shall Respondent be responsible for transporting the Waste to a Designated Landfill(s);

f. Upon disposal of the Waste, Respondent shall prepare a gate receipt evidencing the amount of waste received and the date of receipt. Upon pick up of a hauling container, Respondent shall prepare a receipt evidencing the number of containers/semi-trailer loads hauled and the date of the receipt. Copies of all of the receipts shall be forwarded to the parties named hereafter in Subparagraph j;

g. Complainant shall use its best efforts to utilize the Hauling and/or Landfill Capacity within five years from the date of a Board Order accepting this Stipulation ("Hauling/Landfill Capacity Usage Period" or "HLCUP");

h. In the event that Complainant is unable to utilize the Hauling and/or Landfill Capacity within the HLCUP, despite its best efforts to do so, then, at Respondent's sole

option and after receipt of a written request from either Complainant, or the Illinois EPA as described below:

(i). Respondent may pay the remaining amount of the SEP value, as calculated under Subparagraph i.(i) below; or

(ii) Respondent may extend the HLCUP up to two (2) years, but in no event shall the extension last longer than seven (7) years from the date of a Board Order accepting this Stipulation. Either Complainant or the Illinois EPA shall make a written request to Respondent to extend the HLCUP no later than 90 days prior to the expiration of the HLCUP. Respondent shall respond to the request within 30 days of receipt. In the event that Respondent determines to extend the HLCUP, then the remaining amount of the SEP value, if any, at the date of the expiration of the extension period, as calculated under the formulas in Subparagraphs i.(ii) through (iv) below, shall be due and owing within 60 days of the date of expiration of the extension period. In the event that Respondent determines not to extend the HLCUP, then the remaining amount of the SEP value, as calculated in Subparagraph i.(i) below, shall be due and owing within 120 days of written notice of the non-extension. Payment shall be made to the EPTF. Non-payment of the SEP amount outstanding within this period of time will be subject to interest, as provided below. Failure by either Complainant or the Illinois EPA to request an extension of time within the 90 days prior to expiration of the HLCUP shall not adversely impact Complainant's right to utilize the Landfill Capacity under this SEP or right to payment of any remaining amount of SEP value that may be due under Subparagraph i.;

i. The remaining amount of the SEP value, described in Subparagraph h. above, shall be calculated as follows:

(i) At the end of the five (5) year HLCUP, the remaining value of the SEP shall be the difference between the \$40,000.00 value and the amount of Hauling and/or Landfill Capacity that has been used by Complainant multiplied by \$160.00 per container or part

thereof for hauling from Bachtown and \$400.00 per semi-trailer load or part thereof hauling from Easton and \$35.00/ton for all landfills but Sangamon Valley and \$37.00 per ton for Sangamon Valley for landfill capacity. As set forth above, the multiplier of \$160.00 and/or \$400.00 per container/semi-trailer load shall be applied to the number of containers or parts thereof hauled by Respondent and shall be taken from receipts provided in accordance with paragraph f above. As set forth above, the multiplier of \$35.00 per ton and/or \$37.00 per ton shall be applied to the tons of landfill capacity that has been used by the Complainant as taken from the gate receipts.

(ii) Between the date of the expiration of the HLCUP, plus an extension of up to one (1) year, for a total of up to six (6) years from the entry of a Board Order accepting this Stipulation, the amount that is two-thirds (2/3) of the difference between the \$40,000.00 value of the SEP and the amount of Hauling and/or Landfill Capacity calculated in accordance with Subparagraph i.(i). above.

(iii) Between the date of the expiration of the HLCUP, plus an extension of between one (1) and up to two (2) years, for a total of up to seven (7) years from the entry of a Board Order accepting this Stipulation, the amount that is one-third (1/3) of the difference between the \$40,000.00 value of the SEP and the amount of Hauling and/or Landfill Capacity calculated in accordance with Subparagraph i.(i). above.

(iv) The remaining amount of the SEP value shall be zero seven (7) years after the date of the entry of a Board Order accepting this Stipulation. If Complainant fails to utilize all of the Hauling and/or Landfill Capacity by this date, Respondent shall have no further obligations to provide Hauling and/or Landfill Capacity.

(v) Any amounts owed Complainant shall be paid by certified check payable to the Illinois Environmental Protection Agency for deposit in the Environmental Protection Trust Fund and delivered to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62702-9276

The name and number of the case and Respondent's FEIN shall appear on the face of the certified check.

A copy of the payment transmittal and check shall be simultaneously submitted to:

Office of the Attorney General
c/o Peggy Poitevint
Environmental Bureau
500 South Second Street
Springfield, IL 62706

j. For purposes of the notice provided for above, the parties may be notified by contact with the following persons or their designee:

For Complainant:

David Jansen
Illinois EPA
4500 South Sixth Street Road
Springfield, IL 62703

Kyle Davis
Illinois EPA
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

For Respondent:

Brickyard Disposal and Recycling, Inc.
c/o Mr. Harry Bent
Allied Waste Central Region
4340 Acer Grove Suite B
Springfield, IL 62707

3. **INTEREST:**

Pursuant to Section 42(g) of the Act, 415 ILCS 5/42 (g) (2000), interest shall accrue on any amount 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) (2000) :

- a. Interest on unpaid amounts shall begin to accrue from the date the payment is due and continue to accrue to the date payment is received by the Illinois EPA;
- b. Where partial payment is made on any payment amount that is due, such partial payment shall be first applied to any interest on unpaid amounts then owing;
- c. All interest on amounts owed Complainant shall be paid by certified check payable to the Illinois Environmental Protection Agency for deposit in the Environmental Protection Trust Fund and delivered to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62702-9276

A copy of the payment transmittal and check shall be simultaneously submitted to:

Office of the Attorney General
c/o Peggy Poitevint
Environmental Bureau
500 South Second Street
Springfield, IL 62706

The name and number of the case and Respondent's FEIN shall appear on the face of the certified check.

4. **PAYMENT, COLLECTION AND NOTIFICATION:**

For issues relating to the payment of the penalty, Respondent may be reached at the following address:

Brickyard Disposal and Recycling, Inc.
c/o Mr. Harry Bent
Allied Waste Central Region
4340 Acer Grove Suite B
Springfield, IL 62707

IX.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects Respondent's responsibility to comply with any federal, state or local regulations, including but not limited to the Act and Board Regulations, 35 Ill. Adm. Code, Subtitle A through H.

X.

RIGHT OF ENTRY

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

XI.

RELEASE FROM LIABILITY

In consideration of Respondent's completion of the SEP contained herein and its commitment to refrain from future violations of the Act and Board regulations, Complainant releases, waives and discharges Respondent from any further liability or penalties for violations of the Act and regulations which were the subject matter of the Complaint herein, upon the completion of all activities required hereunder and the payment of all monies owed. The

release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed contemporaneously with the Stipulation and Proposal for Settlement. Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents 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. Any future liability for natural resources damage arising out of the alleged violations; or for removal, cleanup, or remedial actions as a result of a release of hazardous substances or the liability of the Respondent under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Sections 9601-9675 and,
- d. Liability or claims based on the Respondents failure to satisfy the requirements of this Stipulation and Proposal for Settlement.

Nothing in this Stipulation and Proposal for Settlement 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 Respondents.

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

AGREED:

FOR THE COMPLAINANT:

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

Dated: 05/10/04

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: Joseph E. Svooboda
JOSEPH E. SVOBODA
Chief Legal Counsel

Dated:

FOR THE RESPONDENT:

BRICKYARD DISPOSAL AND
RECYCLING, INC.

BY: _____

Dated: 06-03-04