

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

JUN 10 2005

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
ASBESTOS CONTROL AND )  
ENVIRONMENTAL SERVICES CORP., )  
an Illinois corporation, )  
)  
Respondent. )

PCB No. 04-162  
(Enforcement)

NOTICE OF FILING

TO: See Attached Service List.

PLEASE TAKE NOTICE that on June 10, 2005, the People of the State of Illinois filed with the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY: Bridget M. Carlson

BRIDGET M. CARLSON  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph Street, Suite 2001  
Chicago, Illinois 60601  
(312) 814-0608

SERVICE LIST

Mr. Norman V. Chimenti  
Martin, Craig, Chester and Sonnenschein  
2215 York Road, Suite 550  
Oak Brook, Illinois 60523

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

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**MOTION FOR RELIEF FROM HEARING REQUIREMENT**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* 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 ("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. The Complaint in this matter alleges violations of Sections 9(a) and 9.1(d)(1) of the Act, 415 ILCS 5/9(a) and 5/9.1(d)(1)(2002), Section 201.141 of the Board regulations, 35 Ill. Adm. Code 201.141, 40 CFR 61.145(c)(3) and (c)(6), and 40 CFR 61.150(b).
2. Complainant is filing this Motion and a Stipulation and Proposal for Settlement with the Board.
3. The parties have reached agreement on all outstanding issues in this matter.
4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.
5. 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, 415 ILCS 5/31(c)(1)(2002).

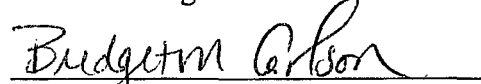
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:



BRIDGET M. CARLSON  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
(312) 814-0608

DATE: June 10, 2005

THIS FILING IS SUBMITTED ON RECYCLED PAPER

JUN 10 2005

STATE OF ILLINOIS  
Pollution Control Board

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PCB 04-162

(Enforcement)

**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 Respondent, ASBESTOS CONTROL AND ENVIRONMENTAL SERVICES CORP. ("ACES"), have agreed to the making of this Stipulation and Proposal for Settlement 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 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, Complainant and Respondent agree to be bound by the Stipulation and not to contest its validity in any subsequent proceeding to implement or enforce its terms.

**I.**

**JURISDICTION**

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (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 March 17, 2004, a Complaint was filed 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 ACES.

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. Respondent ACES was an Illinois corporation qualified to do business in the State of Illinois when the Complaint was filed. ACES has since been involuntarily dissolved by the

Illinois Secretary of State. ACES' principal business address is P.O. Box 945, Wheaton, Illinois.

4. ACES is a contractor licensed by the Illinois Department of Public Health to conduct asbestos abatement activities. ACES engages in the removal and disposal of regulated asbestos-contained material ("RACM") and asbestos containing waste material ("ACWM") generated during demolition and renovation at various commercial and industrial facilities.

**B. Site Description**

1. On November 21, 2002, the Illinois EPA received from ACES a Notification of Demolition and Renovation informing the Illinois EPA of scheduled renovation activities at a vacant warehouse located at 816 West 47<sup>th</sup> Place, Chicago, Cook County, Illinois ("facility"). The notification indicated that approximately 6600 linear feet of pipe insulation would be removed starting November 25, 2002, and ending December 2, 2002.

2. The notification stated that the building is owned by ABM LLC.

**C. Allegations of Noncompliance**

Complainant contends that ACES has violated the following provisions of the Act and Board Regulations:

Count I: Air Pollution – Violation of Section 9(a) of the Act, 415 ILCS 5/9(a)(2002), and 35 Ill. Adm. Code 201.141.

Count II: Failure to Follow Proper Emission Control Procedures – Violation of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1)(2002), and 40 CFR 61.145(c)(3) and (c)(6).

Count III: Improper Disposal – Violation of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1)(2002), and 40 CFR 61.150(b).

**D. No Admission of Violations**

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

**E. Compliance Activities to Date**

As of the date of filing of this Stipulation, the asbestos renovation project that was the subject of ACES' November 21, 2002, Notification of Demolition and Renovation has been completed, and all ACWM and asbestos contamination found on site, inside and outside the facility building, has been removed and disposed of.

**IV.**

**APPLICABILITY**

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



V.

**COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

This Stipulation in no way affects the responsibilities of ACES 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, and the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for asbestos, 40 CFR 61, Subpart M.

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 human health and the environment were threatened by

ACES' violations of ACM regulations. However, the threat of ACM contamination was abated by the proper cleanup and disposal of the ACM.

2. The asbestos abatement work that ACES performs is of social and economic benefit, and when done in accordance with applicable statutes and regulations, is beneficial to human health and the environment.
3. The suitability of ACES' operations to this location is not at issue in this matter.
4. It is both technically practicable and economically reasonable for ACES to follow work practices and procedures to properly handle, remove and dispose of RACM and ACWM in compliance with all applicable provisions of the Act, the Board Air Pollution Regulations and 40 CFR 63, Subpart M.
5. ACES has subsequently complied with the Act, Board Regulations and NESHAP for asbestos at the subject facility.

## 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 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 as follows:

1. A significant amount of RACM was disturbed during the renovation ACES performed at the facility. However, the removal area was under containment and the workers were wearing personal protective equipment. The Illinois EPA inspection during which the alleged violations were discovered was conducted on December 19, 2002. On or about March 29, 2003, ACES submitted to the Illinois EPA copies of worker licenses, daily logs, clearance analyses and waste shipment records for the project. The duration of the alleged violations at issue lasted for one day.
2. Complainant asserts that ACES did not act diligently in that it failed to ensure that all RACM was wetted prior to removal. ACES did return to compliance once the alleged violations were brought to its attention.
3. Respondent's economic benefit from alleged non-compliance was nominal and the penalty obtained includes any economic benefit received.
4. Complainant has determined that a penalty of Twenty Thousand Dollars (\$20,000.00) will serve to deter violations and aid in future voluntary compliance with the Act, Board Air Pollution Regulations and asbestos NESHAP.

5. To Complainant's knowledge, ACES has no previously adjudicated violations of the Act, Board regulations or asbestos NESHAP.

## VIII.

### TERMS OF SETTLEMENT

#### A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Twenty Thousand Dollars (\$20,000.00) within one hundred (100) days from the date the Board adopts and accepts this Stipulation. Within seven days of entry of the stipulation and proposal for settlement with the Board, ACES will pay \$7,500 of the total penalty amount. Thirty days thereafter, ACES will remit an additional \$2,500, thirty days thereafter, ACES will remit an additional \$2,500, thirty days thereafter, ACES will remit the final \$7,500.

The Respondent stipulates that the first payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the first penalty payment on behalf of Respondent, within seven (7) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The penalty described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and shall be sent overnight mail to:

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

The name and number of the case and ACES' Federal Employer Identification Number, 36-3618977, shall appear on the check. A copy of the certified check or money order and the transmittal letter shall be sent to:

Ms. Bridget M. Carlson  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), 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 (2002). 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 payment owed shall be paid by certified check or money order, payable to the Illinois Environmental Protection Agency, designated to the Environmental Protection Trust Fund and delivered to the address and in the manner described above.

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

Mr. Norman V. Chimenti  
Martin, Craig, Chester and Sonnenschein  
2215 York Road, Suite 550  
Oak Brook, Illinois 60523

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

**B. Future Use**

Notwithstanding any other language in this Stipulation to the contrary, this Stipulation may be used against ACES 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 Section 39(i) and/or 42(h) of the Act, 415 ILCS 5/39(i) and/or 5/42(h)(2002).

**C. Cease and Desist**

ACES 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 III.C. of this Stipulation.

**D. Release from Liability**

In consideration of ACES' payment of the Twenty Thousand Dollar (\$20,000.00) penalty and any specified costs and accrued interest, and 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 ACES from any further liability or penalties for violations of the Act, Board Regulations or asbestos NESHAP 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 March 17, 2004. The Complainant reserves, and this Stipulation and Proposal for Settlement is without prejudice to, all rights of the State of Illinois against ACES 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. Correspondence, Reports and Other Documents**

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

As to the Complainant

Ms. Bridget Carlson  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

As to the Respondent

Mr. Norman V. Chimenti  
Martin, Craig, Chester and Sonnenschein  
2215 York Road, Suite 550  
Oak Brook, Illinois 60523

**F. 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.

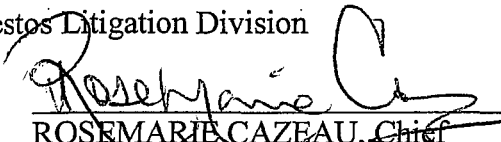


WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

**PEOPLE OF THE STATE OF ILLINOIS,**

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General


DATE: 5/13/05

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

BY:   
WILLIAM INGERSOLL  
Acting Chief Legal Counsel

DATE: May 11, 2005

**ASBESTOS CONTROL AND ENVIRONMENTAL SERVICES CORP.**

BY: 

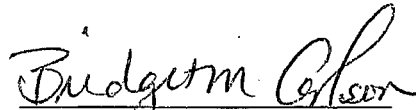
DATE: 06/01/05

Name: Daniel T. Coyne

Title: President

CERTIFICATE OF SERVICE

I, BRIDGET M. CARLSON, an Assistant Attorney General, certify that on the 10th day of June 2005, I caused to be served by First Class Mail the foregoing Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

  
BRIDGET M. CARLSON