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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

October 27, 2005

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

Re: ***People v. James Zeller, et al.***
PCB No. 05-99

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 of the documents to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

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

RC/pp
Enclosures

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CERTIFICATE OF SERVICE

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STATE OF ILLINOIS
Pollution Control Board

I hereby certify that I did on October 27, 2005, 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: **JAMES ZELLER**
c/o Stephen R. Green
400 N. Market St.
Marion, IL 62959

THOMAS ZELLER
c/o Brian D. Lewis
411 ½ N. Court St.
Marion, IL 62959

MATTHEW SHORT
c/o Randy Patchett
104 W. Calvert
P.O. Box 1176
Marion, IL 62959

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



RAYMOND CALLERY
Assistant Attorney General

This filing is submitted on recycled paper.

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: 

RAYMOND CALLERY
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 27, 2005

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
Complainant,)
)
)
)
v.) PCB 05-99
) (Enforcement - Air)
)
)
JAMES ZELLER, THOMAS ZELLER, and)
MATTHEW SHORT,)
)
Respondents.)

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 Respondents, JAMES ZELLER, THOMAS ZELLER, and MATTHEW SHORT, 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 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, Respondents agree to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

I. JURISDICTION

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

II. AUTHORIZATION

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

III. STATEMENT OF FACTS

A. Parties

1. On November 29, 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 the Respondents.

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

3. At all times relevant to the Complaint, Respondent, JAMES ZELLER, was the owner of a parcel of property located at 408 South Court Street in Marion, Williamson County, Illinois.

4. At all times relevant to the Complaint, Respondent, THOMAS ZELLER, was a contractor doing business as "TZ Builders."

5. At all times relevant to the Complaint, Respondent, MATTHEW SHORT, was a contractor doing business as "Short Brothers Excavating and Trucking."

B. Site Description

1. On or about March 31, 2003, JAMES ZELLER sold to MATTHEW SHORT a building located at 408 South Court Street in Marion, Williamson County, Illinois ("site") for the express purpose of being demolished and removed from the property. The document signed by both parties also states as follows: "Buyer is aware of abestos siding and that is [sic] has to be handled with legal disposal."

2. On or before April 2, 2003, MATTHEW SHORT employed heavy equipment to demolish the building and to remove the siding from the building. In response to a citizen complaint on that date, the Illinois EPA visited the site and photographed the building. On April 8, 2003, the Illinois EPA attempted to contact JAMES ZELLER and MATTHEW SHORT.

3. On a date better known to the Respondents, MATTHEW SHORT, ceased demolition activities. On a date better known to the Respondents, THOMAS ZELLER resumed demolition activities, employing heavy equipment to demolish the building and to remove the siding from the building.

4. On October 30, 2003, the Illinois EPA returned to the site in response to another citizen complaint. All of the siding had been removed from the building with only the structural steel beams remaining intact; a second, smaller building had been completely demolished. The Illinois EPA observed demolition debris remaining at the site including transite panels and broken pieces thereof. Samples were collected of the debris and the subsequent analyses confirmed that the transite pieces contained asbestos ranging from 18% to 21%. The Illinois EPA attempted to contact JAMES ZELLER again.

5. On November 3, 2003, the Illinois EPA returned to the site to further its investigation. The Illinois EPA observed

that the transite panels had been crushed and most of the debris had been loaded into an open roll off box.

C. Allegations of Non-Compliance

Complainant contends that the Respondents have violated the following provisions of the Act and Board regulations:

Count I: Respondents, JAMES ZELLER, THOMAS ZELLER, and MATTHEW SHORT, did not provide written notification to the Illinois EPA prior to the demolition of the facility, in violation of 40 CFR §61.145(b)(2) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1)(2002).

Count II: Respondents, MATTHEW SHORT and THOMAS ZELLER, failed to remove the transite prior to the demolition, in violation of 40 CFR §61.145(c)(1) and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d)(2002).

D. Admission of Violations

The Respondents admit to the violation(s) alleged in the Complaint filed in this matter and referenced within Section III.C herein.

E. Compliance Activities to Date

1. On November 5, 2003, the Illinois EPA received from Lundsford Baysinger Architects and Engineers, Inc. ("LBAE"), environmental consultants retained by JAMES ZELLER, a facsimile coversheet informing the Illinois EPA, in part, that an asbestos

abatement contractor licensed by the Illinois Department of Public Health ("IDPH") had been retained, an asbestos abatement project design plan would be drafted, and site security measures had been implemented to control asbestos emissions and restrict public access to the site.

2. On November 24, 2003, the Illinois EPA received from JAMES ZELLER a project design plan setting forth methods and procedures to be utilized to locate, remove, and dispose of all regulated asbestos-containing waste material and asbestos contamination at the site.

3. Having reviewed the document, the Illinois EPA communicated to LBAE, in December 2003, its acceptance of the design plan.

4. On February 10, 2004, Illinois EPA inspector Scott Arnold conducted an inspection of the site to monitor measures by JAMES ZELLER to remove and properly dispose of all asbestos contamination. Based upon observations during the inspection, the Illinois EPA determined asbestos remediation activities were complete.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondents, and any officer, director,

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

V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations including, but not limited to, the National Emission Standards for Hazardous Air Pollutants for Asbestos ("NESHAP") (40 CFR §61.140 et seq.), the Act, and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

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

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

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

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

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

1. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondents' violations.

2. The site was a former commercial facility comprised of two adjacent buildings. Both structures have now been demolished.

3. The site was a former commercial facility comprised of two adjacent buildings. Both structures have now been demolished.

4. Providing written notice to the Illinois EPA and removal of the transite pipe prior to demolition at the site is both technically practicable and economically reasonable.

5. Respondents have subsequently complied with the Act and the Board Regulations.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

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

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

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

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

1. The Respondents failed to provide written notice to the Illinois EPA and failed to remove the transite pipe prior to demolition activities at the site. The violations began on or around March 31, 2003, and were resolved at various times during the following year.

2. Following the initial citizen complaint and inspection on April 8, 2003, Illinois EPA Inspector Arnold communicated to JAMES ZELLER a request for information relative to demolition activities at the site. Information responsive to this request was not received by the Illinois EPA. Subsequent to the second citizen complaint on October 30, 2003, Illinois EPA performed a further inspection of the site and requested that measures be promptly implemented to restrict public access to the site and control asbestos emissions, and that a project designer and

asbestos abatement contractor licensed by the IDPH be retained. On November 5, 2003, the Illinois EPA was advised that LBAE had been retained by JAMES ZELLER.

3. Respondents realized an economic benefit of non-compliance by avoiding and delaying costs necessary to properly conduct asbestos removal and disposal activities in compliance with the asbestos NESHAP in this matter.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Seventy-Five Hundred Dollars (\$7,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondents have 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 Respondents shall pay a civil penalty in the sum of Seventy-Five Hundred Dollars (\$7,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The

Respondents stipulate that payment has been tendered to Randy Patchett, attorney of record in this matter for MATTHEW SHORT, in a form acceptable to that attorney. Further, Respondents stipulate that said attorney has been directed to make the penalty payment on behalf of Respondents, within thirty (30) 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 submitted to:

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

A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Raymond J. Callery
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62702

and

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

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, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

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

James Zeller
Zeller Construction
P.O. Box 1201
900 Skyline Dr.
Suite 600
Marion IL 62959

Thomas Zeller
TZ Builders
1109 Oakwood Ln.
Marion IL 62959

Matthew Short
12154 Short Dr.
Marion IL 62959

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.

B. Future Use

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

C. Cease and Desist

The Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject

matter of the Complaint as outlined in Section III.C
("Allegations of Non-Compliance") of this Stipulation.

D. Release from Liability

In consideration of the Respondents' payment of the \$7,500.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.C and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for 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 November 29, 2004. The 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. liability for natural resources damage arising out of the alleged violations; and

d. liability or claims based on the Respondents' 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 Respondents.

E. 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. Respondents agree 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 none of the parties are bound by the terms herein.

4. It is the intent of the Complainant and Respondents 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.

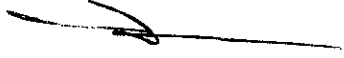
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WHEREFORE, Complainant and Respondents request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,


LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
THOMAS E. DAVIS, Chief
Environmental Bureau
Assistant Attorney General

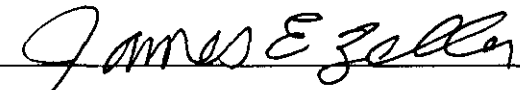
DATE: 10/27/05

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: 
WILLIAM D. INGERSOLL
Acting Chief Legal Counsel

DATE: July 29, 2005

JAMES ZELLER


THOMAS ZELLER

DATE: aug-10-05


Tom Zeller

DATE: 15 Aug-05

MATTHEW SHORT


Matthew Short

DATE: 22 - AUG 05