

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 05-199
)	(Enforcement)
CHAMPION ENVIRONMENTAL SERVICES)	
INC., a Wisconsin Corporation,)	
)	
Respondent.)	

NOTICE OF MOTION

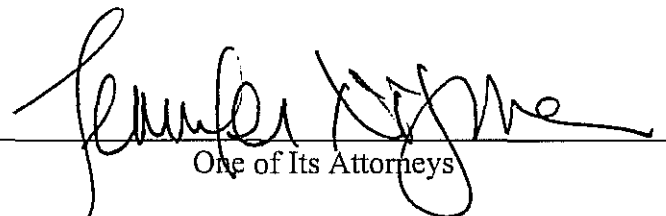
TO: John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Ms. Javonna L. Homan
Assistant Attorney General
Environmental Enforcement Bureau
Office of the Illinois Attorney General
500 South Second Street
Springfield, IL 62706

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board Champion Environmental Services Inc.'s Motion To Finalize Settlement Agreement and Memorandum In Support Of Its Motion To Finalize Settlement Agreement, copies of which are herewith served upon you.

CHAMPION ENVIRONMENTAL SERVICES, INC.

By 
One of Its Attorneys

Dated: September 2, 2008

Jennifer T. Nijman
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
(312) 251-5255

CERTIFICATE OF SERVICE

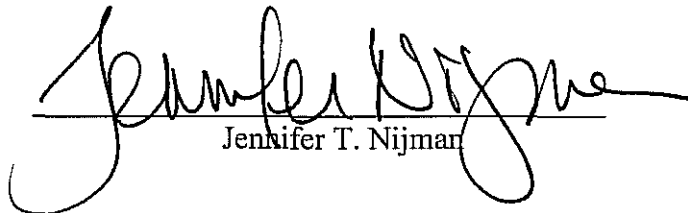
I, the undersigned, certify that on this 2nd day of September, 2008, I served electronically the attached Champion Environmental Services Inc.'s Motion To Finalize Settlement Agreement and Memorandum In Support Of Its Motion To Finalize Settlement Agreement upon the following person:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

and by U.S. Mail, first class postage prepaid, to the following person:

Javonna L. Homan
Assistant Attorney General
Environmental Enforcement Bureau
Office of the Illinois Attorney General
500 South Second Street
Springfield, IL 62706

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274



Jennifer T. Nijman

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CHAMPION ENVIRONMENTAL SERVICES INC.'S MOTION
TO FINALIZE SETTLEMENT AGREEMENT

Champion Environmental Services Inc. ("Champion"), by its undersigned counsel, and pursuant to 35 Ill. Adm. Code 101.508, requests that the Illinois Pollution Control Board ("Board") enter an Order finding that the Stipulation and Proposal for Settlement prepared and presented by Complainant on December 5, 2007 and executed by Champion is a final agreement to be presented to the Board. In support of its Motion, Champion submits the attached Memorandum in Support and states as follows:

1. Champion and Complainant entered into a valid contract to resolve this matter. All terms were agreed by both parties, put into writing by Complainant, and presented to Champion as final for presentation to the Board. The parties reached a final agreement to present to the Board.
2. Almost a year after reaching agreement on all terms, Complainant now refuses to execute the agreement and demands changes to substantive terms that had been specifically

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negotiated. Neither law nor policy allows Complainant to avoid its contractual obligation to present the agreed settlement to the Board.

3. On May 23, 2005, Complainant filed a complaint alleging violations of the National Emissions Standards for Asbestos and certain air pollution violations relating to a transite removal action performed by Champion in February of 2005. Champion disputed the allegations of the complaint, but entered into settlement discussions with Complainant to avoid the expense of a full hearing.
4. After a series of written exchanges of a settlement agreement, in December 2007 Complainant presented Champion with a final Stipulation and Proposal for Settlement ("Stipulation") and requested that Champion execute it "as soon as possible." At that time, the parties had agreed to all terms and had manifested their intent to finalize a contract. Counsel for Champion immediately sent the Stipulation to her client for execution, as Asst. A.G. Homan had requested. Champion executed the Stipulation and delivered it to Asst. A.G. Homan.
5. On May 20, 2008, without explanation, Complainant refused to execute the final Stipulation and instead sent to Champion a new version of the Stipulation that removed all of the key settlement terms to which the parties had already agreed.
6. Contract law precludes Complainant from simply renegeing on an agreement it had fully negotiated and finalized. The parties had a valid contract between them which was ready to present to the Board. To allow such backtracking is directly contrary to applicable law and to the policy to encourage settlements of disputes. The parties spent almost two years working out the details of the Stipulation, and Complainant now seeks to begin

those discussions anew, resulting in excessive and unnecessary delay and expenditure of taxpayer funds.

7. The Restatement (Second) of the Law – Contracts, Section 27, entitled “Existence of Contract Where Written Memorial is Contemplated” states:

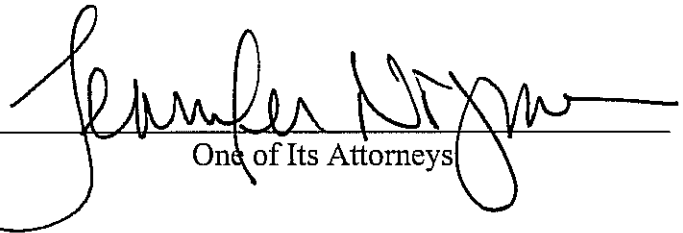
Manifestations of assent that are in themselves sufficient to conclude a contract will not be prevented from so operating by the fact that the parties also manifest an intention to prepare and adopt a written memorial thereof; but the circumstances may show that the agreements are preliminary negotiations.

Restatement (Second) of Contracts, Section 27 (1981).

8. In this case, the parties unquestionably came to final terms. The parties exchanged many drafts, and in December 2007 Complainant ultimately drafted a Stipulation which contained ALL the final terms. Complainant then requested that Champion sign the Stipulation as soon as possible. None of the terms were incomplete and Complainant clearly intended the terms to be final when it requested that Champion sign the Stipulation.
9. Just as the Restatement of Contracts contemplated, the parties created a contract, the terms of which included an obligation to execute a final writing and present it to the Board. The parties had agreed to the terms of a Stipulation to present to the Board.
10. To allow IEPA to renegotiate final terms of a settlement at any time is directly contrary to the policy to encourage settlement. Public policy in Illinois favors settlements and dictates that, absent fraud or duress, settlements should be final. Johnson v. Hermanson, 221 Ill.App.3d 582, 582 N.E.2d 265 (5 Dist. 1991).

WHEREFORE, Champion Environmental Services Inc. requests that the Illinois Pollution Control Board ("Board") enter an Order finding that the Stipulation and Proposal for Settlement prepared and presented by Complainant on December 5, 2007 and executed by Champion is a final agreement to be presented to the Board.

CHAMPION ENVIRONMENTAL SERVICES, INC.

By _____
One of Its Attorneys

Dated: September 2, 2008

Jennifer T. Nijman
NIJMAN FRANZETTI LLP
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CHAMPION ENVIRONMENTAL SERVICES INC.'S MEMORANDUM IN SUPPORT OF
ITS MOTION TO FINALIZE SETTLEMENT AGREEMENT

Champion Environmental Services Inc. ("Champion"), by its undersigned counsel, and pursuant to 35 Ill. Adm. Code 101.508, requests that the Illinois Pollution Control Board ("Board") enter an Order finding that the Stipulation and Proposal for Settlement prepared and presented by Complainant on December 5, 2007 and executed by Champion is a final agreement to be presented to the Board. In support of its Motion, Champion submits this Memorandum in Support.

Champion and Complainant entered into a valid contract to resolve this matter. All terms were agreed by both parties, put into writing by Complainant, and presented to Champion as final for presentation to the Board. The parties reached a final agreement to present to the Board. Almost a year after reaching agreement on all terms, Complainant now refuses to execute the agreement and demands changes to substantive terms that had been specifically negotiated. Neither law nor policy allows Complainant to avoid its contractual obligation to present the agreed settlement to the Board.

I. BACKGROUND AND CHRONOLOGY OF SETTLEMENT

On May 23, 2005, Complainant filed a complaint alleging violations of the National Emissions Standards for Asbestos and certain air pollution violations relating to a transite removal action performed by Champion in February of 2005. Champion strongly disputed the allegations of the complaint, but entered into settlement discussions with Complainant to avoid the expense of a full hearing. *See* 11/3/06 correspondence to Asst. Attorney General, attached as Ex. 1, disputing allegations and discussing settlement terms. After discussions between the parties, Champion agreed to increase the amount of the settlement on the condition that the “settlement would not be an admission and would not be used against [Complainant] in any way in the future.” *See* 4/12/07 e mail to Asst. A.G. Javonna Homan, attached as Ex. 2.

On April 16, 2007, Complainant issued a demand for a final settlement amount, and counsel for Champion confirmed that any settlement must include key terms (i.e., no admission and no use of the agreement as proof of a violation in the future). *See* 4/16/07 correspondence and responsive e mail, attached as Ex. 3. Complainant prepared and submitted to Champion a draft Stipulation and Proposal for Settlement (“Stipulation”) on June 22, 2007, and Champion submitted comments on July 3, 2007, again insisting that specific terms for settlement must include no admission, no future use of the settlement as evidence of a violation in the future, and a full release of liability for all issues which could have been raised in the complaint. *See* 6/22/07 correspondence and draft agreement with Champion revisions, attached as Ex. 4. After further exchange, Champion issued a letter to Complainant dated September 21, 2007 again insisting on certain terms as express conditions to resolving the dispute, including limiting the future use of the settlement as evidence of a violation in the future and obtaining a full release. *See* 9/21/07 correspondence, attached as Ex. 5. Complainant responded in December with a

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revised version of the Stipulation, which contained the terms repeatedly requested by Champion. *See* 12/3/07 correspondence and agreement, attached as Ex. 6.

Following minor corrections, Complainant presented Champion with a revised Stipulation (which contained all the agreed terms) and requested that Champion execute it “as soon as possible.” *See* 12/05/07 e mail from Asst. A.G. Javonna Homan, attached as Ex. 7. At that time, the parties had agreed to all terms and had manifested their intent to finalize a contract. Counsel for Champion immediately sent the Stipulation to her client for execution, as Asst. A.G. Homan had requested. Champion executed the Stipulation and delivered it to Asst. A.G. Homan on March 6, 2008. A copy of the executed Stipulation is attached as Ex. 8.

In December, 2007, Asst. A.G. Homan requested a minor change to the Stipulation to remove references to the IEPA due to an internal dispute, but later determined that the IEPA would, in fact, be included in the Stipulation. *See* December 2007 e mails between counsels, attached as Ex 9. No other changes to the Stipulation were made and no substantive terms were changed. In fact, Complainant represented that she was authorized to route the Stipulation that included IEPA (as had been executed by Champion) for signature. *See* 12/18/07 and 12/19/07 e mails between counsels, attached as Ex. 10. The parties reported to the Hearing Officer that Settlement terms had been reached and the Hearing Officer’s Order reflected the fact that the requested change to the agreed terms was “to clarify that the Agency is a party to the proceeding.” *See* 3/10/08 Hearing Officer Order, attached as Ex. 11.

In May, 2007, Asst A.G. Homan informed Champion’s counsel that IEPA would prefer a newer version of the stipulation – without ANY mention of revised terms other than adding IEPA. On May 20, 2008, without explanation, Complainant sent to Champion a version of the Stipulation that removed all of the key settlement terms to which the parties had already agreed.

See 5/20/08 correspondence and draft Stipulation; 5/22/08 e mail from Champion, attached as Ex. 12.¹

Contract law precludes Complainant from simply reneging on an agreement it had fully negotiated and finalized. The parties had a valid contract between them which was ready to present to the Board. To allow such backtracking is directly contrary to applicable law and to the policy to encourage settlements of disputes. The parties spent almost two years working out the details of the Stipulation, and Complainant now seeks to begin those discussions anew, resulting in excessive and unnecessary delay and expenditure of taxpayer funds.

II. ARGUMENT

The scenario is common. Parties in a case agree to settle, come to terms, and one party refuses to sign the settlement agreement. The law is clear in this scenario – the contract is enforceable. Settlement agreements fall within the laws of contract. City of Chicago Heights v. Crotty, 287 Ill.App.3d 883, 679 N.E.2d 412 (1997); Solar v. Weinberg, 653 N.E.2d 1365 (1995); Sementa v. Tylman, 230 Ill.App.3d 701, 595 N.E.2d 688 (1992). Under contract law, oral settlements are enforceable if there is an offer, an acceptance, and a meeting of the minds regarding the terms. Johnson v. Hermanson, 221 Ill.App.3d 582, 582 N.E.2d 265, 267 (1991) (citing Sheffield Poly-Glaz, Inc. v. Humboldt Glass Co., 42 Ill.App.3d 865, 868-69, 1 Ill.Dec. 555, 356 N.E.2d 837, 840 (1976)). An offer or acceptance must be so definite with respect to its material terms that the promises and performances of each party are reasonably certain. Academy Chicago Publishers v. Cheever, 144 Ill.2d 24, 578 N.E.2d 981, 983 (1991). A meeting of the minds between the parties will occur where there has been “assent to the same things in

¹ Pursuant to 35 Ill. Adm. Code 101.505, the undersigned counsel hereby certifies that the attached exhibits are true and correct copies of correspondence and documents exchanged by the parties and verily believes the same to be true.

the same sense on all essential terms and conditions.” La Salle National Bank v. International Ltd., 129 Ill.App.2d 381, 394, 263 N.E.2d 506, 513 (1970).

There is no doubt in this case that a valid contract exists. As of December 2007, there was a written document, prepared by Complainant, detailing all the terms and conditions of the contract and making the promises and performances of each party very clear. Champion accepted the terms as written, and ultimately signed the Stipulation. The parties both assented to the same things on all the essential terms and conditions. Because a valid contract exists, whether oral or written, the parties may not repudiate it. As soon as the parties manifested their intent to conclude the contract, the fact that the contract was not finally executed does NOT prevent the contract from operating.

The Restatement (Second) of the Law – Contracts contemplates this exact scenario. Section 27, entitled “Existence of Contract Where Written Memorial is Contemplated” states:

Manifestations of assent that are in themselves sufficient to conclude a contract will not be prevented from so operating by the fact that the parties also manifest an intention to prepare and adopt a written memorial thereof; but the circumstances may show that the agreements are preliminary negotiations.

Restatement (Second) of Contracts, Section 27 (1981). The Comments to the Restatement provide: “Parties who plan to make a final written instrument as the expression of their contract necessarily discuss the proposed terms of the contract before they enter into it and often, before the final writing is made, agree upon all the terms which they plan to incorporate therein. This they may do orally or by exchange of several writings. It is possible thus to make a contract the terms of which include an obligation to execute subsequently a final writing which shall contain certain provisions. If parties have definitely agreed that they will do so, and that the final writing

shall contain these provisions and no others, they have then concluded the contract.” See Comment a, Rest. 2d. Contracts, section 27.

In this case, the parties unquestionably came to final terms. The parties exchanged many drafts and in December 2007 Complainant ultimately drafted a Stipulation which contained ALL the final terms. Complainant then requested that Champion sign the Stipulation as soon as possible. None of the terms were incomplete and Complainant clearly intended the terms to be final when it requested that Champion sign the Stipulation. IEPA was a party to the Stipulation when it was negotiated and finalized by Complainant, and presented to Champion for signature. Despite some subsequent internal dispute between the Attorney General’s office and IEPA over whether IEPA would ultimately be a party to the Stipulation, the settlement terms were fully agreed between Claimant and Champion. IEPA was a named party in the final Stipulation and IEPA, through its counsel, had finalized all the terms of settlement. Just as the Restatement of Contracts contemplated, the parties created a contract, the terms of which included an obligation to execute a final writing and present it to the Board. The parties had agreed to the terms of a Stipulation to present to the Board.

The fact that the parties in this case are required by Board rule to present a written Stipulation to the Board is not dispositive. *See* 35 Ill. Adm. Code 103.300(a), 103.302. Settlement of a case filed by the IEPA, through the Attorney General, is a two step process. First, the parties to the case must come to agreement on settlement terms. Second, the parties present the agreed terms to the Board in order to obtain relief from the requirement of a hearing. This is no different than settling a case before a court where the court accepts the settlement agreement in order to dismiss the case. The key is the parties’ intent. Did the parties to the settlement reach a point where they intended the agreement to be final? In this case, that point

came in December 2007 when Claimant presented Champion with a final written agreement to be executed. The parties intended the terms to be final and did not intend to invite further negotiations before execution. As noted by the Restatement Comments, it is possible to make a contract the terms of which include an obligation to execute subsequently a final writing. The parties here made a contract which included an obligation to execute it and present it to the Board.

There is no case law directly on point with this situation in which all terms had been agreed and expressed in writing. In cited cases, the parties orally come to general settlement terms, but do not agree on the details of the written document. *See Estate of Glassman*, 257 Ill.App.3d 102, 628 N.E. 2d 666 (1993) (oral settlement upheld where general settlement terms reached but details never finalized and new facts arose after oral agreement). Here, all the details were final and in writing. IEPA is simply trying to renegotiate terms that had already been settled. In other cases, there is oral agreement on terms but a dispute over the final release. The Court analyzes the question of fact whether parties specified that their agreement hinged on the execution of the written release. *See Lampe v. O'Toole*, 292 Ill.App.3d 144, 685 N.E. 2d 423 (2 Dist. 1997) (oral agreement upheld where unsigned release did not alter the settlement and merely embodies the agreement the parties had already reached). Here, the parties had finalized the written document containing the release and all other terms. The parties thus had an obligation to execute the final writing and present it to the Board.²

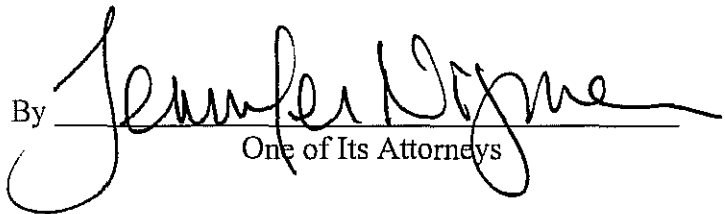
To allow IEPA to renegotiate final terms of a settlement at any time is directly contrary to the policy to encourage settlement. Public policy in Illinois favors settlements and dictates that,

² In fact, in this case the most recent Stipulation presented by Claimant specifically **deletes** the language “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.” *See* Stipulation p. 12, attached as Ex. 12. IEPA’s intent as reflected by this deletion was to present the Stipulation to the Board as required, but not that the parties could ignore its terms.

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absent fraud or duress, settlements should be final. Johnson v. Hermanson, 221 Ill.App.3d 582, 582 N.E.2d 265 (5 Dist. 1991) (citing Fitzgerald v. Theisen, 101 Ill.App.3d 193, 196, 427 N.E.2d 1044, 1046 (1981)). Here, the Claimant seeks to push this case back two years, at great expense, to renegotiate terms that had clearly been finalized and were ready to present to the Board. Champion requests that the agreement between the parties in December 2007 be deemed final for presentation to the Board.

CHAMPION ENVIRONMENTAL SERVICES, INC.

By  One of Its Attorneys

Dated: September 2, 2008

Jennifer T. Nijman
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3600
Chicago, IL 60603
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EXHIBIT 1

**People v. Champion Environmental Services, Inc.
PCB No. 05-199**

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FOR SETTLEMENT PURPOSES ONLY

November 3, 2006

Ms. J.L. Homan
Assistant Attorney General
Office of the Attorney General
State of Illinois
Environmental Bureau
500 South Second Street
Springfield, IL 62706

Re: *People v. Champion*

Dear Jay:

As we discussed, the following is a position paper regarding why the state should not pursue civil claims against Champion Environmental Services, Inc. ("Champion") regarding the March 2005 transite removal in Moline, Illinois. This information is confidential and is provided to you for settlement purposes only.

In brief, the allegations in the State's complaint regarding violations of the National Emissions Standards for Asbestos ("NESHAP") are not supported by the evidence. Specifically, the nature of the product (transite), the failure of the inspector to take appropriate samples and handle the samples properly, the lack of any evidence in the videotapes provided, and the air monitoring conducted at and around the site during the removal, make it questionable whether the NESHAP applies to the Moline job at all. U.S. EPA has made it clear that asbestos-cement products like transite panels are in a unique category:

Whether asbestos-cement products are subject to the asbestos NESHAP should be determined by the owner or operator on a case-by-case basis based on the demolition techniques to be used. *In general, if contractors carefully remove asbestos-cement materials using tools that do not cause significant damage, the materials are not considered RACM and can be disposed of with other construction debris.*

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However, if demolition is accomplished through the use of cranes (equipped with wrecking balls, clamshells or buckets), hydraulic excavators, or implosion/explosion techniques, asbestos-cement products will be crumbled, pulverized or reduced to powder, and are subject to the provisions of the asbestos NESHAP. (emphasis added)

U.S. EPA, Demolition Practices Under the Asbestos NESHAP, at Section 1, <http://www.epa.gov/Region4/air/asbestos/demolish.htm> (last updated March 7, 2006). Champion did not use wrecking balls, clamshells or implosion/explosion techniques. Unless Champion employed methods that crumbled, pulverized or reduced the transite to powder, the NESHAP does not apply to these materials.

Background

Champion was established in 1992 by Dominic Gorniak. Mr. Gorniak has over 25 years of personal experience in the removal and handling of asbestos materials. Champion has an excellent record during that time period with only one prior violation resulting in a consent decree.¹ Champion has a history of paying attention to employees health and safety and acts in good faith based on its years of experience.

The owners of the former Case Manufacturing facility located in Moline, Illinois contacted Champion and requested that they conduct the removal of, among other things, Category II nonfriable transite panels from the roof of the facility. Champion had done a prior job for the Case owners in Wisconsin and had no complaints or violations. Champion submitted a notification of the abatement and demolition project in a timely manner and began the project in March 2005.

As you know, this case has been politically motivated from day one. The initial "complaint" you received from a citizen, which spurred IEPA's investigation and allegations, was actually submitted by a local union representative. In fact, the same union representative took all the videos you provided to us in discovery. We are aware that the local state senator and the area union were upset that their local union employees were not being used for the job (Champion uses its own union employees). The union has made it clear to Mr. Gorniak that "this will all go away" if Mr. Gorniak changes his employees. In addition, the fact that the press was aware of the Illinois Environmental Protection Agency ("IEPA") inspector visiting the site, before the inspector himself was tasked with the inspection, reveals the true motivation of the case. We note this because we believe the allegations are unsupported and the basis for filing the

¹ That violation was due to notification issues, not handling or removal. Champion had been sending its notices of removal jobs by federal express when the statute required other forms of delivery. The notices were in fact provided in a timely manner to the agency, but a technical violation occurred in that the notices were not provided according to the statute (they were provided by Federal Express). This is hardly the record of a company with repeat violations.

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complaint had little to do with Champion's practices and everything to do with a union's attempt to exert influence.

Champion's Removal

The evidence in the case establishes that Champion employees properly removed and handled the transite panels. As I described in our meeting, the transite panels had a rubber membrane, foam and fiberboard attached to them. Spray-on newspaper (insulation) was adhered to the underside of the panels. Further, the panels were held down by wooden strips which required significant effort to remove. Finally, the slope of the roof created access issues.

Champion employees handled the panels in accordance with all requirements. They peeled off the rubber membrane and scraped the foam, then used hammers or spud-bars to knock off the nails and wooden strips (hold downs). Fiberboard was removed from the roof and at times thrown from the roof. The transite panels (which are simply too heavy to be thrown) were transported to the base of the roof, angled, and stacked there, or stacked onto a high lift/forklift. The panels were disposed, along with all material removed from the roof, as asbestos containing material at the Rock Island landfill. Witness testimony will establish the thousands of loads deposited as full sheets.

Champion's practice was to wet the material daily, while accounting for worker safety. Due to the roof pitch, constant wetting would cause workers to fall. Champion had a third-party consultant on site every day and conducted both personal and area air monitoring on a daily basis. These documents have been produced to you. None of the air monitoring revealed impermissible levels of asbestos fibers in the air.

The Evidence Supports Proper Removal Practices

The process used by Champion is, in fact, perfectly depicted in the video tapes you produced.² The tapes clearly show employees removing transite panels from the roof and stacking them; not dropping them off the edge as IEPA alleges. The workers are videotaped hammering; but the tape does not show what is being hammered. The testimony will provide that workers were hammering the wooden hold down bars or nails. There is no contrary evidence. Material thrown from the roof was the lighter weight fiberboard--not transite. This fact is clear because the fiberboard actually "sails" a short way; due to its weight, transite could never be "thrown" in that way.

Moreover, the reports issued by IEPA's inspector support Champion's removal as described. On November 3, 2005, the inspector reports transite panels being "stacked." Although he sees something thrown, he cannot tell what and only assumes transite. On

² By discussing these videotapes Champion does not waive its arguments that the tapes lack foundation, there are chain of custody issues, the quality of tapes are poor, and/or other arguments concerning IEPA's reliance on the tapes.

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September 28, 2005, the inspector reports what he assumes to be transite being pushed off the roof. On both occasions, the inspector is off site and cannot testify whether the material he saw actually was transite. In fact, the inspector goes to the site to take samples of the debris on the ground on September 28th, and all his samples are non-detect for asbestos. Moreover, the on-site air monitoring shows no impermissible levels of asbestos fibers. Surely, if Champion was throwing the transite as alleged, there would be traces in the air on at least some occasions.

There is no doubt that pieces of the transite did break, either on the roof, due to accidental dropping, or when stacked or placed in dumpsters. Such breakage, however, is neither improper nor against NESHAP standards. Broken pieces are not a violation. In fact, U.S. EPA has issued a policy determination on when asbestos-containing materials, which are broken during the course of demolition and renovation, become friable. U.S. EPA states:

Specifically, you inquired at what point does damaged non-friable ACM, such as transite siding, become regulated. As you stated in your memorandum, the word "broken" has been deleted from the definition section because it could be mistakenly interpreted as substantially increasing the scope of the standard. Most nonfriable material can be broken without releasing significant quantities of airborne fibers. It is only when the material is extensively damaged that the potential for significant fiber release is greatly increased.

Transite siding, which is a Category II nonfriable ACM, becomes regulated ACM if it has a high probability of becoming or has become crumbled, pulverized or reduced to powder by the forces expected to act on the material in the course of the demolition and renovation operations. There is a difference between merely breaking transite panel, and crumbling, pulverizing or reducing it to powder. If a Category II material, such as transite, is in good condition it can be broken without causing the material to become regulated. *Transite panels are typically bolted or nailed to buildings on which they are attached. The extent of breakage which would normally result from carefully moving a transite panel from a building and lowering it to the ground prior to demolition could not result in crumbling, pulverizing or reducing the panel to powder. (emphasis added)*

See Memorandum from John P. Rasnic, Director, Stationary Source Compliance Division to James J. Burke, Chief, Toxics and Pesticides Branch, Region III (Jan. 8, 1992), <http://www.epa.gov/oecaadix/html/C108.htm>.

Only when pieces are crumbled, pulverized or reduced to powder is the NESHAP standard even triggered. Again, any such "pulverizing or reducing to powder" would have

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FOR SETTLEMENT PURPOSES ONLY

shown up in daily area monitoring, but did not. The photos taken by the inspector which purport to show crushed debris do not establish the debris as ACM as none of the three test results correspond with any crushed debris. As noted, sprayed on newspaper lined the panels and was scattered throughout. The photos, like the September 28th non-detect samples, were simply a different material.

IEPA's support for an alleged failure to wet consists of the inspector's notes that the material he saw was dry when in the dumpsters. As noted above, dry, broken materials are not regulated. Only Category II material that is subject to sanding, grinding, cutting or abrading during collection must be wetted and wetting must occur during the operation that damages the material. No such observations were made and it has not been established that wetting was required.

In any case, Section 8 of U.S. EPA's Asbestos NESHAP Adequately Wet Guidance sets forth procedures for inspectors to follow to determine whether material is adequately wet. None of these procedures were followed. The Guidance provides:

- If the bag or other container is transparent: ...

- If the material appears dry or not penetrated with liquid or a wetting agent, open the bag using the additional steps described in step 9 below a collect a bulk sample of each type of material in the bag noting variations in size, patterns, color and textures.

- If the waste material is contained in an opaque bag or other container, or if the material is in a transparent bag which appears to be inadequately wetted: ...

- Examine the contents of the bag for evidence of moisture as in 8 above, and if the material appears dry or it is not fully penetrated with water or a wetting agent, collect a bulk sample.

<http://www.epa.gov/region04/air/asbestos/awet.htm> (last updated March 7, 2006).

You have confirmed that no samples to establish wetness were taken. Moreover, employee safety precluded wetting panels on the roof when employees were at risk, and testimony will establish that Champion wetted the material each day. Finally, the transite and attached foam, by their very nature, are developed to repel water. Id. at Section 7 (citing "asbestos-concrete products" as materials that do not absorb water readily). Whether a piece had been previously wet could only be determined by specific sampling. We will have expert testimony to support this fact. Such sampling was not done here. The only "dry" samples that were taken by the inspector cannot be verified because there is no documentation that proper sampling protocol was followed.

Ms. J.L. Homan
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Allegations of the Complaint

As set forth above, the evidence does not support a finding of a violation of the National Emissions Standard for Asbestos, as IEPA alleges in Count I of its Complaint. Champion's procedures did not "crumble, pulverize or reduce to powder" the transite panels. There is no evidence transite was hammered or dropped to the floor. The fact that pieces were broken is not enough. Even if broken pieces were run over, as alleged, Champion uses rubber-tired vehicles, the use of which does not establish a violation. U.S. EPA has stated in Section 1 of its publication on Demolition Practices Under the Asbestos NESHAP:

Rubber-tired Vehicles

If nonfriable ACM is intentionally run over by rubber-tired vehicles as a means of segregation, it does not automatically become RACM but must be examined for damage. If it has become extensively damaged, i.e., it was sanded, ground, cut or abraded during segregation, it becomes RACM and is subject to the NESHAP regulation.

<http://www.epa.gov/Region4/air/asbestos/demolish.htm> (last updated March 7, 2006).

Although Champion did not intentionally run-over any materials, this Guidance is helpful because even if intentionally damaged, the transite material must be examined for "extensive" damage. When damage is minimal and non-intentional, as in this case, the mere fact that pieces of transite may have been run-over is irrelevant.

In Count II, IEPA alleges "air pollution" based on Section 9(a) of the Illinois Environmental Protection Act [the "Act"]. Under the Act, "Air pollution" is defined as:

[T]he presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

415 ILCS 5/3.115. There is no evidence to establish any presence of asbestos fibers in such quantities and duration to be injurious. The daily air monitoring results dispel any such allegation. The fact that the inspector observed "dust" is meaningless as nothing establishes the dust as ACM or as injurious.

Count III of the Complaint is equally without basis. IEPA generally alleges that Champion engaged in "open dumping" which resulted in litter in violation of 415 ILCS 5/21(a), (e) & (p)(1) by disposing and abandoning ACM and other refuse at the Moline site. However, Champion did not dispose or abandon any ACM or other refuse at the site, but rather consolidated demolition materials at the site for the appropriate purpose of removing the

WINSTON & STRAWN LLP

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consolidated materials to a sanitary landfill³. The mere consolidation of materials by Champion at the demolition site does not itself constitute "open dumping." See County of Madison v. Abert, 1992 WL 404137, at *3 (Ill. Pollution Control Bd. Dec. 17, 1992) ("[M]ere consolidation of refuse does not constitute open dumping.").

Under the Environmental Protection Act, 415 ILCS 5/21, "open dumping happens not when refuse is consolidated at the point of demolition, but when it is consolidated at a *disposal* site that does not fulfill sanitary landfill requirements." EPA v. Vander, 579 N.E.2d 1215, 1217 (Ill. App. 1991) (emphasis in original). In other words, "there must be more than demolition" for an open dumping violation to take place; there ultimately must also be "disposal." Id. Actual *disposal* occurs "when [] waste is disposed of in such a way that it enters the environment, is emitted into the air, or is discharged into water." Abert, 1992 WL 404137 at *3 (citing Vander, 579 N.E.2d at 1217-18 ("If a building is demolished and the resulting waste is cleared away to another location before it is allowed to be dissipated back into the environment or emitted into the air, or discharged into the water, the demolition site cannot be regarded as the 'disposal site,' and the prohibition against open dumping will not be triggered.")).

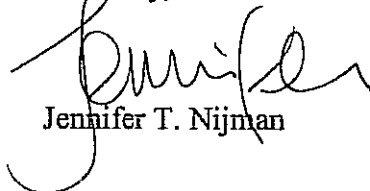
Given that daily air monitoring results at the Moline site did not at any time reveal any impermissible traces of asbestos fibers in the air, it is clear that Champion did not "dispose" of any ACM in such a way so as to constitute open dumping within the meaning of 415 ILCS 5/21(a) & (e). And, because Champion did not "dispose" of any ACM in such a way so as to constitute open dumping generally, it thus certainly did not then engage in any open dumping "which resulted in litter" in violation of 415 ILCS 5/21(p)(1).

Conclusion

For the reasons discussed above, IEPA's allegations in its Complaint should be resolved for minimal value. We propose that we resolve this matter by payment of \$7,000.00, no admission of liability, and with "future use" of this settlement not to exceed five (5) years.

We look forward to discussing this matter with you.

Sincerely,



Jennifer T. Nijman

JTN:dlc

cc: Dominic Gorniak

³ As noted in the inspector's report, by the time of his second inspection on May 11, 2005, Champion had removed to an off-site landfill several piles of consolidated debris originally observed by the inspector during his May 5, 2005 inspection. See Asbestos Inspection Memorandum for Former Case 1 H Plant, 1100 3rd St. East Moline, IL 61244 from Dennis Hancock to Dale Halford 5 (May 5, 2005) (original in possession of IEPA).

Electronic Filing - Received, Clerk's Office, September 2, 2008

Curry, Deborah

From: RightFax E-mail Gateway
Posted At: Friday, November 03, 2006 4:49 PM
Conversation: Your fax has been successfully sent to J.L. Homan at 12175247740.
Posted To: Inbox

Subject: Your fax has been successfully sent to J.L. Homan at 12175247740.

Importance: High

Your fax has been successfully sent to J.L. Homan at 12175247740.

From: Jennifer T. Nijman
Account: 009175
Matter: 00001

Time: 11/3/2006 4:42:03 PM
Sent to 12175247740 with remote ID "2175247740"
Result: (0/339;0/0) Successful Send
Page record: 1 - 8
Elapsed time: 06:00 on channel 7

EXHIBIT 2

**People v. Champion Environmental Services, Inc.
PCB No. 05-199**

Nijman, Jennifer

From: Nijman, Jennifer
Sent: Thursday, April 12, 2007 2:26 PM
To: 'Homan, Javonna'
Cc: Nijman, Jennifer
Subject: RE: Champion

Hi Jay, after my vacation and then my client's, we've finally been able to discuss how to proceed with this matter. At this point, your client demanded \$44,000 and we responded with a detailed paper describing our position and our offer of \$7,000. I still do not have any sense of your client's basis for the alleged violations, as your letter of 2/27 gave very little to go on. In any case, before we start spending alot of taxpayer money on a hearing, let's try again. My client will be able to increase its offer, but on the condition that the settlement would not be an admission and would not be used against him in any way in the future. If that is of interest, please respond with a demand and we'll get the discussion moving. thanks

EXHIBIT 3

**People v. Champion Environmental Services, Inc.
PCB No. 05-199**

Electronic Filing - Received, Clerk's Office, September 2, 2008

Nijman, Jennifer

From: Nijman, Jennifer
Sent: Monday, April 16, 2007 10:58 AM
To: 'Homan, Javonna'
Subject: RE: Champion

Jay, I received your letter. Will the state agree with our settlement terms regarding no admissions and no use for future matters? If so, we can work with this number. thanks

-----Original Message-----

From: Homan, Javonna [mailto:JHoman@atg.state.il.us]
Sent: Monday, April 16, 2007 10:32 AM
To: Nijman, Jennifer
Subject: RE: Champion

Ma'am - I've done a short letter & will fax it shortly with our bottom line penalty for your review, per our discussions. Hope you had a nice trip. Will initiate the status call at 1:30. -J

J.Homan, AAG
Environmental Bureau

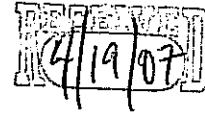
-----Original Message-----

From: Nijman, Jennifer [mailto:JNijman@winston.com]
Sent: Thursday, April 12, 2007 2:26 PM
To: Homan, Javonna
Cc: Nijman, Jennifer
Subject: RE: Champion

Hi Jay, after my vacation and then my client's, we've finally been able to discuss how to proceed with this matter. At this point, your client demanded \$44,000 and we responded with a detailed paper describing our position and our offer of \$7,000. I still do not have any sense of your client's basis for the alleged violations, as your letter of 2/27 gave very little to go on. In any case, before we start spending alot of taxpayer money on a hearing, let's try again. My client will be able to increase its offer, but on the condition that the settlement would not be an admission and would not be used against him in any way in the future. If that is of interest, please respond with a demand and we'll get the discussion moving. thanks

The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 16, 2007

Ms. Jennifer Nijman
Winston and Strawn
35 W. Wacker Drive
Chicago, IL 60601

Re: People v. Champion

Dear Ms. Nijman:

In response to your April 12, 2007, email, my authorization is for a bottom line offer of thirty four thousand dollars (\$34,000). If your client is unwilling to accept that amount, we should proceed to hearing.

If you have any questions, I may be reached at (217)782-9031. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to be "J. L. Homan", written over a horizontal line.

J. L. Homan
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
217/782-9031

cc: file

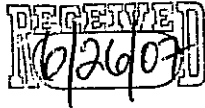
EXHIBIT 4

**People v. Champion Environmental Services, Inc.
PCB No. 05-199**



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL



June 22, 2007

Ms. Jennifer Nijman
Winston and Strawn
35 W. Wacker Drive
Chicago, IL 60601

Re: People v. Champion

Dear Ms. Nijman:

Enclosed please find the draft Stipulation and Proposal for Settlement for your review. Please let me know if there are any proposed changes so that I may discuss them with my management.

If you have any questions, I may be reached at (217)782-9031. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "J. L. Homan", with a long horizontal line extending to the right.

J. L. Homan
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
217/782-9031

cc: C. Pressnall/D. Hancock, Illinois EPA
file

FILE

Curry, Deborah

From: Curry, Deborah on behalf of Nijman, Jennifer
Sent: Tuesday, July 03, 2007 12:33 PM
To: 'jhoman@atg.state.il.us'
Subject: People v. Champion Environmental, PCB 05-199

Attachments: nijman comments.pdf



nijman
comments.pdf (161 K)

Attached are our comments, subject to client review. Thank you.

Jennifer T Nijman
Winston & Strawn LLP
35 West Wacker Drive
Chicago Illinois 60601
312.558.5771 - Direct Dial
312.558.5700 - Facsimile

The contents of this message are privileged and confidential. If this message is received in error, please delete it without reading. This message should not be forwarded or distributed without the permission of the author.

Before the Illinois Pollution Control Bd
~~IN THE CIRCUIT COURT FOR THE FOURTEENTH JUDICIAL DISTRICT~~
~~ROCK ISLAND COUNTY, ILLINOIS~~

DRAFT

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

~~Plaintiff,~~
Complainant

vs.

CHAMPION ENVIRONMENTAL
SERVICES, INC., an Wisconsin
corporation,

Respondent
~~Defendant~~

PCB 05-199

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 CHAMPION ENVIRONMENTAL SERVICES, INC., ("Respondent"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. ~~The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony 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, Respondent agrees to be bound by the Stipulation and Board Order and not to contest ^{its} ~~their~~ validity in any subsequent proceeding to implement or enforce their terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting

hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2004).

II. AUTHORIZATION

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

III. STATEMENT OF FACTS

A. Parties

1. On May 23, 2005, 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(2004), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).

3. At all times relevant to the Complaint, Respondent was and is a Wisconsin corporation that has filed a certificate of authority to transact business in Illinois in good standing. The registered agent for Champion is Barbara J. Gorniak, 38 West End Drive, Gilberts, Kane County, Illinois 60136..

B. Site Description

1. CNH America LLC of East Moline is the owner of the former Case manufacturing facility located at 1100 Third Street in East Moline, Rock Island County, Illinois. The size of the facility is approximately two million five hundred thousand (2,500,000) square feet. CNH America LLC contracted Champion to remove approximately fifteen thousand linear feet of regulated asbestos containing material ("RACM"), ten thousand (10,000) square feet of Category I non-friable asbestos containing material ("ACM"), and two million ten thousand

(2,010,000) square feet of Category II non-friable ACM, prior to the demolition of the facility.

2. Champion submitted a notification of the asbestos abatement and demolition project to the Illinois EPA on February 14, 2005. The project commenced on or after February 24, 2005. Champion subsequently submitted a revised notification of the asbestos abatement and demolition project to the Illinois EPA on March 23, 2005.

C. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

Count I:

Violation of the National Emissions Standards for Asbestos, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2004) and 40 CFR §61.145(c)(1),(6) and 40 CFR §61.150(b)(1).

Count II:

Air Pollution Violations, in violation of, 415 ILCS 9(a), 9.1(d)(2004) and 40 CFR §61.150(a), and 35 Ill. Adm. Code 201.141.

~~**D. Admission of Violations**~~

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

Contests and

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any

enforcement action taken pursuant to this Stipulation 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 Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2004), 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:

Complainant alleges that
1. Human health and the environment were threatened by any emission of asbestos.

2. There is social and economic benefit to the Respondent's operations.

3. The facility was suitable for the area in which it was located.

4. The parties agree that compliance with the requirements of the Act, Board

regulations, and the asbestos NESHAP is both technically practicable and economically reasonable.

5. Respondent has 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)(2004), 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:

- Complainant alleges that*
1. *the* Respondent failed to properly conduct asbestos removal operations at the site *beginning*

~~The violations began~~ on or around May 5, 2005. The Illinois EPA reinspected the facility on May 11, 2005, and determined that the removal and disposal activities at the site were in compliance with applicable laws and regulations at that time.

2. Respondent represents that it was diligent in attempting to come back into *its*

compliance with the Act, Board regulations and applicable federal regulations, ^{prior to and subsequent to} ~~once~~ the Illinois EPA ^{notification} ~~notified~~ ^{alleged} of its noncompliance.

3. Complainant alleges that Respondent derived a nominal economic benefit by not using the proper and approved method for asbestos removal; however, the civil penalty amount exceeds any economic benefit that may have been enjoyed by the Respondent.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of thirty four thousand dollars (\$34,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has one previously adjudicated violation of the Act, PCB 1997-135, ^{which related an alleged improper notification of asbestos removal and was resolved by settlement and stipulation.}

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

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

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of thirty four thousand dollars (\$34,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

~~The Respondent stipulates that 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 penalty payment on behalf of Respondent, 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

The payment of the civil penalty shall not be construed as an admission of any fact or allegation but is paid for settlement purposes only.

1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), shall appear on the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

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

Christopher Pressnall
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) (2004), 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 (2004). 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, Respondent may be ~~reached~~ *contacted through counsel* at the following address:

Jennifer Nijman

Winston & Strawn
35 W. Wacker Drive
Chicago, IL 60601-9703

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.

for payment of the civil penalty

B. Future Use

Notwithstanding any other language in this Stipulation and Proposal for Settlement to the contrary and in consideration of the mutual promises and conditions contained in this Stipulation including the Release from Liability contained in Section XIV., below, ~~Respondent~~ *the parties* ~~hereby agree~~ *Not* that this Stipulation may be used against Respondent in any subsequent enforcement action or permit proceeding initiated within ten (10) years from the date of the ~~Board order accepting this Stipulation~~ 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 (l) and/or 42(h) of the Act, 415 ILCS 5/39(a) and (l) and/or 5/42(h)(2004). Further, ~~Respondent agrees to waive any rights to contest, in any such subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated~~

C. Cease and Desist

The Respondent 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 Respondent's payment of the \$34,000.00 penalty and commitment to Cease and Desist as contained in Section VIII.C and upon the Pollution Control

or which could have been raised in the Complaint.

Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondent 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 May 23, 2005. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

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. 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

DATE: _____

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

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DATE: _____

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

CHAMPION ENVIRONMENTAL SERVICES, DATE: _____
INC.

BY: _____
Name: _____
Title: _____

EXHIBIT 5

**People v. Champion Environmental Services, Inc.
PCB No. 05-199**

WINSTON & STRAWN LLP

43 RUE DU RHONE
1204 GENEVA, SWITZERLAND

BUCKLESBURY HOUSE
3 QUEEN VICTORIA STREET
LONDON, EC4N 8NH

333 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-1543

35 WEST WACKER DRIVE
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SAN FRANCISCO, CALIFORNIA 94111-5884

1700 K STREET, N.W.
WASHINGTON, D.C. 20008-3817

JENNIFER T. NIJMAN
(312) 558-5771
jnijnman@winston.com

September 21, 2007

BY EMAIL AND U.S. MAIL

Ms. Javonna L. Homan
Assistant Attorney General
Environmental Enforcement Bureau
Office of the Illinois Attorney General
500 South Second Street
Springfield, IL 62706

**Re: *People v. Champion Environmental*, No. 05-199
Before the Illinois Pollution Control Board**

Dear Javonna:

I received the revised Stipulation and Proposal for Settlement and have several comments. For ease of discussion, I created a redlined version with any remaining disputes noted in bold. The redlined version is attached.

On page 1, I requested deletion of the statements regarding agreement to the facts as stated. This is not a "standard" paragraph (*i.e.*, not in every settlement before the Board) and is not accurate. The only "facts" in this Stipulation are in Section III.A and III.B, so I have limited any references accordingly. We do not agree that the limited facts as presented reflect the evidence or testimony the defense would introduce at a hearing. The facts in Section III.A. and III.B. are very brief and incomplete. I had deleted the reference to use of the facts in other proceedings because the facts as stated are very basic (*i.e.*, description of parties; description of site). Although I do not see why such basic facts would not be able to be used in other proceedings, I left the remaining language as you requested.

In Section VIII.B, Future Use, you deleted the language which limited the future use of the settlement against my client. As you will recall, my client's agreement to this entire settlement was conditioned on this limitation in use. The client agreed to pay a higher penalty in return. Please see my email of April 12, 2007 where I made this point in writing. Champion cannot be in the position of a settlement being used against it when neither the facts nor the allegations are established or agreed. This flies in the face of our agreement and the purpose of

WINSTON & STRAWN LLP

Ms. Jovanna Homan
September 21, 2007
Page 2

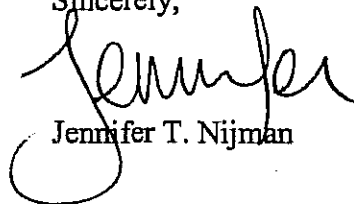
settlement. We would be happy to raise this issue with the Hearing officer should your client refuse to agree to the revision.

Similarly, in Section VIII.D, Release from Liability, you did not accept my revisions. The settlement must address all issues relating to the removal project at the former Case facility. Surely you understand that we cannot settle this Complaint only to face the potential of a new complaint the next day for the same site. We have discussed the "politics" behind the filing of the complaint and our understanding of the union issues involved. Work at the site is long over and the client needs final resolution. All issues regarding this site should be addressed by this settlement.

Finally, please justify your request to retain Section VIII.E, paragraph 4, page 10, regarding severability. We cannot agree to a scenario where, for instance, the provisions of this agreement regarding our non-admission of the facts and allegations are not upheld, but we are none-the-less ordered to pay the settlement amount. Each of these paragraphs is dependent upon the entire agreement being accepted.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer", with a large, stylized loop at the bottom.

Jennifer T. Nijman

JTN:dlc

Enclosure

cc: Dominic Gorniak

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)	
ILLINOIS, ex. rel. LISA MADIGAN,)	
Attorney General of the State of Illinois,)	
)	
Complainant,)	
)	
vs.)	No. 05-199
)	
CHAMPION ENVIRONMENTAL)	
SERVICES, INC., an Wisconsin)	
corporation,)	
)	
Respondent.)	

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 CHAMPION ENVIRONMENTAL SERVICES, INC., ("Respondent"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the statement of facts contained in Section III.A and III.B¹ 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~~² 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 stipulated³ in Section III.A and III.B⁴ herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest its validity in any subsequent proceeding to implement or enforce the terms.

I.JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2004).

II.AUTHORIZATION

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

III.STATEMENT OF FACTS

A. Parties

1. On May 23, 2005, 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(2004), against the Respondent.
2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).
3. At all times relevant to the Complaint, Respondent was and is a Wisconsin corporation that has filed a certificate of authority to transact business in Illinois in good standing. The registered agent for Champion is Barbara J. Gorniak, 38 West End Drive, Gilberts, Kane County, Illinois 60136.

B. Site Description

1. CNH America LLC of East Moline is the owner of the former Case manufacturing facility located at 1100 Third Street in East Moline, Rock Island County, Illinois.

The size of the facility is approximately two million five hundred thousand (2,500,000) square feet. CNH America LLC contracted Champion to remove approximately fifteen thousand linear feet of regulated asbestos containing material ("RACM"), ten thousand (10,000) square feet of Category I non-friable asbestos containing material ("ACM"), and two million ten thousand (2,010,000) square feet of Category II non-friable ACM, prior to the demolition of the facility.

2. Champion submitted a notification of the asbestos abatement and demolition project to the Illinois EPA on February 14, 2005. The project commenced on or after February 24, 2005. Champion subsequently submitted a revised notification of the asbestos abatement and demolition project to the Illinois EPA on March 23, 2005.

C. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

- | | |
|-----------|---|
| Count I: | Violation of the National Emissions Standards for Asbestos, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2004) and 40 CFR §61.145(c)(1),(6) and 40 CFR §61.150(b)(1). |
| Count II: | Air Pollution Violations, in violation of, 415 ILCS 9(a), 9.1(d)(2004) and 40 CFR §61.150(a), and 35 Ill. Adm. Code 201.141. |

D. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent contests and does not affirmatively admit the allegations of violation within the Complaint and

referenced within Section III.C herein, and this Stipulation shall not be interpreted as including such admission.

As such, this stip shall not be deemed a previously adjudicated violation.

IV.APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation 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 Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2004), 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. The Complainant alleges that human health and the environment were threatened by any emission of asbestos.
2. There is social and economic benefit to the Respondent's operations.
3. The facility was suitable for the area in which it was located.
4. The parties agree that compliance with the requirements of the Act, Board regulations, and the asbestos NESHP is both technically practicable and economically reasonable.
5. Respondent has 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)(2004), 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. Complainant alleges that the Respondent failed to properly conduct asbestos removal operations at the site beginning on or around May 5, 2005. The Illinois EPA reinspected the facility on May 11, 2005, and determined that the removal and disposal activities at the site were in compliance with applicable laws and regulations at that time.
2. Respondent represents that it was diligent in its compliance with the Act, Board regulations and applicable federal regulations, prior to and subsequent to the Illinois EPA's notification of its alleged noncompliance.
3. Complainant alleges that Respondent derived a nominal economic benefit by not using the proper and approved method for asbestos removal; however, the civil penalty amount exceeds any economic benefit that may have been enjoyed by the Respondent.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of thirty four thousand dollars (\$34,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has one previously adjudicated violation of the Act, PCB 1997-135, which related to⁶an alleged improper notification of asbestos removal and was resolved by settlement and stipulation.

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

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

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of thirty four thousand dollars (\$34,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The payment of the civil penalty shall not be construed as an admission of any fact or allegation but is paid for settlement purposes only. The penalty described in this Stipulation shall be paid by certified check or money order 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

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), shall appear on the check. A copy of the certified check or money order and any transmittal letter shall be sent to:

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

Christopher Pressnall

¹⁵Assistant Counsel

¹⁶Illinois Environmental Protection Agency

¹⁷1021 North Grand Avenue East

¹⁸P.O. Box 19276

¹⁹Springfield, Illinois 62794-9276

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), 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 (2004). 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, Respondent may be contacted through counsel at the following address:

Jennifer ~~T.~~ ²⁰Nijman

²¹Winston & Strawn ~~LLP~~

²²35 W. ²³~~West~~ ²⁴Wacker Drive

²⁵Chicago, IL 60601-9703

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

B. Future Use

Notwithstanding any other language in this Stipulation and Proposal for Settlement to the contrary and in consideration of the mutual promises and conditions contained in this Stipulation

including the Release from Liability contained in Section XIV., below, the Respondent agrees²⁶ **parties agree**²⁷ that this Stipulation may **not**²⁸ be used against Respondent in any subsequent enforcement action or permit proceeding ~~initiated within ten (10) years from the date of the Board order accepting this Stipulation~~²⁹ 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)(2004). ~~Further, Respondent agrees to waive any rights to contest, in any such subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated~~³⁰.

Is this a
"prev adjud"
violation

C. Cease and Desist

The Respondent 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 Respondent's payment of the \$34,000.00 penalty and commitment 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 Respondent from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on May 23, 2005.³¹ **2005 or which could have been raised in the Complaint.**³² The Complainant reserves, and this Stipulation is without prejudice

to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

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. 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.~~³³

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

DATE: _____

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

BY: _____

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DATE: _____

BY: _____

ROBERT A. MESSINA
Chief Legal Counsel

CHAMPION ENVIRONMENTAL
SERVICES, INC.

DATE: _____

BY: _____

Name: _____
Title: _____

Document comparison by Workshare Professional on Friday, September 21, 2007
10:18:15 AM

Document 1 ID	PowerDocs://CHI/1964143/2
Description	CHI-#1964143-v2- Champion_Enviromental: __Stipulation_and_Proposal_for Settlement
Document 2 ID	PowerDocs://CHI/1964143/3
Description	CHI-#1964143-v3- Champion_Enviromental: __Stipulation_and_Proposal_for Settlement
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~~Deletion~~

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Moved to

Style change

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~~Moved deletion~~

Inserted cell

Deleted cell

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Split/Merged cell

Padding cell

	Count
Insertions	25
Deletions	10
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	35

EXHIBIT 6

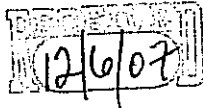
**People v. Champion Environmental Services, Inc.
PCB No. 05-199**



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 3, 2007



Ms. Jennifer Nijman
Winston and Strawn
35 W. Wacker Drive
Chicago, IL 60601

Re: People v. Champion

Dear Ms. Nijman:

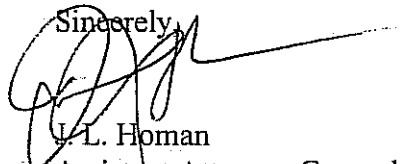
Enclosed please find the most recent version of the draft Stipulation and Proposal for Settlement for your review. Most of the changes suggested in your September 21, 2007, letter and previous revised draft have been incorporated. Specifically:

- (1) previous draft page 1, first paragraph, rework references to "facts" - done
- (2) previous draft page 7, add "to" to VII, #5 - done
- (3) previous draft page 8, changes to address - done
- (4) previous draft pages 8-9, B - removed "Future Use" section
- (5) previous draft page 9, addition of "or which could have been raised in the Complaint" - rephrased
- (6) previous draft pages 10-11, E. #4 - removed.

As you can see, nearly all of your suggestions were incorporated - only one was rephrased. Please review the enclosed document and inform me of your position.

If you have any questions, I may be reached at (217)782-9031. Thank you.

Sincerely,


J. L. Homan
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

Electronic Filing - Received, Clerk's Office, September 2, 2008

217/782-9031

cc: file

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)	
ILLINOIS, ex. rel. LISA MADIGAN,)	
Attorney General of the State of Illinois,)	
)	
Complainant,)	
)	
vs.)	No. 05-199
)	
CHAMPION ENVIRONMENTAL)	
SERVICES, INC., an Wisconsin)	
corporation,)	
)	
Respondent.)	

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 CHAMPION ENVIRONMENTAL SERVICES, INC., ("Respondent"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the statement of facts contained in Section III. A and III.B herein 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 in Section III.A and III.B herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest its validity in any subsequent proceeding to implement or enforce the terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2004).

II. AUTHORIZATION

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

III. STATEMENT OF FACTS

A. Parties

1. On May 23, 2005, 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(2004), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).

3. At all times relevant to the Complaint, Respondent was and is a Wisconsin corporation that has filed a certificate of authority to transact business in Illinois in good standing. The registered agent for Champion is Barbara J. Gorniak, 38 West End Drive, Gilberts, Kane County, Illinois 60136..

B. Site Description

1. CNH America LLC of East Moline is the owner of the former Case manufacturing facility located at 1100 Third Street in East Moline, Rock Island County, Illinois. The size of the facility is approximately two million five hundred thousand (2,500,000) square feet. CNH America LLC contracted Champion to remove approximately fifteen thousand linear feet of regulated asbestos containing material ("RACM"), ten thousand (10,000) square feet of Category I non-friable asbestos containing material ("ACM"), and two million ten thousand (2,010,000) square feet of Category II non-friable ACM, prior to the demolition of the facility.

2. Champion submitted a notification of the asbestos abatement and demolition project to the Illinois EPA on February 14, 2005. The project commenced on or after February 24, 2005. Champion subsequently submitted a revised notification of the asbestos abatement and demolition project to the Illinois EPA on March 23, 2005.

C. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

Count I:	Violation of the National Emissions Standards for Asbestos, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2004) and 40 CFR §61.145(c)(1),(6) and 40 CFR §61.150(b)(1).
Count II:	Air Pollution Violations, in violation of, 415 ILCS 9(a), 9.1(d)(2004) and 40 CFR §61.150(a), and 35 Ill. Adm. Code 201.141.

D. Non-Admission of Violations

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

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation 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 Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2004), 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. The Complainant alleges that human health and the environment were threatened by any emission of asbestos.
2. There is social and economic benefit to the Respondent's operations.
3. The facility was suitable for the area in which it was located.
4. The parties agree that compliance with the requirements of the Act, Board

regulations, and the asbestos NESHAP is both technically practicable and economically reasonable.

5. Respondent has 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)(2004), 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. Complainant alleges that the Respondent failed to properly conduct asbestos removal operations at the site beginning on or around May 5, 2005. The Illinois EPA reinspected the facility on May 11, 2005, and determined that the removal and disposal activities at the site

were in compliance with applicable laws and regulations at that time.

2. Respondent represents that it was diligent in its compliance with the Act, Board regulations and applicable federal regulations, prior to and subsequent to the Illinois EPA's notification of its alleged noncompliance.

3. Complainant alleges that Respondent derived a nominal economic benefit by not using the proper and approved method for asbestos removal; however, the civil penalty amount exceeds any economic benefit that may have been enjoyed by the Respondent.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of thirty four thousand dollars (\$34,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has one previously adjudicated violation of the Act, PCB 1997-135, which related to an alleged improper notification of asbestos removal and was resolved by settlement and stipulation.

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

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

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of thirty four thousand dollars (\$34,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The payment of the civil penalty shall not be construed as an admission of any fact or allegation but is paid for settlement purposes only. The penalty described in this Stipulation shall be paid by certified check or money order payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to:

Illinois Environmental Protection Agency
Fiscal Services Section

Electronic Filing - Received, Clerk's Office, September 2, 2008

1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), shall appear on the check. A copy of the certified check or money order and any transmittal letter shall be sent to:

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

Christopher Pressnall
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) (2004), 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 (2004). 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, Respondent may be contacted through counsel at the following address:

Jennifer T. Nijman

Winston & Strawn, LLP
35 West Wacker Drive
Chicago, IL 60601-9703

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

B. Cease and Desist

The Respondent 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.

C. Release from Liability

In consideration of the Respondent's payment of the \$34,000.00 penalty and commitment to Cease and Desist as contained in Section VIII.B 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 Respondent from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on May 23, 2005, or which could have been raised in the Complaint filed before the Illinois Pollution Control Board. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and

d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

D. 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.

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

DATE: _____

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

BY: _____
THOMAS DAVIS, Chief

Environmental Bureau
Assistant Attorney General

CHAMPION ENVIRONMENTAL SERVICES, DATE: _____

INC.

BY: _____

Name: _____

Title: _____

EXHIBIT 7

**People v. Champion Environmental Services, Inc.
PCB No. 05-199**

Electronic Filing - Received, Clerk's Office, September 2, 2008

Nijman, Jennifer

From: Homan, Javonna [JHoman@atg.state.il.us]
Sent: Wednesday, December 05, 2007 4:14 PM
To: Nijman, Jennifer
Cc: Davis, Thomas E.
Subject: stipdraftchampionrespondentversion2
Attachments: stipdraftchampionrespondentversion2.wpd

<<stipdraftchampionrespondentversion2.wpd>> Ma'am, I think I've gotten the changes - I removed the extra period on pg 2, IIIA3. I checked my version and pg 8, Section C(d) had the word "Stipulation" - it should show up on this one. I think I included the sentence as you suggested "As such, this Stipulation shall not constitute a previously adjudicated violation," on pg 3, IIID.

As for signature, we would like this to be executed by your client as soon as possible - would it be possible to get it signed this week? We may be filing this document without IEPA's signature.

stipdraftchampionrespondentversion2

EXHIBIT 8

**People v. Champion Environmental Services, Inc.
PCB No. 05-199**

NIJMAN • FRANZETTI LLP

10 South LaSalle Street • Suite 3600 • Chicago, Illinois 60603
312.251.5250 • fax 312.251.4610 • www.nijmanfranzetti.com

Jennifer T. Nijman
jn@nijmanfranzetti.com

Susan M. Franzetti
sf@nijmanfranzetti.com

March 6, 2008

BY FEDERAL EXPRESS

Ms. Javonna L. Homan
Assistant Attorney General
Environmental Enforcement Bureau
Office of the Illinois Attorney General
500 South Second Street
Springfield, IL 62706

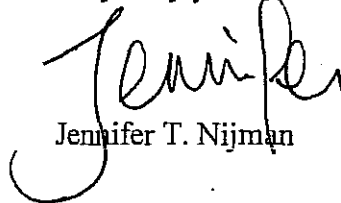
Re: State of Illinois v. Champion Environmental Services, Inc.
No. 05-199 – Stipulation and Proposal for Settlement

Dear Ms. Homan:

Enclosed are three copies of the signed settlement agreement. Please have IEPA execute the agreement so we may present it to the Illinois Pollution Control Board.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Jennifer T. Nijman

JTN/lbb
Enclosure

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)	
ILLINOIS, ex. rel. LISA MADIGAN,)		
Attorney General of the State of Illinois,)		
)	
Complainant,)		
)	
vs.)	No. 05-199	
)	
CHAMPION ENVIRONMENTAL)	
SERVICES, INC., an Wisconsin)	
corporation,)	
)	
Respondent.)	

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 CHAMPION ENVIRONMENTAL SERVICES, INC., ("Respondent"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the statement of facts contained in Section III. A and III.B herein 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 in Section III.A and III.B herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest its validity in any subsequent proceeding to implement or enforce the terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2004).

II. AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by

the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

III. STATEMENT OF FACTS

A. Parties

1. On May 23, 2005, 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(2004), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).

3. At all times relevant to the Complaint, Respondent was and is a Wisconsin corporation that has filed a certificate of authority to transact business in Illinois in good standing. The registered agent for Champion is Barbara J. Gorniak, 38 West End Drive, Gilberts, Kane County, Illinois 60136.

B. Site Description

1. CNH America LLC of East Moline is the owner of the former Case manufacturing facility located at 1100 Third Street in East Moline, Rock Island County, Illinois. The size of the facility is approximately two million five hundred thousand (2,500,000) square feet. CNH America LLC contracted Champion to remove approximately fifteen thousand linear feet of regulated asbestos containing material ("RACM"), ten thousand (10,000) square feet of Category I non-friable asbestos containing material ("ACM"), and two million ten thousand (2,010,000) square feet of Category II non-friable ACM, prior to the demolition of the facility.

2. Champion submitted a notification of the asbestos abatement and demolition project to the Illinois EPA on February 14, 2005. The project commenced on or after February 24, 2005. Champion subsequently submitted a revised notification of the asbestos abatement and

demolition project to the Illinois EPA on March 23, 2005.

C. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

- | | |
|-----------|---|
| Count I: | Violation of the National Emissions Standards for Asbestos, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2004) and 40 CFR §61.145(c)(1),(6) and 40 CFR §61.150(b)(1). |
| Count II: | Air Pollution Violations, in violation of, 415 ILCS 9(a), 9.1(d)(2004) and 40 CFR §61.150(a), and 35 Ill. Adm. Code 201.141. |

D. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent contests and does not affirmatively admit the allegations of violation within the Complaint and referenced within Section III.C herein, and this Stipulation shall not be interpreted as including such admission. As such, this Stipulation shall not constitute a previously adjudicated violation.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation 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 Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2004), 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. The Complainant alleges that human health and the environment were threatened by any emission of asbestos.
2. There is social and economic benefit to the Respondent's operations.
3. The facility was suitable for the area in which it was located.
4. The parties agree that compliance with the requirements of the Act, Board regulations, and the asbestos NESHAP is both technically practicable and economically reasonable.
5. Respondent has 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)(2004), 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. Complainant alleges that the Respondent failed to properly conduct asbestos removal operations at the site beginning on or around May 5, 2005. The Illinois EPA reinspected the facility on May 11, 2005, and determined that the removal and disposal activities at the site were in compliance with applicable laws and regulations at that time.
2. Respondent represents that it was diligent in its compliance with the Act, Board regulations and applicable federal regulations, prior to and subsequent to the Illinois EPA's notification of its alleged noncompliance.

3. Complainant alleges that Respondent derived a nominal economic benefit by not using the proper and approved method for asbestos removal; however, the civil penalty amount exceeds any economic benefit that may have been enjoyed by the Respondent.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of thirty four thousand dollars (\$34,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant's knowledge, Respondent has one previously adjudicated violation of the Act, PCB 1997-135, which related to an alleged improper notification of asbestos removal and was resolved by settlement and stipulation.
6. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental project.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of thirty four thousand dollars (\$34,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The payment of the civil penalty shall not be construed as an admission of any fact or allegation but is paid for settlement purposes only. The penalty described in this Stipulation shall be paid by certified check or money order 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

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), shall appear on the check. A copy of the certified check or money order and any

transmittal letter shall be sent to:

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

Christopher Pressnall
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) (2004), 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 (2004). 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, Respondent may be contacted through counsel at the following address:

Jennifer T. Nijman
Winston & Strawn, LLP
35 West Wacker Drive
Chicago, IL 60601-9703

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

B. Cease and Desist

The Respondent 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.

C. Release from Liability

In consideration of the Respondent's payment of the \$34,000.00 penalty and commitment to Cease and Desist as contained in Section VIII.B 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 Respondent from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on May 23, 2005, or which could have been raised in the Complaint filed before the Illinois Pollution Control Board. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

D. 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.

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, DATE: _____

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

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

CHAMPION ENVIRONMENTAL SERVICES, DATE: 3-4-08
INC.

BY: Dominic Gorniak
Name: Dominic Gorniak
Title: PRESIDENT

EXHIBIT 9

**People v. Champion Environmental Services, Inc.
PCB No. 05-199**

Electronic Filing - Received, Clerk's Office, September 2, 2008

Nijman, Jennifer

From: Homan, Javonna [JHoman@atg.state.il.us]
Sent: Thursday, December 13, 2007 9:26 AM
To: Nijman, Jennifer
Cc: Davis, Thomas E.
Subject: RE: stipdraftchampionrespondentversion2

Ma'am -
The Illinois Attorney General's Office made the decision to delete the references to the Illinois Environmental Protection Agency in the initial paragraph, and in Section IA, paragraphs 1 & 2. There is a disagreement between the IAGO and the IEPA as to the role of the IEPA in litigation such as the Champion matter. It is the position of our office that the IEPA has been overreaching in our interactions during litigation. I am sure you, or at least your client, would agree that is at least occasionally the case in his dealings with representatives of the IEPA.

Regarding future use/penalties, the IEPA may only be bound in legal actions by the Attorney General. In this case, any future claims regarding these alleged violations will be precluded by the operation of law, and, as a practical matter, it is the IAGO who would oversee any possible future use of this matter in designating a penalty in some future case. If your concern is for future NESHAP notices, the IEPA has no discretion to refuse a NESHAP notice and cannot hold the settlement against your client in the ordinary conduct of the Agency's business.

This message and any attachments may contain confidential/privileged information protected by the attorney-client or attorney work product privilege. If you are not the intended recipient, please notify the sender immediately and delete the original message and any attachments.

Thank you.

J.Homan, AAG
Environmental Bureau

-----Original Message-----

From: Nijman, Jennifer [mailto:JNijman@winston.com]
Sent: Wednesday, December 12, 2007 11:39 AM
To: Homan, Javonna
Subject: RE: stipdraftchampionrespondentversion2

Would you please explain why IEPA wants their name taken out of this settlement given that they are the "client" and the money is being paid to the IEPA trust fund? in addition, I want to ensure that IEPA is bound by this agreement as to future use and penalties - this change suggests they do not believe they are bound? This is a significant change we may want to raise to the hearing officer. This is like me, as lawyer, signing this agreement instead of Champion - the party. thanks

Champion 12/12/07

Nijman, Jennifer

To: Homan, Javonna
Subject: RE: stipdraftchampionrespondentversion2

Would you please explain why IEPA wants their name taken out of this settlement given that they are the "client" and the money is being paid to the IEPA trust fund? in addition, I want to ensure that IEPA is bound by this agreement as to future use and penalties - this change suggests they do not believe they are bound? This is a significant change we may want to raise to the hearing officer. This is like me, as lawyer, signing this agreement instead of Champion - the party. thanks

-----Original Message-----

From: Homan, Javonna [mailto:JHoman@atg.state.il.us]
Sent: Wednesday, December 12, 2007 9:13 AM
To: Nijman, Jennifer
Subject: RE: stipdraftchampionrespondentversion2

Ma'am - I very much appreciate your efforts to rushing the stip for signature as I asked. I am sorry to say that those changes are necessary.

This message and any attachments may contain confidential/privileged information protected by the attorney-client or attorney work product privilege. If you are not the intended recipient, please notify the sender immediately and delete the original message and any attachments.
Thank you.
J.Homan, AAG
Environmental Bureau

-----Original Message-----

From: Nijman, Jennifer [mailto:JNijman@winston.com]
Sent: Tuesday, December 11, 2007 4:50 PM
To: Homan, Javonna
Subject: RE: stipdraftchampionrespondentversion2

On your request to rush this, I've already sent the prior version to the client for signature. Are these changes absolutely necessary?

-----Original Message-----

From: Homan, Javonna [mailto:JHoman@atg.state.il.us]

Sent: Tuesday, December 11, 2007 4:01 PM
To: Nijman, Jennifer
Subject: stipdraftchampionrespondentversion2

<<stipdraftchampionrespondentversion2.wpd>> Ma'am - I have been instructed to make a couple small revisions to this draft - they are removal of references to the Illinois Environmental Protection Agency in the prefatory paragraph and paragraphs 1 & 2 in Section I.A. Here is

Electronic Filing - Received, Clerk's Office, September 2, 2008

the revised version. Please let me know your position on this version when you can. Thank you.

stipdraftchampionrespondentversion2

The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

-----Original Message-----

From: Homan, Javonna [mailto:JHoman@atg.state.il.us]

Sent: Tuesday, December 11, 2007 4:01 PM

To: Nijman, Jennifer

Subject: stipdraftchampionrespondentversion2

<<stipdraftchampionrespondentversion2.wpd>> Ma'am - I have been instructed to make a couple small revisions to this draft - they are removal of references to the Illinois Environmental Protection Agency in the prefatory paragraph and paragraphs 1 & 2 in Section I. A. Here is the revised version. Please let me know your position on this version when you can. Thank you.

stipdraftchampionrespondentversion2

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)	
ILLINOIS, ex. rel. LISA MADIGAN,)		
Attorney General of the State of Illinois,)		
)	
Complainant,)		
)	
vs.)	No. 05-199	
)	
CHAMPION ENVIRONMENTAL)	
SERVICES, INC., an Wisconsin)	
corporation,)	
)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and CHAMPION ENVIRONMENTAL SERVICES, INC., ("Respondent"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the statement of facts contained in Section III. A and III.B herein 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 in Section III.A and III.B herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest its validity in any subsequent proceeding to implement or enforce the terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2004).

II. AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by

the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

III. STATEMENT OF FACTS

A. Parties

1. On May 23, 2005, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, pursuant to Section 31 of the Act, 415 ILCS 5/31(2004), against the Respondent.

2. At all times relevant to the Complaint, Respondent was and is a Wisconsin corporation that has filed a certificate of authority to transact business in Illinois in good standing. The registered agent for Champion is Barbara J. Gorniak, 38 West End Drive, Gilberts, Kane County, Illinois 60136.

B. Site Description

1. CNH America LLC of East Moline is the owner of the former Case manufacturing facility located at 1100 Third Street in East Moline, Rock Island County, Illinois. The size of the facility is approximately two million five hundred thousand (2,500,000) square feet. CNH America LLC contracted Champion to remove approximately fifteen thousand linear feet of regulated asbestos containing material ("RACM"), ten thousand (10,000) square feet of Category I non-friable asbestos containing material ("ACM"), and two million ten thousand (2,010,000) square feet of Category II non-friable ACM, prior to the demolition of the facility.

2. Champion submitted a notification of the asbestos abatement and demolition project to the Illinois EPA on February 14, 2005. The project commenced on or after February 24, 2005. Champion subsequently submitted a revised notification of the asbestos abatement and demolition project to the Illinois EPA on March 23, 2005.

C. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the

Act and Board regulations:

Count I:	Violation of the National Emissions Standards for Asbestos, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d)(2004) and 40 CFR §61.145(c)(1),(6) and 40 CFR §61.150(b)(1).
Count II:	Air Pollution Violations, in violation of, 415 ILCS 9(a), 9.1(d)(2004) and 40 CFR §61.150(a), and 35 Ill. Adm. Code 201.141.

D. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent contests and does not affirmatively admit the allegations of violation within the Complaint and referenced within Section III.C herein, and this Stipulation shall not be interpreted as including such admission. As such, this Stipulation shall not constitute a previously adjudicated violation.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation 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 Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the

Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2004), 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. The Complainant alleges that human health and the environment were threatened by any emission of asbestos.
2. There is social and economic benefit to the Respondent's operations.
3. The facility was suitable for the area in which it was located.
4. The parties agree that compliance with the requirements of the Act, Board regulations, and the asbestos NESHAP is both technically practicable and economically reasonable.
5. Respondent has 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)(2004), 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. Complainant alleges that the Respondent failed to properly conduct asbestos removal operations at the site beginning on or around May 5, 2005. The Illinois EPA reinspected the facility on May 11, 2005, and determined that the removal and disposal activities at the site were in compliance with applicable laws and regulations at that time.
2. Respondent represents that it was diligent in its compliance with the Act, Board regulations and applicable federal regulations, prior to and subsequent to the Illinois EPA's notification of its alleged noncompliance.
3. Complainant alleges that Respondent derived a nominal economic benefit by not using the proper and approved method for asbestos removal; however, the civil penalty amount exceeds any economic benefit that may have been enjoyed by the Respondent.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of thirty four thousand dollars (\$34,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant's knowledge, Respondent has one previously adjudicated violation of the Act, PCB 1997-135, which related to an alleged improper notification of asbestos removal and was resolved by settlement and stipulation.
6. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental project.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of thirty four thousand dollars (\$34,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The payment of the civil penalty shall not be construed as an admission of any fact or allegation but is paid for settlement purposes only. The penalty described in this Stipulation shall be paid by certified check or money order 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

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), shall appear on the check. A copy of the certified check or money order and any transmittal letter shall be sent to:

J. Homan
Assistant Attorney General
Environmental Bureau
500 South Second Street

Springfield, Illinois 62702

Christopher Pressnall
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) (2004), 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 (2004). 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, Respondent may be contacted through counsel at the following address:

Jennifer T. Nijman
Winston & Strawn, LLP
35 West Wacker Drive
Chicago, IL 60601-9703

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

B. Cease and Desist

The Respondent 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.

C. Release from Liability

In consideration of the Respondent's payment of the \$34,000.00 penalty and commitment to Cease and Desist as contained in Section VIII.B 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 Respondent from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on May 23, 2005, or which could have been raised in the Complaint filed before the Illinois Pollution Control Board. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

D. 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.

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, DATE: _____

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

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

CHAMPION ENVIRONMENTAL SERVICES, DATE: _____

INC.

BY: _____

Name: _____

Title: _____

EXHIBIT 10

**People v. Champion Environmental Services, Inc.
PCB No. 05-199**

Electronic Filing - Received, Clerk's Office, September 2, 2008

Nijman, Jennifer

From: Nijman, Jennifer
Sent: Wednesday, December 19, 2007 12:02 PM
To: 'Homan, Javonna'
Subject: RE: Stipulation

that would be fine - it's the version I had already sent to the client. I assume IEPA will sign as well. thanks

From: Homan, Javonna [mailto:JHoman@atg.state.il.us]
Sent: Tuesday, December 18, 2007 11:19 AM
To: Nijman, Jennifer
Subject: Stipulation

Ma'am, if your client would prefer the version of the stipulation that includes signoff by the Agency, I am now authorized to route it that way.

J.Homan, AAG
Environmental Bureau

EXHIBIT 11

**People v. Champion Environmental Services, Inc.
PCB No. 05-199**

RECEIVED
CLERK'S OFFICE

MAR 10 2008

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD

March 10, 2008

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 05-199
)	(Enforcement - Air)
CHAMPION ENVIRONMENTAL)	
SERVICES, INC.,)	
)	
Respondent.)	

HEARING OFFICER ORDER

On March 10, 2008, the parties participated in a telephone status conference with the hearing officer. The Illinois Environmental Protection Agency (Agency) has requested changes to the settlement agreement to clarify that the Agency is a party to the proceeding. When complainant receives the revised settlement agreement from the Agency, it will be sent to the respondent.

The parties are directed to participate in a telephone status conference with the hearing officer at 11:00 a.m. on May 12, 2008. The status conference shall be initiated by the complainant.

IT IS SO ORDERED.

Carol Webb

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
webbc@ipcb.state.il.us

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on March 10, 2008, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on March 10, 2008:

John T. Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601

Carol Webb

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
webbc@ipcb.state.il.us

PCB 2005-199
Javonna Homan
Office of the Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706

PCB 2005-199
Jennifer T. Nijman
Winston & Strawn
35 West Wacker Drive
Suite 4200
Chicago, IL 60601-9703

PCB 2005-199
Katherine P. O'Halleran
Winston & Strawn
35 West Wacker Drive
Suite 4200
Chicago, IL 60601-9703

PCB 2005-199
Barbara J. Gorniak, R. A.
Champion Environmental Services, Inc.
38 West End Drive
Gilberts, IL 60136

EXHIBIT 12

**People v. Champion Environmental Services, Inc.
PCB No. 05-199**

Electronic Filing - Received, Clerk's Office, September 2, 2008

Nijman, Jennifer

From: Nijman, Jennifer
Sent: Thursday, May 22, 2008 2:22 PM
To: Homan, Javonna
Subject: RE: Champion stip

Javonna, I just received in the mail the hard copy, redline of the Settlement. I am very concerned and disappointed that your client has simply reneged on all the agreements in language that we previously reached. My understanding was that the only issue left was the inclusion of IEPA in the Settlement. Instead, agreements we made back in September have simply been ignored (please refer back to my letter of Sept 21 and the subsequent agreements in language). This is not acceptable and presents many issues of good faith and potential breach of our agreement. It is a waste of my client's money to go over these terms yet again. If your client will not agree to return to the substantive agreement we previously negotiated, I will bring this to the attention of the Hearing Officer for further discussion. Please let me know how your client would like to proceed.

Jennifer Nijman
Nijman Franzetti LLP
10 S. LaSalle St., Suite 3600
Chicago, IL 60603
312-251-5255 Direct
312-251-5250 General

Please note that effective February 1, 2008 the firm name has changed to Nijman Franzetti LLP and my e-mail address has changed to jn@nijmanfranzetti.com.

This Internet message may contain information that is privileged, confidential, and exempt from disclosure. It is intended for use only by the person to whom it is addressed. If you have received this in error, please (1) do not forward or use this information in any way; and (2) contact me immediately.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 20, 2008

Ms. Jennifer Nijman
Attorney at Law
Nijman & Franzetti
10 S. LaSalle Street, Ste. 3600
Chicago, IL 60603


Re: *People v. Champion*
PCB No. 05-199

Dear Jennifer:

Enclosed is a copy of the proposed Stipulation and Proposal for Settlement, along with a red-lined copy for your reference. If the settlement meets with your approval, please have it signed by your client and return to us for filing.

Thank you for your consideration in this matter.

Sincerely,



Javonna Homan
Assistant Attorney General
Environmental Bureau
Springfield, IL 62706

JH/pjk
Enclosure

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 05-199
)	(Enforcement)
CHAMPION ENVIRONMENTAL SERVICES,)	
INC., a Wisconsin corporation,)	
)	
Respondent.)	

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 CHAMPION ENVIRONMENTAL SERVICES, INC., a Wisconsin corporation, ("Respondent" or "Champion"), 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. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2006), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

I. JURISDICTION

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

~~(2004).~~

~~H. 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.~~

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On May 23, 2005, 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 (2006), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2006).

3. At all times relevant to the Complaint, Respondent was and is a Wisconsin corporation in good standing that is authorized to transact business in the State of Illinois. The Registered Agent for Champion is Barbara J. Gorniak, 38 West End Drive, Gilberts, Kane County, Illinois.

B. Site Description

4. CNH America LLC of East Moline is the owner of the former Case manufacturing facility located at 1100 Third Street in East Moline, Rock Island County, Illinois ("Site"). The size of the facility is approximately two million five hundred thousand (2,500,000) square feet. CNH America LLC contracted Champion to remove approximately fifteen thousand

(15,000) linear feet of regulated asbestos containing material ("RACM"), ten thousand (10,000) square feet of Category I non-friable asbestos containing material ("ACM"), and two million ten thousand (2,010,000) square feet of Category II non-friable ACM, prior to the demolition of the facility.

5. Champion submitted a notification of the asbestos abatement and demolition project to the Illinois EPA on February 14, 2005. The project commenced on or after February 24, 2005. Champion subsequently submitted a revised notification of the asbestos abatement and demolition project to the Illinois EPA on March 23, 2005.

EB. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act and Board regulations:

- Count I: Violation of the National Emissions Standards for Asbestos ("NESHAP"), in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d) (2006) and 40 CFR Section 61.145(c)(1) & (6), and 40 CFR Section 61.150(b)(1).
- Count II: Air Pollution Violations, in violation of 415 ILCS 9(a), 9.1(d) (2006), and 40 CFR Section 61.150(a), and 35 Ill. Adm. Code 201.141.

DC. Non-Admission of Violations

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

such admission. ~~As such, this Stipulation shall not constitute a previously adjudicated violation.~~

IVII. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation 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. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

~~V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS~~

~~— This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.~~

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), 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 to this Stipulation state the following:

1. ^{NO} ~~The Complainant alleges that~~ Human health and the environment were threatened by any emission of asbestos by the Respondent's violations.

2. There is social and economic benefit to the Respondent's operations facility.

3. Operation of the facility was suitable for the area in which it ~~was located~~ occurred.

4. ~~The parties agree that~~ Compliance with the requirements of the Act, Board regulations, and the asbestos NESHAP is both technically practicable and economically reasonable.

5. Respondent has subsequently complied with the Act and the Board Regulations.

VH IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), 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 to this Stipulation state as follows:

ND

1. ~~Complainant alleges that~~ The Respondent failed to properly conduct asbestos removal operations at the site beginning on or around May 5, 2005. The Illinois EPA reinspected the facility on May 11, 2005, and determined that the removal and disposal activities at the site were in compliance with applicable laws and regulations at that time.

2. Respondent ~~represents that it was diligent in attempting to come back into its~~ compliance with the Act, Board regulations and applicable federal regulations, ~~prior to and~~ subsequent to the Illinois EPA's notification of its alleged noncompliance once the Illinois EPA notified it of its noncompliance.

3. Complainant ~~alleges that~~ Respondent derived a nominal economic benefit by not using the proper and approved method for asbestos removal; however, the civil penalty amount exceeds any economic benefit that may have been enjoyed by the Respondent.

4. Complainant and the Illinois EPA ~~have~~ has determined, based upon the specific facts of this matter, that a penalty of Thirty Four Thousand Dollars (\$34,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's and the Illinois EPA's knowledge, Respondent has one previously adjudicated violation of the Act, PCB 1997-135, which related to an alleged improper notification of asbestos removal and was resolved by settlement and stipulation.

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

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

VII V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Thirty Four Thousand Dollars (\$34,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. ~~The payment of the civil penalty shall not be construed as an admission of any fact or allegation but is paid for settlement purposes only. The penalty described in this Stipulation shall be paid by certified check or money order 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~~

The name and number of the case and Respondent's Federal Employer Identification Number (FERN), shall appear on the check. A copy of the certified check or money order and any transmittal letter shall be sent to:

~~J. Homan
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62702~~

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

B. Stipulated Penalties, Interest and Default

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.
2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment

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

C. Payment Procedures

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

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

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), 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 (2004). 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, Respondent may be contacted through counsel at the following address:~~

~~Jennifer T. Nijman
Winston & Strawn, LLP
35 West Wacker Drive
Chicago, IL 60601-9703~~

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

~~B. Cease and Desist~~

~~The Respondent 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.~~

€ E. Release from Liability

In consideration of the Respondent's payment of the \$34,000.00 penalty and commitment to Cease and Desist as contained in Section VIII.B and any specified costs and accrued interest, completion of all activities required hereunder, 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 Respondent from any further liability or penalties for the 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 May 23, 2005, or which could have been raised in the Complaint filed before the Illinois Pollution Control Board. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

~~D. Enforcement of Board Order~~

F. Enforcement and Modification of Stipulation

~~1.~~ Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the 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.~~

G. Execution of Stipulation

The undersigned representatives for each party to this Stipulation 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.

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

PEOPLE OF THE STATE OF ILLINOIS, FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

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

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

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

DATE: _____

CHAMPION ENVIRONMENTAL
SERVICES, INC., a Wisconsin
corporation,

DATE: _____

BY: _____

Name: _____

Title: _____