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FEB 11 2009

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

STATE OF ILLINOIS  
Pollution Control Board

**Lisa Madigan**  
ATTORNEY GENERAL

February 9, 2009

John T. Therriault, Assistant Clerk  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 West Randolph  
Chicago, Illinois 60601

Re: ***People v. Quad-County Ready Mix Corp.***  
**PCB No. 06-181**

Dear Clerk:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Michael D. Mankowski  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031

MDM/pjk  
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
vs. )  
)  
QUAD-COUNTY READY MIX )  
CORPORATION, an Illinois corporation, )  
)  
Respondent. )

PCB No. 06-181  
(Enforcement - Air, Land, Water)

NOTICE OF FILING

To: Claire A. Manning  
Brown, Hay & Stephens, LLP  
205 South Fifth Street, Ste. 700  
P.O. Box 2459  
Springfield, IL 62705-2459

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STATE OF ILLINOIS  
Pollution Control Board

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY: Michael D. Mankowski  
MICHAEL D. MANKOWSKI  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: August 19, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that I did on February 9, 2009, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: Claire A. Manning  
Brown, Hay & Stephens, LLP  
205 South Fifth Street, Ste. 700  
P.O. Box 2459  
Springfield, IL 62705-2459

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: John T. Therrault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, IL 62794

  
MICHAEL D. MANKOWSKI  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
vs. )  
)  
QUAD-COUNTY READY MIX )  
CORPORATION, an Illinois corporation, )  
)  
Respondent. )

PCB No. 06-181  
(Enforcement - Air, Land, Water)

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STATE OF ILLINOIS  
Pollution Control Board

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2006), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2006). In support of this motion, Complainant states as follows:

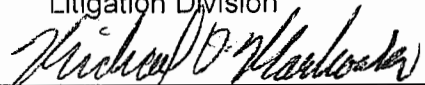
1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

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

BY: 

MICHAEL D. MANKOWSKI  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: February 9, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 QUAD-COUNTY READY MIX )  
 CORPORATION, an Illinois corporation )  
 )  
 Respondent. )

PCB 06-181  
(Enforcement - Air, Land, Water )

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STIPULATION AND PROPOSAL FOR SETTLEMENT STATE OF ILLINOIS  
Pollution Control Board

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 QUAD-COUNTY READY MIX CORPORATION ("Respondent"), the Parties to the Stipulation and Proposal for Settlement ("Parties to the Stipulation"), 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. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On June 2, 2006, 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 an Illinois corporation in good standing.

4. At all times relevant to this Complaint, Quad-County Ready Mix was the owner and operator of a concrete ready mix plant located at 300 Old Fullerton, Swansea, St. Clair County, Illinois ("facility").

5. Stormwater discharges from the facility are regulated by National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges from Industrial Activities No. ILR003761.

**B. Allegations of Non-Compliance**

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

Count I: NOTIFICATION AND FEE PAYMENT VIOLATIONS, in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006), Section 9.13(b) of the Act, 415 ILCS 5/9.13(b) (2006), and 40 CFR 61.145(a) & (b)(1)

Count II: FAILURE TO FOLLOW PROPER EMISSION CONTROL PROCEDURES, in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006), and 40 CFR 61.145(c)(1) & (6)

- Count III: IMPROPER DISPOSAL OF REGULATED ASBESTOS CONTAINING MATERIALS, in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006), and 40 CFR 61.150(a)(1) & (b)(1)
- Count IV: AIR POLLUTION VIOLATIONS, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2006), and Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141
- Count V: OPEN DUMPING, in violation of Sections 21(a), (e), & (p)(1), (4), & (7) of the Act, 415 ILCS 5/21(a), (e), & (p)(1), (4), & (7) (2006)
- Count VI: OPEN BURNING, in violation of Section 9(c) of the Act, 415 ILCS 5/9(c) (2006) and Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2006)
- Count VII: WATER POLLUTION, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006)
- Count VIII: NPDES PERMIT VIOLATIONS: UNLAWFUL DISCHARGES, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), NPDES Permit No. ILR003761

**C. Admission of Violations**

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.

**D. Compliance Activities to Date**

Respondent has properly removed and disposed of the any and all remaining RACM at the facility; ceased open dumping and removed all open dumped waste from the facility; ceased open burning; ceased all alleged water pollution; and updated the Storm Water Pollution



Prevention Plan (SWPPP) for the facility as required by NPDES Permit No. ILR003761.

## **II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation, 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).

## **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 state the following:

1. During renovation and demolition of the former batch house RACM was disturbed and managed in a manner not in compliance with the Act and regulations, thereby threatening the release of asbestos fibers into the atmosphere. In addition, during demolition and renovation, Respondent conducted open burning and open dumping at the site and failed to have a valid storm water management plan for containment of water runoff. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations.

2. There is social and economic benefit to the facility. Respondent's demolition and renovation of the former batch house which was obsolete and seriously in need of renovation, provides a substantial improvement for Swansea, Illinois, and required a major investment of resources on the part of Respondent.

3. Operation of the facility was suitable for the area in which it occurred. The demolition and renovation of the former batch house, was in its current location for decades; thus, the construction activities involved in the renovation were suitable for the area.

4. The proper removal and disposal of RACM at the site is both technically practicable and economically reasonable. It was both technically practicable and economically reasonable to avoid open dumping and open burning at the site. It was technically practicable and economically reasonable to maintain containment for wash water runoff and update the SWPPP for the facility.

5. Once having been notified of its non-compliance, the Respondent made substantial efforts to come into compliance with the Act and the Board's regulations.

#### 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 state as follows:

1. The Respondent failed to conduct demolition in accordance with regulatory and statutory requirements concerning the removal of asbestos in the demolition of the former batch

house in Illinois. Also, Respondent violated the Act by conducting open burning and open dumping of construction debris and by failing to manage storm water in accordance with a storm water permit.

2. While Respondent did not exercise diligence in its initial demolition activities, once notified by the IEPA of its noncompliance, Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations.

3. Respondent received no or marginal economic benefit from its noncompliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Thirty Thousand Dollars (\$30,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. A review of Illinois EPA records does not indicate any previous enforcement action taken by the Illinois EPA against the Respondent.

6. Respondent did not voluntarily disclose to the Illinois EPA the violations that are the subject of this case.

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

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

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

**B. 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:

Michael D. Mankowski  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702

**C. Release from Liability**

In consideration of the Respondent's payment of the Thirty Thousand Dollar (\$30,000.00) penalty, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, 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 November 1, 2006. 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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), or entity other than the Respondent.

**D. Enforcement and Modification of Stipulation**

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.

**E. 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, 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,

LISA MADIGAN  
Attorney General  
State of Illinois

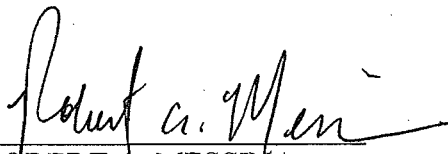
MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 2/06/09

THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

BY:   
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 2/5/09

FOR THE DEFENDANT:

QUAD-COUNTY READY MIX  
CORPORATION

BY: \_\_\_\_\_

Name: Perleth J. Fuestedde

Title: Pres.

DATE: 1-27-09