

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD


PEOPLE OF THE STATE OF ILLINOIS)
by LISA MADIGAN Attorney General)
of the State of Illinois)
)
Complainant,) PCB No. 07-144
)
v.) (Enforcement- Air)
)
MICK MORFEY, individually and)
WILLIAM KNAUER, individually)
)
Respondents.)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 11th day of February, 2009, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement with Respondent Mick Morfey Only and a Motion to Request Relief from Hearing Requirement as to Respondent Mick Morfey Only, copies of which are attached hereto and are hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN
Attorney General of the State of Illinois

BY: 
STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau North
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-2087
ssylvester@atg.state.il.us

DATE: February 11, 2009

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

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Springfield, IL 62794-9276

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**MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT
AS TO RESPONDENT MICK MORFEY ONLY**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter as to Respondent Mick Morfey Only. In support thereof, the Complainant states as follows:

1. On June 15, 2007, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter. On February 11, 2009, a Stipulation and Proposal for Settlement with Respondent Mick Morfey was filed with the Board in this matter.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2006), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement.

3. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2006), provides as follows:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of

Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

4. No hearing is currently scheduled in the instant case.
5. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415

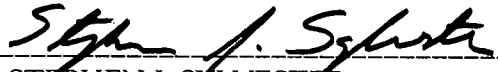
ILCS 5/31(c)(2) (2006).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
by LISA MADIGAN
Attorney General of the State of Illinois

BY:


STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau North
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-2087
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STIPULATION AND PROPOSAL FOR SETTLEMENT
WITH RESPONDENT MICK MORFEY ONLY

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent Mick Morfey ("Morfey") only, ("Parties to the Stipulation and Proposal for Settlement") 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), the Board's Air Pollution Regulations, and the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR 61.140, *et. seq.*, as alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to this Stipulation and Proposal for Settlement ("Parties to this Stipulation") that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On June 15, 2007, 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 Morfey and William Knauer for alleged violations that occurred at barracks buildings 266 and 267 ("Buildings"), situated within the former Savanna Army Depot, Savanna, Carroll County, Illinois ("Site").

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).

B. Allegations of Non-Compliance

Complainant contends that Morfey has violated the following provisions of the Act, Board Air Pollution Regulations, and the NESHAP for asbestos:

Count I: Air Pollution: 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 II: Failure to Inspect and to Submit Complete and Accurate Notification of Demolition and Renovation: Violation of 9.1(d) of the Act, 415 ILCS 5/9.1(d), and Sections 61.145(a) and (b) of the NESHAP for asbestos, 40 C.F.R. 61.145(a) and (b);

Count III: Failure to Remove and Contain RACM in Compliance with NESHAP Requirements: Violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d), and Sections 61.145(c)(1), (c)(2), (c)(6) and (c)(8) and 61.150(a)(1)(iii), (iv) and (v) of the NESHAP for asbestos, 40 C.F.R. 61.145(c)(1), (c)(2), (c)(6) and (c)(8) and 61.150(a)(1)(iii), (iv) and (v);

Count IV: Improper Disposal of Regulated Asbestos-Containing Materials: Violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d), and Section 61.150(b) of the NESHAP for asbestos, 40 C.F.R. 61.150(b);

Count V: Failure to Pay Asbestos Fees: Violation of Section 9.13(a) of the Act, 415 ILCS 5/9.13(a); and

Count VI: Open Burning of Refuse: Violation of Section 9(c) of the Act, 415 ILCS 5/9(c).

C. Admission of Violations

Morfey admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. This Stipulation may be used against Morfey 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 to the Stipulation state the following:

1. The impact to the public resulting from Morfey's failure to comply with the work practice standards of the asbestos NESHAP in connection with regulated building renovation activities resulted in the emission of asbestos fibers, a known carcinogen, which threatened human health and the environment. In addition, the Illinois EPA and the public were not privy to information that is important to monitoring of hazardous material in Illinois, because no notification of activities was received by the Illinois EPA, prior to the commencement of asbestos removal activities at the Site.
2. The Buildings at the Site, which are the subject of the Complaint, have social and economic value.
3. The Buildings at the Site, which are the subject of the Complaint, are suitable to the area in which they are located.
4. Complying with the applicable provisions of the Act, the Board's Air Pollution Regulations and the NESHAP for asbestos was both technically practicable and economically reasonable.
5. Complainant states that asbestos remediation activities to ensure proper removal and disposal of all regulated asbestos-containing waste material at the Buildings, resulting from improper renovation activities at each of the two Buildings, have been completed.

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 the Stipulation state as follows:

1. The duration of the violations that are the subject of the Complaint are alleged by Complainant to have occurred on or before January 13, 2006 and continued through at least October 30, 2006. The gravity of the alleged violations is enhanced, due to the hazardous nature of the regulated asbestos-containing materials ("RACM") that was disturbed during Respondents' activities at the Site, exposing, at a minimum, Respondents to carcinogenic asbestos fibers.

2. Morfey failed to act diligently in this matter, as evidenced by improperly disturbing, handling and disposing of dry, friable RACM at the Site. By failing to retain a contractor trained in the requirements of the NESHAP for asbestos and by improperly disturbing, handling and disposing of dry, friable RACM at the Site, Morfey caused, threatened or allowed the discharge or emission of asbestos, a known human carcinogen for which there is no known safe level of exposure, into the environment.

3. Morfey realized an undetermined economic benefit for non-compliance by avoiding and/or delaying costs necessary to properly conduct asbestos removal and waste disposal activities in compliance with the NESHAP for asbestos, the Act, and Board Air Pollution Regulations.

4. Complainant states that a civil penalty payment of One Thousand Dollars (\$1,000.00) will serve to deter further violations by Morfey and to otherwise aid in enhancing voluntary compliance with the Act, Board Regulations, and the NESHAP for asbestos by Morfey and other persons similarly subject to the Act, Board Regulations, and the NESHAP for asbestos.

5. To Complainant's knowledge, Morfey has had no previously adjudicated violations of the NESHAP for asbestos, the Act, and Board regulations thereunder.

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

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

V. TERMS OF SETTLEMENT

A. Penalty Payment

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

B. Interest and Default

1. If Morfey fails to make any payment required by this Stipulation on or before the date upon which the payment is due, Morfey 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 Morfey 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 and case 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:

Stephen J. Sylvester
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington St., Suite 1800

Chicago, Illinois 60602

D. Future Compliance

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

2. Morfey shall cease and desist from future violations of the Act, Board Air Pollution Regulations, and the NESHAP for asbestos that were the subject matter of the Complaint.

E. Release from Liability

In consideration of Morfey's payment of the \$1,000.00 penalty and his commitment to Cease and Desist as contained in Section V.D above and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Respondent, Morfey only, from any further liability or penalties for the violations of the Act, Board Air Pollution Regulations, and the NESHAP for asbestos 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 June 15, 2007. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Morfey 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 Morfey'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, or entity other than Morfey

F. 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.

G. Execution of Stipulation

The undersigned representatives for each Party to the 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 the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

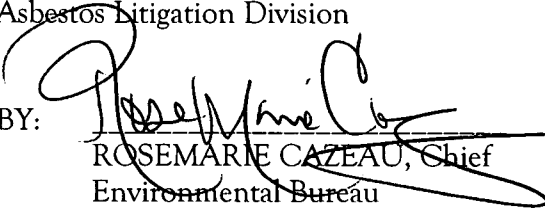
PEOPLE OF THE STATE OF ILLINOIS

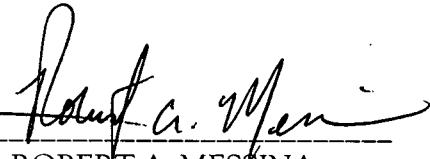
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 2/6/09

DATE: 2/5/09

MICK MORFEY

BY: _____

DATE: _____

Name: _____

Title: _____

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

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Assistant Attorney General

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

DATE: _____

MICK MORFEY

BY: Micky J Morfe
Name: _____

DATE: 2-2-09

Title: _____

CERTIFICATE OF SERVICE

I, STEPHEN J. SYLVESTER, an Assistant Attorney General in this case, do certify that I caused to be served this 11th day of February, 2009, the foregoing Stipulation and Proposal for Settlement with Respondent Mick Morfey Only, Motion to Request Relief from Hearing Requirement as to Respondent Mick Morfey Only and Notice of Filing upon the persons listed on the Service List by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.


STEPHEN J. SYLVESTER