



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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OCT 30 2009

STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

October 28, 2009

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

Re: ***People v. Chippewa Loft, LLC***
PCB 07-68

Dear Clerk Gunn:

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

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas Davis", is written over a horizontal line.

Thomas Davis, Chief
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

TD/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,
Complainant,
vs.
CHIPPEWA LOFT, LLC, a Missouri corporation,
Respondent.

PCB No. 07-68
(Enforcement-Air)

NOTICE OF FILING

RECEIVED
CLERK'S OFFICE

OCT 30 2009

STATE OF ILLINOIS
Pollution Control Board

To: Harjot S. Padda
Padda, Benner & Benner LLC
3915 Brannon Avenue
St. Louis, MO 63109

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 STIPULATION AND PROPOSAL FOR SETTLEMENT and MOTION FOR RELIEF FROM HEARING REQUIREMENT, 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: [Signature]
THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 28, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on October 28, 2009, send by U.S. mail, first class 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, STIPULATION AND PROPOSAL FOR SETTLEMENT and MOTION FOR RELIEF FROM HEARING REQUIREMENT

To: Harjot S. Padda
Padda, Benner & Benner LLC
3915 Brannon Avenue
St. Louis, MO 63109

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

To: John T. Therriault, 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



Thomas Davis, Chief
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
CHIPPEWA LOFT, LLC, a Missouri)
corporation,)
)
Respondent.)

PCB No. 07-68
(Enforcement-Air)

RECEIVED
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OCT 30 2009
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) (2008), 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) (2008). 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) (2008).

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) (2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 28, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 CHIPPEWA LOFT, LLC, a Missouri)
 Corporation)
)
 Respondent.)

PCB NO. 07-68 RECEIVED
(Enforcement - Air) CLERK'S OFFICE
OCT 30 2009
STATE OF ILLINOIS
Pollution Control Board

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 CHIPPEWA LOFT, LLC ("Respondent") ("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 January 22, 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 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 Missouri limited liability company that has not filed a certificate of authority to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned property located at 113 East Clay Street, Collinsville, Madison County, Illinois, which contains a building formerly known as the Collinsville Herald Building (“facility”).

4. On or before March 9, 2005, the Respondent commenced renovation activities within the Collinsville Herald Building, including the removal of approximately 3,700 square feet of asbestos-containing floor tile.

5. As of March 9, 2005, the Respondent had not filed a written notification of its renovation project with the Illinois EPA.

6. On March 10, 2005, the Illinois EPA inspected the facility and observed a substantial amount of debris within, and on the ground adjacent to, two open dumpsters in the rear of the facility. The debris had been subjected to mechanical chipping and was crushed, dry, and friable waste material suspected to contain asbestos; subsequent analysis of five samples revealed asbestos in a range of six to twelve percent.

7. The floor tile in Respondent’s facility was classified as Category I nonfriable asbestos containing material (“ACM”) that was subjected to grinding, cutting, and/or abrading, and therefore subject to the asbestos NESHAP work practices and other requirements as regulated asbestos containing material (“RACM”).

8. The Respondent failed to pay its statutory fee and file its notice of intent to renovate or demolish.

B. Allegations of Non-Compliance

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

Count I: Violations of the National Emissions Standards for Asbestos

The Respondent did not provide written notification to the Illinois EPA prior to commencement of renovation activities at the facility, thereby violating 40 CFR 61.145(b)(1) and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

The Respondent failed to adequately wet and keep wet, collect, contain and deposit as soon as practicable all RACM and asbestos-containing waste materials generated during the removal at a site permitted to accept such waste, and thereby violated 40 CFR 61.145(c)(6) and 61.150(b)(1) and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

Count II: Air Pollution Violations

By failing to adequately wet and keep wet all RACM removed during renovation activities until collected and contained in leak-tight wrapping in preparation for disposal, to utilize equipment or methods to properly control emission of asbestos, and to deposit as soon as practicable all RACM at a site permitted to accept such waste, the Respondent has threatened the emission of contaminants into the environment so as to tend to cause air pollution and thereby violated 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 (2005).

Count III: Nonpayment of Statutorily Required Fees

The Respondent did not pay the statutorily required notification fee, and thereby violated Section 9.13 of the Act, 415 ILCS 5/9.13 (2006).

C. Admission of Violations

The Respondent admits to the violation(s) alleged in the Complaint filed in this matter and referenced within Section I.B herein.

D. Compliance Activities to Date

On September 23, 2005, the Respondent submitted the required asbestos notification for the clean-up of 1,600 square feet of RACM, 400 square feet of nonfriable material, and 10 linear feet of thermal insulation and paid the required fee. The site was fully remediated on October 18, 2005. There are no further ongoing violations at the site.

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 to the Stipulation state the following:

1. Human health of the workers and handlers of the ACM was threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
2. There is social and economic benefit to proper removal of ACM from the Collinsville Herald Building.
3. The suitability of asbestos removal at this location is not an issue in this matter.
4. Providing notice to the Illinois EPA prior to renovation is both technically practicable and economically reasonable. In addition, it is both technically practicable and economically reasonable to properly remove, handle and dispose of ACM prior to renovation of the facility.
5. Respondent has subsequently complied with the Act and the Board 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 to the Stipulation state as follows:

1. During the renovation activities at the facility, a significant amount of RACM was disturbed thereby potentially exposing the workers and, as the material was improperly handled and disposed of, the public to carcinogenic asbestos fibers. The dumpster containing RACM was also improperly removed and disposed of. Further, the Plaintiff alleges there was significant delay in addressing the violations.

2. The Respondent did not act diligently to ensure that the requirements of the NESHAP for asbestos were met prior to and during renovation activities. It failed to promptly remediate the violations and did not adequately clean up the contamination until October, 2005, approximately seven months after being notified of its violations. Despite guidance from the Illinois EPA, the Respondent allowed a dumpster containing RACM to be improperly removed.

3. The Respondent's economic benefit from alleged noncompliance was likely nominal and the Parties to the Stipulation believe that the penalty obtained includes any such economic benefit.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that the agreed upon civil penalty 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 no previously adjudicated violations of the Act.

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

7. The settlement of this matter includes the Respondent's participation in a supplemental environmental project ("SEP").

Project Name: City of Collinsville Disinfection Upgrade

Type of Project: Pollution Prevention and Resource Efficiency

Estimated Cost: \$124,000.00

Project Details: The SEP is an upgrade to the City of Collinsville's water disinfection system. The current system was installed in 1993 and unable to keep up with the City's needs. The disinfection equipment will include piping hookups, transportation of the plumbing, and the disinfection units. It will require new MIOX RIO M2, a new dual water softener, and a new 1,090-gallon mixed oxidant storage tank. The project was approved by the Collinsville City Council on October 14, 2008. The project will be complete as of the date of the filing of this Stipulation.

The disinfection system project area includes the City of Collinsville city limits, state park area north of route 40, and rural Collinsville to the east of the city proper in Madison County, Collinsville Township.

A preliminary sketch of the disinfection system is attached as Exhibit A.

V. TERMS OF SETTLEMENT

A. **Penalty Payment**

The Respondent shall pay a civil penalty in the sum of Thirty Three Thousand Dollars (\$33,000.00). The Respondent shall make three equal payments of \$11,000.00. The payments shall be made as follows:

Payment Number 1: \$11,000 within thirty days of Board approval.

Payment Number 2: \$11,000 within sixty days of Board approval.

Payment Number 3: \$11,000 ninety days of Board approval.

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

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.
2. 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.
3. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Supplemental Environmental Project

1. In order to promote the goals of the Act to restore, protect and enhance the quality of the environment, the Respondent shall perform the following supplemental environmental project ("SEP"). The settlement value of the SEP is Twelve Thousand Dollars (\$12,000.00) and will offset penalties sought by the Complainant and the Illinois EPA in this matter. The Parties to the Stipulation agree that this SEP shall consist of the following:

An upgrade of the water disinfection system for the City of Collinsville.

2. The Respondent shall pay the amount of Twelve Thousand Dollars (\$12,000.00) within thirty (30) days after the date of entry of this Stipulation to fund the City of Collinsville Disinfection Upgrade. The upgrade system will consist of new disinfection equipment, including piping hookups, plumbing, and the disinfection units. In addition, it will require new MIOX RIO M2, a new dual water softener, and a new 1,090-gallon mixed oxidant storage tank. The project will complete as of the date of the filing of this Stipulation. The payment shall be paid by certified check or money order made payable to The City of Collinsville. The certified check or money order shall be sent by first class mail to:

Bob Frank, Director
Water Department
125 South Center Street
Collinsville, Illinois 62234

A copy of the check and the transmittal letter shall be sent to:

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

3. By signature on this Stipulation, the Respondent certifies that, as of the date of entry of this Order, it is not required to perform or develop the foregoing SEP by any federal,

state or local law or regulation, nor is it required to perform or develop the SEP by agreement or injunctive relief in any other case. The Respondent further certifies that it has not received, and is not presently negotiating to receive credit for, the SEP in any other enforcement action.

4. Any public statement, oral or written, in print, film or other media, made by the Respondent making reference to any SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Illinois Attorney General and the Illinois EPA for alleged violations of the Illinois Environmental Protection Act and regulations promulgated thereunder."

F. Release from Liability

In consideration of the Respondent's payment of the \$33,000.00 civil penalty, its commitment to cease and desist as contained in Section V.D. above, its performance of the SEP as contained in Section V.E. above, 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 January 22, 2007. 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, or entity other than the Respondent.

G. 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.

H. 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.

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,

LISA MADIGAN


Attorney General
State of Illinois

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

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY:




THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE:

10/28/09

BY:



JOHN J. KIM
Chief Legal Counsel

DATE:

10/27/09

CHIPPEWA LOFT, LLC

BY: _____

Name: _____

Title: _____

DATE: _____

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,

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: _____

CHIPPEWA LOFT, LLC

BY: _____
(Signature)

Name: Gregory S. Paddy
managing member
(Please print)

Title: Managing Member

DATE: 7/20/09

