

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

DAVID J. SHULTZ,

Respondent.

PCB No. 09-74
(Enforcement - Air)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on December 17, 2009, I electronically filed 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: Christine Zeivel
Christine Zeivel
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 17, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on December 17, 2009, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.


CHRISTINE ZEIVEL
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Randy Mead
Attorney at Law
107 East Allen Street
Springfield, IL 62704

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 09-74
)	(Enforcement - Air)
DAVID J. SHULTZ,)	
)	
Respondent.)	

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. On April 6, 2009, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter.
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).

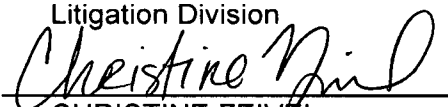
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY:



CHRISTINE ZEIVEL
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 17, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Complainant,)	
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)	(Enforcement - Air)
)	
DAVID J. SHULTZ,)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and David J. Shultz ("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 the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On April 6, 2009, 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, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), against the Respondent.

2. The Respondent, David J. Shultz, lives at 2816 Wordsworth Road, Springfield, Sangamon County, Illinois.

3. On February 4, 1999, PSI Environmental Geotechnical Construction Co. ("PSI") performed an Asbestos Survey & Assessment Report for the St. John's East/Building T Building ("Building T") located at 400 North Ninth Street, Springfield, Sangamon County, Illinois. Building T, which was owned by St. John's Hospital of the Hospital Sisters of the Third Order of St. Francis ("St. John's Hospital"), had 3 floors and a room on the roof called the "penthouse."

4. The PSI Asbestos Survey & Assessment Report stated that the mudded joint packing on pipes in Building T, which served as the thermal insulation, was asbestos containing material.

5. In 2004, Parkland Environmental Group performed a walk through of Building T in preparation of creating a proposal for demolition. Parkland Environmental Group observed asbestos inspection tags on the insulation covering the pipes in Building T.

6. On August 19, 2004, Parkland Environmental Group, submitted a Notification of Demolition and Renovation to the Illinois EPA for Building T, stating that there were 1,706 linear feet of regulated asbestos containing material ("RACM") on the pipes at Building T.

7. At some time before August 9, 2004, Melvin "Jay" Tode, the Purchasing and Surplus Manager for St. John's Hospital, allowed the Respondent to scrap materials from Building T, including the pipes and copper wire.

8. Between approximately August 9, 2004 and August 20, 2004, the Respondent, removed pipes, thermal insulation and other material from Building T, including but not limited to from the penthouse, without wetting the thermal insulation for the purpose of selling the pipes

and material.

9. Between approximately August 9, 2004 and August 20, 2004, Respondent dropped, damaged and disturbed the thermal insulation while removing from the pipes and other material from Building T, including dropping pipes and other materials that had been covered in thermal insulation from the roof of Building T to the ground below.

10. On August 20, 2004, Parkland Environmental Group and Biggs Construction, Inc. walked through Building T, where broken joint compound, a.k.a. thermal insulation, was present on the floor in the penthouse.

11. On September 3, 2004, Parkland Environmental Group observed stripped insulation in the penthouse and on the roof.

12. On September 9, 2004, Illinois EPA conducted an inspection of Building T, where thermal insulation was present on the roof between the condensing units and on the floor in the doorway of the penthouse and within the penthouse.

13. During the September 9, 2004 inspection, Illinois EPA collected seven samples of the thermal insulation to analyze for asbestos. Five of the samples were collected from the penthouse, one sample was collected from thermal insulation on the roof, and one sample was collected from thermal insulation in the stairwell landing. All samples had no moisture and were reduced to powder by hand pressure.

14. Analysis of the seven samples collected by the Illinois EPA showed that all of the samples contained asbestos. All seven of the thermal insulation samples contained chrysotile asbestos, ranging from 5% to 15%, and two of the samples contained amosite asbestos ranging from 20% to 40%.

15. The Illinois EPA did not receive notification from the Respondent for the renovation of Building T.

16. Respondent is not trained in National Emission Standards for Hazardous Air Pollutants("NESHAP") requirements for renovation of a building; nor was there an on-site representative trained in the NESHAP requirements present during the renovation.

B. Allegations of Non-Compliance

Complainant contends that the Respondents have violated the following provisions of the Act, Board regulations and the NESHAP for asbestos.

Count I: Asbestos Notification Violation

By failing to provide written notification to the Illinois EPA prior to the renovation of Building T, the Respondent violated 40 C.F.R. 60.145(b)(1) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2006).

Count II: Asbestos Renovation & Disposal Violations

By failing to remove all RACM from Building T before removing the pipes and other materials, the Respondent violated 40 C.F.R. 61.145(c)(1) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2006).

By failing to wet all RACM during and after the removal of the pipes from Building T, allowing the airborne migration of asbestos fibers, the Respondent violated 40 C.F.R. 61.145(c)(3), 61.145(c)(6)(i), and 61.150(a)(1) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2006).

By dropping, damaging and disturbing the thermal insulation and failing to carefully lower the RACM to the ground and floor, the Respondent violated 40 C.F.R. 61.145(c)(6)(ii) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2006).

By failing to transport the RACM in leak-tight chutes or containers from the roof to the ground, the Respondent

violated 40 C.F.R. 61.145(c)(6)(iii) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2006).

By failing to have a person trained in NESHAP requirements present during the renovation activities, the Respondent violated 40 C.F.R. 61.145 (c)(8) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2006).

By failing to deposit RACM in an appropriate waste disposal site as soon as possible, the Respondent violated 40 C.F.R. 61.150(b) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2006).

C. Admission of Violations

The Respondent 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, and any 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 his 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 and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
2. There is social and economic benefit to the facility and its renovation.
3. The facility and its renovations were suitable for the area in which the violations occurred.
4. Compliance with the Act, Board regulations, and the NESHAP for asbestos is both technically practicable and economically reasonable.
5. The Respondent did not remove any additional material from the facility after notification of noncompliance.

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. Between approximately August 9, 2004 and August 20, 2004, the Respondent failed to conduct asbestos removal activities in compliance with asbestos NESHAP notification, emission control and disposal requirements. The violations were resolved during that same year.
2. The Respondent did not exercise due diligence in complying with the Act, Board regulations, or NESHAP for asbestos prior to commencing the asbestos-disturbing renovation activities. The Respondent's noncompliant activities were completed prior to Illinois EPA's becoming aware of the violations and the Respondent has not since violated the Act, Board regulations or the NESHAP for asbestos.

3. The Complainant alleges the Respondents realized an economic benefit by receiving \$6,613.11 for salvaging piping and other materials removed from Building T and then avoided costs necessary to properly conduct asbestos removal and disposal activities in compliance with the Act, Board regulations, and the NESHAP for asbestos.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Seven Thousand Dollars (\$7,000.00) will serve to deter further violations by the Respondents and aid in enhancing voluntary compliance by the Respondents and other persons similarly subject to the Act, Board regulations, and the NESHAP for asbestos.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act, Board regulations, or the NESHAP for asbestos.

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. The Respondent shall pay a civil penalty in the sum of Seven Thousand Dollars (\$7,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents 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 Respondents 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 Respondents' 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. This Stipulation in no way affects the responsibility of the Respondent to comply

with any other federal, state or local laws or regulations, including but not limited to the Act, Board regulations and the NESHAP for asbestos.

3. The Respondent shall cease and desist from future violations of the Act, Board regulations, and the NESHAP for asbestos that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$7,000.00 penalty, 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 the Respondent from any further liability or penalties for the violations of the Act, Board 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 April 6, 2009. 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 Respondents' failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in

law or in equity, which the State of Illinois 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.

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 the Parties 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,

LISA MADIGAN
Attorney General
State of Illinois

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

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY: 

JOHN J. KIM
Chief Legal Counsel

DATE: 12/17/09

DATE: 12/14/09

BY: 

DAVID SHULTZ

DATE: 11-16-09