

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	PCB 09-39
v.)	
)	(Enforcement—Air)
AL-ALGONQUIN APARTMENTS, LLC,)	
an Indiana limited liability company;)	
ALGONQUIN APARTMENTS, LLC, an)	
Indiana limited liability company; and)	
ALGONQUIN MANAGEMENT, LLC, a)	
Delaware limited liability company,)	
)	
Respondents.)	

NOTICE OF FILING

TO: Michael J. Hayes
 Graham C. Grady
 Thomas R. Carey
 K&L Gates, LLP
 70 West Madison Street, Suite 3100
 Chicago, Illinois 60602

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief from Hearing, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

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

By: Andrew Armstrong

DATE: April 2, 2010

ANDREW ARMSTRONG
 Assistant Attorney General
 Environmental Bureau
 69 West Washington, 18th Floor
 Chicago, Illinois 60602
 (312) 814-0660

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**MOTION TO REQUEST RELIEF
FROM HEARING REQUIREMENT**

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. In support thereof, the Complainant states as follows:

1. On December 18, 2008, the Complaint was accepted for hearing by the Pollution Control Board (“Board”) in this matter. On April 2, 2010, a Stipulation and Proposal for Settlement was filed with the Board. If accepted, the Stipulation and Proposal for Settlement will dispose of the case.

2. Section 31(c)(2) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31(c)(2) (2008), 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. Section 31(c)(2) provides:

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).


3. No hearing is currently scheduled in the instant case.

4. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2008).

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) (2008).

Respectfully submitted,

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

By: 
ANDREW ARMSTRONG
Assistant Attorney General
Environmental Bureau
69 West Washington, 18th Floor
Chicago, Illinois 60602
(312) 814-0660

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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 AL-ALGONQUIN APARTMENTS, LLC; ALGONQUIN APARTMENTS, LLC; and ALGONQUIN MANAGEMENT, LLC ("Respondents") (collectively, "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.* (2008), 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 December 15, 2008, 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 (2008), against the Respondents.

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 (2008).

3. At all times relevant to the Complaint, Respondent Algonquin Apartments, LLC ("Algonquin Apartments") was and is an Indiana limited liability company in good standing with the state of Illinois. At all times relevant to the Complaint, Respondent AL-Algonquin Apartments, LLC ("AL-Algonquin") was and is an Indiana limited liability company in good standing with the state of Illinois. At all times relevant to the Complaint, Respondent Algonquin Management, LLC ("Algonquin Management") was a Delaware limited liability company.

4. At all times relevant to the Complaint, Algonquin Apartments owned a residential apartment building located at 1605 East 50th Street in Chicago, Cook County, Illinois (the "Building"). At all times relevant to the Complaint, AL-Algonquin served as the managing member of Algonquin Apartments. At all times relevant to the Complaint, Algonquin Management served as manager of the Building.

5. Complainant alleges that, on dates better known to the Respondents, but on and prior to May 7, 2007, the Respondents were engaged in a renovation of the Building (the "Renovation"). The Renovation involved the removal of floor tiles ("Floor Tiles") from the first through seventh floors of the Building. The Floor Tiles were asbestos-containing material.

6. Complainant alleges that approximately 1,900 square feet of Floor Tiles were removed from the floors of the Building during the Renovation.

7. Complainant alleges that the Respondents removed the Floor Tiles from the floors of the Building using hand-held scrapers and/or pneumatic jackhammers or drills, and did not wet the Floor Tiles during or after their removal.

8. Complainant alleges that no foreman or other authorized representative of the Respondents who was trained in the laws regulating asbestos removal was present during the removal of the Floor Tiles from the floors of the Building.

9. Complainant alleges that the Respondents did not submit a notice to the Illinois EPA regarding the Renovation prior to the commencement of the Renovation.

B. Allegations of Non-Compliance

Complainant contends that the Respondents have violated the following provisions of the Act and Board regulations:

Count I: Air Pollution—Release of Asbestos Fibers
Violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2008) and Section 201.141 of the Illinois Pollution Control Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141.

Count II: Failure to Provide Notice of a Renovation Activity
Violation of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2008) and Section 61.145(b) of the National Emission Standards for Hazardous Air Pollutants for Asbestos ("Asbestos NESHAP"), 40 C.F.R. § 61.145(b).

- Count III: Failure to Wet and to Properly Handle Regulated Asbestos-Containing Materials During Removal
Violation of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2008) and Section 61.145(c)(3) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(3).
- Count IV: Failure to Wet and to Properly Handle Regulated Asbestos-Containing Materials After Removal
Violation of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2008) and Section 61.145(c)(6)(i) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(6)(i).
- Count V: Failure to Have a Trained Foreman or Representative Present During the Disturbance of Regulated Asbestos-Containing Materials
Violation of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2008) and Section 61.145(c)(8) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(8).
- Count VI: Failure to Deposit All Asbestos-Containing Waste Material Within a Site Permitted to Accept Such Waste as Soon as Practicable
Violation of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2008) and Section 61.150(b) of the Asbestos NESHAP, 40 C.F.R. § 61.150(b).

C. Non-Admission of Violations

The Respondents represent that they have 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 Respondents do not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

1. On May 7, 2007, the Respondents ceased and desisted from their renovation activities and sealed the Building.
2. Thereafter, the Respondents retained Carnow, Conibear & Associates to conduct remediation of the Building.

3. On July 19, 2007, Carnow, Conibear & Associates submitted clearance air monitoring results to the Illinois Department of Public Health ("IDPH") indicating the Building had met clearance criteria. The IDPH accepted Carnow, Conibear & Associates' clearance air monitoring results by letter dated August 3, 2007.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their 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 Respondents 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 (2008).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2008), 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 by the Respondents' violations as alleged in the Complaint.
2. There was social and economic benefit afforded by the Respondents' renovation activities at the Building.
3. The Respondents' renovation activities at the Building were suitable for the area in which they were located, had they been conducted in accordance with all applicable statutory and regulatory requirements.
4. Conducting the renovation activities at the Building in compliance with all applicable statutory and regulatory requirements relating to the removal and disposal of asbestos-containing material was both technically practicable and economically reasonable.
5. The Respondents have subsequently complied with the Act and the Board Regulations. In this regard, once Respondents were notified of the alleged violations, Respondents cooperated with state and local officials to bring the renovation activities into full compliance.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2008), 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 Respondents' renovation activities at the Building disturbed asbestos-containing material, which created the possibility that workers in the Building were exposed to asbestos.
2. The Respondents were not diligent in ensuring that the requirements of the Act, Board regulations, and the Asbestos NEHSAP were met prior to and during their renovation

activities. However, the Respondents were diligent in attempting to come back into compliance with the Act, Board regulations, and the Asbestos NESHAP after the Illinois EPA discovered the disturbance of asbestos-containing material at the Building.

3. The Illinois EPA has determined that the economic benefit to the Respondents associated with the alleged violations was less than the penalty of Forty-Three Thousand Dollars (\$43,000.00) referenced in paragraph 4, below.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Forty-Three Thousand Dollars (\$43,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act, Board regulations, and the Asbestos NESHAP.

5. To Complainant's knowledge, the Respondents have no previously adjudicated violations of the Act.

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 Respondents shall pay, jointly and severally, a civil penalty in the sum of Forty-Three Thousand Dollars (\$43,000.00) 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 the 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, 415 ILCS 5/42(g) (2008), 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 numbers 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:

Andrew Armstrong
Environmental Bureau
Illinois Attorney General's Office

69 West Washington Street, 18th Floor
Chicago, Illinois 60602

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 Building 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 Respondents 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 Respondents shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondents' payment of the \$43,000.00 civil penalty and their 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 Respondents 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 December

15, 2008. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents 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 Respondents.

F. Enforcement 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.

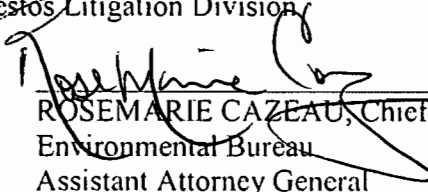
PEOPLE OF THE STATE OF ILLINOIS,

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: 
JOHN J. KIM
Chief Legal Counsel

DATE: 3/31/10

DATE: 3/31/10

AL-ALGONQUIN APARTMENTS, LLC

ALGONQUIN APARTMENTS, LLC
By: AL-Algonquin Apartments, LLC,
Its Manager

BY: _____
Name: Eli Ungar
Title: President

BY: _____
Name: Eli Ungar
Title: President

DATE: _____

DATE: _____

ALGONQUIN MANAGEMENT, LLC

BY: _____
Name: Eli Ungar
Title: President

DATE: _____

foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
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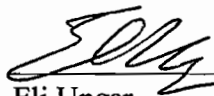
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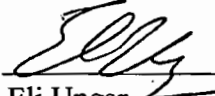
DATE: _____

AL-ALGONQUIN APARTMENTS, LLC

ALGONQUIN APARTMENTS, LLC

By: AL-Algonquin Apartments, LLC,
Its Manager


BY:  _____
Name: Eli Ungar
Title: President

BY:  _____
Name: Eli Ungar
Title: President

DATE: _____

DATE: _____

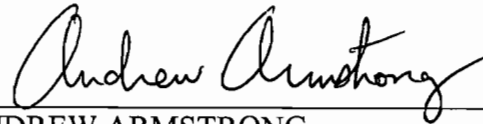
ALGONQUIN MANAGEMENT, LLC

BY:  _____
Name: Eli Ungar
Title: President

DATE: _____

CERTIFICATE OF SERVICE

I, ANDREW ARMSTRONG, an Assistant Attorney General, do certify that I caused to be mailed this 2nd day of April, 2010, the foregoing Motion to Request Relief from Hearing, Stipulation and Proposal for Settlement, and Notice of Filing, upon the persons listed on said notice, by U.S. first-class mail.



ANDREW ARMSTRONG
Assistant Attorney General
Environmental Bureau
69 West Washington, 18th Floor
Chicago, IL 60602
(312) 814-0660