

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

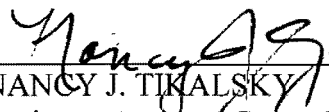
PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 13-43
)	(Enforcement - Air)
BLICK'S CONSTRUCTION CO., INC.,)	
an Illinois corporation, and RON BRICKER,)	
)	
Respondents.)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 2nd day of December, 2016, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief from Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

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

BY: 

NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
312-814-8567
Primary: ntikalsky@atg.state.il.us
Secondary: mcacaccio@atg.state.il.us

DATE: December 2, 2016

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 W. Randolph
Chicago, Illinois 60601

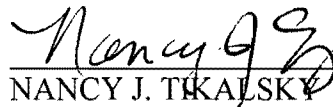
Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

Thomas D. Lupo
Hinshaw and Culbertson
222 N. LaSalle Street, Suite 300
Chicago, IL 60601-1081

Gerald L. Timmerwilke
Blickhan, Timemrwilke, et al
226 North Sixth Street
Quincy, IL 62301

CERTIFICATE OF SERVICE

I, NANCY J. TIKALSKY, an Assistant Attorney General, do certify that I caused to be electronically filed this 2d day of December, 2016, the foregoing Motion to Request Relief from Hearing, Stipulation and Proposal for Settlement and Notice of Filing with Respondent BLICK'S CONSTRUCTION CO., INC., and RON BRICKER, upon the persons listed on said notice.



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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 BLICK'S CONSTRUCTION CO., INC. ("Blick's") and RON BRICKER ("Bricker"), ("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. (2014), the Board's regulations and National Emissions Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, 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 February 8, 2013, 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 (2014), 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 (2014).

3. At all times relevant to the Complaint, Respondent Blick's was and is an Illinois corporation that was and is authorized to transact business in the State of Illinois; and Respondent Bricker was and is an Illinois resident.

4. At all times relevant to the Complaint, Respondent Blick's operated a salvaging and demolition project, which included asbestos removal activity, at 1201 Broadway, Quincy, Adams County, Illinois ("Facility") that is the subject of the Complaint.

5. At all times relevant to the Complaint, Respondent Bricker operated as a salvager at the Facility.

B. Allegations of Non-Compliance

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

Count I: **AIR POLLUTION**
Violations of Section 9(a) of the Act, 415 ILCS 5/9(a), and Section 201.141 of the Board's regulations, 35 Ill. Admin. Code 201.141;

Count III: **ASBESTOS ABATEMENT WORK PRACTICE VIOLATIONS**
Violations of Sections 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1), and Sections 61.145(c)(1) and (6) of the NESHAP for asbestos, 40 CFR 61.145(c)(1) and (6);

Count IV: **ASBESTOS WASTE HANDLING VIOLATION**
Violations of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1), and Sections 61.150(a) and (b) of the NESHAP for asbestos, 40 CFR 61.150(a) and (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 as referenced in Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

On September 19, 2011, Illinois EPA accepted the final Project Manager's Report documenting the completion of activities at the Facility.

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, the Board Regulations, and NESHAP for asbestos 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 (2014).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2014), 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 when asbestos was disturbed at the Site without employing the regulatory procedures for the proper removal, handling and disposal of asbestos to control asbestos emissions.
2. There is social and economic benefit to the asbestos removal activity performed at the Facility.
3. Asbestos removal activity at the Facility was and is suitable for the area in which it is located.
4. Proper removal of asbestos prior to salvaging at the Facility and compliance with the Act, Board regulations and the NESHAP for Asbestos was both technically practicable and economically reasonable.

5. Respondents ceased any operation at the Facility and agreed to restrict access to the Facility until asbestos remediation was completed.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2014), 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 Respondents 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 Respondents 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 Respondents and to otherwise aid in enhancing voluntary compliance with this Act by the Respondents 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 Respondents voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
7. whether the Respondents has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a Respondents agrees to undertake in settlement of an enforcement action brought under this Act, but which the Respondents is not otherwise legally required to perform; and
8. whether the Respondents has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. Respondent Blick's sub-contracted with an asbestos removal contractor for the proper removal of certain asbestos containing materials ("ACM") at the Facility. Prior to the proper removal of ACM from the Facility, certain ACM was disturbed and mishandled. The Complainant alleges that the Respondents failed to employ the regulatory procedures for the proper removal, handling and disposal of asbestos to control asbestos emissions at the Facility prior to beginning salvaging activities, resulting in violations of the Act, Board Regulations and provisions of NESHAP for asbestos. The violations began in or around May 9, 2011 and were individually resolved by September 19, 2011.

2. Respondents were diligent in attempting to come back into compliance with the Act, Board regulations and NESHAP for asbestos, by agreeing to cease operating at the Facility and to restrict access to the Facility until asbestos remediation was completed, once the Illinois EPA notified them of their alleged noncompliance.

3. The civil penalty takes into account any economic benefit realized by the Respondents as a result of avoided or delayed compliance.

4. Complainant has determined, based upon the specific facts of this matter that a penalty of Fifteen Thousand dollars (\$15,000.00) by Blick's and Five Hundred dollars (\$500.00) by Bricker will serve to deter further violations and aid in future voluntary compliance with the Act, Board regulations and NESHAP for asbestos.

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

6. Respondent Blick's licensed Asbestos removal contractor disclosed the improper disturbance of asbestos at the Site to the Illinois EPA.

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

8. A Compliance Commitment Agreement was proposed by Respondents, but rejected by the Illinois EPA.

V. TERMS OF SETTLEMENT

A. Penalty Payment

The Respondents shall pay a civil penalty in the sum of Fifteen Thousand, Five Hundred Dollars (\$15,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation as follows:

- a. BLICK'S CONSTRUCTION CO., INC. shall pay a civil penalty of Fifteen Thousand dollars (\$15,000.00); and
- b. RON BRICKER shall pay a civil penalty of Five Hundred dollars (\$500.00).

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

1. 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, Illinois 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Nancy J. Tikalsky
Assistant Attorney General
Environmental Bureau
Illinois Attorney General’s Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
ntikalsky@atg.state.il.us

D. Future Compliance

1. 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, the Board Regulations, and NESHAP for asbestos.

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

E. Release from Liability

In consideration of the Respondents' penalty payment of \$15,000.00 by Blick's and \$500.00 by Bricker, their commitment to cease and desist as contained in Section V.D.2 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, the Board Regulations, and 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 February 8, 2013. 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 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 Respondents.

F. Enforcement

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.

FOR THE COMPLAINANTS:

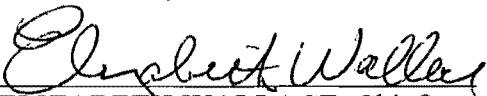
PEOPLE OF THE STATE OF ILLINOIS


ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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

ALEC MESSINA, Acting Director
Illinois Environmental Protection Agency

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 10/31/16

DATE: 10/25/16

FOR THE RESPONDENTS:

BLICK'S CONSTRUCTION CO, INC.

RON BRICKER

BY: _____
Its: _____

BY: _____

DATE: _____

DATE: _____

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LISA MADIGAN
Attorney General
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
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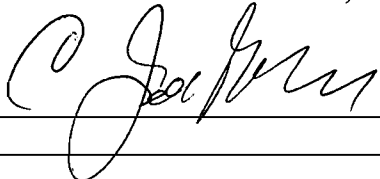
DATE: _____

DATE: _____

FOR THE RESPONDENTS:

BLICK'S CONSTRUCTION CO, INC.

RON BRICKER

BY:  _____
Its: _____

BY: _____

DATE: 10/31/14

DATE: _____

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FOR THE COMPLAINANTS:

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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Attorney General
State of Illinois

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Environmental Enforcement/
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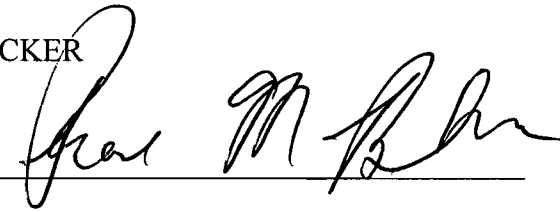
DATE: _____

FOR THE RESPONDENTS:

BLICK'S CONSTRUCTION CO, INC.

RON BRICKER

BY: _____
Its: _____

BY:  _____

DATE: _____

DATE: 11-21-16

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
)	
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)	(Enforcement - Air)
BLICK'S CONSTRUCTION CO., INC.,)	
an Illinois corporation, and RON BRICKER,)	
)	
Respondents.)	

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 February 2, 2013, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter. On December 2, 2016 a Stipulation and Proposal for Settlement was filed with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2010), 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) (2010), 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

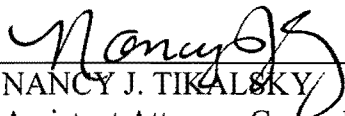
published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, 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) (2010).

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) (2010).

Respectfully submitted,

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

BY: 
NANCY J. TIKALSKY
Assistant Attorney General
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