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JUN 28 1996
STATE OF ILLINOIS
POLLUTION CONTROL BOARD

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
-vs-)
)
ATLAS DISMANTLING CORPORATION,)
an Illinois Corporation, and)
CARY CORNERS PARTNERSHIP, an)
Illinois General Partnership,)
)
Respondents.)

PCB 96- 267
Enforcement

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that I have today filed an explanatory letter, a Complaint, ATLAS DISMANTLING CORPORATION Stipulation and Proposal for Settlement, CARY CORNERS PARTNERSHIP Stipulation and Proposal for Settlement, an Agreed Motion to Request Relief from the Hearing Requirement and a Certificate of Service, on behalf of the Illinois Environmental Protection Agency, a copy of which is attached and herewith served upon you.

NOTIFICATION

YOU ARE HEREBY NOTIFIED that, financing may be available through the Illinois Environmental Facilities Financing Act [Ill.Rev.Stat., ch. 127, par. 721, et seq.] to correct the alleged pollution.

PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
Attorney General of the
State of Illinois

By: Thomas S. Gozdzia
THOMAS S. GOZDZIAK

Assistant Attorney General
Environmental Bureau
100 West Randolph Street, 11th Flr.,
Chicago, IL 60601
(312) 814-6986

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DATE: June 28, 1996

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STATE OF ILLINOIS
POLLUTION CONTROL BOARD

SERVICE LIST

1. Mr. Glenn C. Sechen
Schain, Firsel & Burney, Ltd.
222 North LaSalle Street, Suite 1910
Chicago, IL 60601

2. Mr. Frank Venezia
Atlas Dismantling Corporation
71 Laverne
Hillside, IL 60162



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

June 28, 1996

Illinois Pollution Control Board
100 West Randolph St., 11th Floor
Chicago, Illinois 60601

PCB 96-267

Re: People v. Atlas Dismantling Corp. and Cary Corners Partnership

Dear Board Members:

The State felt it necessary for settlement purposes to enter into a separate Stipulation and Proposal for Settlement with each of the two Respondents in this matter. Accordingly, there are two such documents being submitted today.

I hope that this does not cause you any inconvenience.

Very truly yours,

Handwritten signature of Thomas S. Gozdzik in cursive.

Thomas S. Gozdzik
Assistant Attorney General
Environmental Bureau
100 West Randolph St. - 11th Fl.
Chicago, IL 60601
(312) 814-6986

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 Illinois General Partnership,)
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 Respondents.)

PCB 96-207
 (Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, complains of Respondents, ATLAS DISMANTLING CORPORATION, and CARY CORNERS PARTNERSHIP, as follows:

NOTIFICATION VIOLATION

1. This Complaint is brought by the Attorney General on his own motion and at the request of the Illinois Environmental Protection Agency ("Agency"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(1994).

2. The Agency is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4(1994), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Respondent Cary Corners Partnership ("Cary Corners"), an Illinois general partnership located at 1564 West Algonquin Road, Hoffman Estates, Cook County, Illinois, has been the owner of the Cary Corners Shopping Center ("site" or "facility") located at 300-380 Northwest Highway, Cary, McHenry County, Illinois.

4. Atlas Dismantling Corporation ("Atlas") is an Illinois corporation located at 71 Laverne, Hillside, Cook County, Illinois.

5. Sometime prior to September 22, 1994, at a time better known to Respondents, Atlas began a demolition operation at the site. The demolition operation consisted of removing a canopy which extended across the store fronts.

6. Section 9.1(d) (1) of the Act, 415 ILCS 5/9.1(d) (1) (1994), provides as follows:

No person shall:

1. Violate any provisions of Sections 111, 112, 165, 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto.

7. Pursuant to Section 112(b) (1) of the Clean Air Act ("CAA"), 42 USC 7412(b) (1), the Administrator of the United States Environmental Protection Agency ("USEPA") has listed asbestos as a hazardous air pollutant.

8. Section 112(d) of the CAA, 42 USC 7412(d), titled Emission Standards, provides in pertinent part as follows:

1. The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation . . .

9. Section 112(h) of the CAA, 42 USC 7412(h), titled Work Practice Standards and Other Requirements provides in pertinent part as follows:

1. For the purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, operation standard, or combination thereof, which in the Administrator's judgment is consistent with the provisions of subsection (d) or (f) of this section . . .

10. On June 19, 1978, the Administrator determined that work practice standards rather than emission standards are appropriate in the regulation of asbestos, 43 Fed. Reg. 26372 (1978), and therefore, pursuant to Section 112 of the CAA, the USEPA has adopted National Emission Standards for Hazardous Air Pollutants (NESHAPs), including asbestos, 40 CFR 61, Subpart M.

11. Section 61.141 of the USEPA's NESHAPs, 40 CFR 61.141 (July 1, 1994), provides in part as follows:

All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in subpart A of this part.

Asbestos means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Demolition means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

Facility means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

Facility component means any part of a facility including equipment.

Friable asbestos material means any material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR 763 section 1, Polarized Light Microscopy, that, when dry can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

Nonfriable asbestos-containing material means any material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized or reduced to powder by hand pressure.

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Owner or operator of a demolition or renovation activity means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

Regulated asbestos-containing material (RACM) means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

Remove means to take out RACM or facility components that contain or are covered with RACM from any facility.

Structural member means any load-supporting member of a facility, such as beams and load supporting walls; or any nonload-supporting member, such as ceilings and nonload-supporting walls.

12. Cary Corners Shopping Center is a facility as that term is defined in 40 CFR 61.141
13. The removal of the canopy at the facility constituted a demolition as that term is defined in 40 CFR 61.141.
14. Cary Corners, as the owner of the facility, was the owner of a demolition activity, as that term is defined in 40 CFR 61.141.
15. Atlas, as persons who operated, controlled and supervised the demolition activities, was an operator of a demolition activity, as that term is defined in 40 CFR 61.141.
16. Thus, the requirements of 40 CFR 61.145(b) apply to all of the Respondents.

17. Section 61.145(b) of USEPA's NESHAPs, 40 CFR 61.145(b) (July 1, 1991), as adopted in Section 9.1(d) of the Act, titled Standard for demolition and renovation: Notification requirements, provides in pertinent part as follows:

Each owner or operator of a demolition or renovation activity to which this section applies shall:

- (1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery service is acceptable.
- (2) Update notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent.
- (3) Postmark or deliver the notice as follows:
 - (i) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (a) (1) and (4) (except (a) (4) (iii) and (a) (5) (iv)) of this section. If the operation is as described in paragraph (a) (2) of this section, notification is required 10 working days before demolition begins.

18. At a time prior to September 22, 1994, Atlas and Cary Corners began a demolition operation at the facility without having filed a notification of demolition activities.

19. The Respondents, by their actions as alleged herein, have violated Section 9.1(d) (1) of the Act, 415 ILCS 5/9.1(d) (1) (1994), and 40 CFR 61.145(b).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, prays that the Board enter an order in favor of the Complainant, and against the Respondents, ATLAS DISMANTLING CORPORATION and CARY CORNERS PARTNERSHIP:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 9.1(d)(1) of the Act and 40 CFR 61.145(b);
3. Ordering Respondents to cease and desist from any further violations of Section 9.1(d)(1) of the Act and 40 CFR 61.145(b);
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondents for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of violation;
5. Assessing against Respondents, pursuant to Section 42(f) of the Act, all costs, including expert witness, consultant and attorney fees; and
6. Granting such other relief as the Board deems appropriate and just.

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PCB 96-267
(Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, on his own motion, and at the request of the Illinois Environmental Protection Agency ("Agency"), and Respondent, CARY CORNERS PARTNERSHIP, do hereby submit this Stipulation and Proposal for Settlement. The parties agree that the Complainant's statement of facts contained herein is agreed to only for the purposes of settlement. The parties further state that neither the fact that a party has entered into this stipulation, nor any of the facts stipulated herein, shall be admissible into evidence, or used for any purpose in this, or any other proceeding, except to enforce the terms hereof, by the parties to this agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement, and any Illinois Pollution Control Board ("Board") order accepting same, may be used as a factor to be considered under Section 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(h) (1994), in determining appropriate civil penalties for any future violations of the Act. This Stipulation and Proposal for Settlement shall be null and void unless the Board approves and disposes of this matter on

each and every one of the terms and conditions of the settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 et seq. (1994).

II.

AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal for Settlement and to legally bind them to it.

III.

APPLICABILITY

This Stipulation and Proposal for Settlement shall apply to, and be binding upon, the Complainant and Respondent, and any officer, agent, employee or servant of Respondent, as well as the Respondent's successors and assigns. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this settlement the failure of its officers, directors, agents, servants or employees to take such action as shall be required to comply with the provisions of this settlement.

IV.

STATEMENT OF FACTS

1. The Agency is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (1994), and charged, *inter alia*, with the duty of enforcing the Act.

2. At all times relevant to the complaint, Respondent, CARY CORNERS PARTNERSHIP ("CARY CORNERS"), an Illinois general partnership, has been the owner of Cary Corners Shopping Center ("site") or ("facility"), located at 300-380 Northwest Highway, Cary, McHenry County, Illinois.

3. Sometime prior to September 22, 1994, at a time better known to Respondent, Cary Corners hired United Insulated Structures Corp. ("United") to remove a canopy from the store fronts at Cary Corners Shopping Center. United sub-contracted the canopy removal project to Atlas Dismantling Corporation ("Atlas").

4. Sometime prior to September 22, 1994, at a time better known to Respondent, Atlas began removing the canopy from Cary Corners Shopping Center.

5. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (1994), provides as follows:

No person shall:

1. Violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto.

6. Pursuant to Section 112(b) (1) of the Clean Air Act ("CAA"), 42 USC 7412(b) (1), the Administrator of the United States Environmental Protection Agency ("USEPA") has listed asbestos as a hazardous air pollutant.

7. Section 112(d) of the CAA, 42 USC 7412(d), titled Emission Standards, provides in pertinent part as follows:

1. The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation . . .

8. Section 112(h) of the CAA, 42 USC 7412(h), titled Work Practice Standards and Other Requirements, provides in pertinent part as follows:

1. For the purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, operation standard, or combination thereof, which in the Administrator's judgment is consistent with the provisions of subsection (d) or (f) of this section . . .

9. On June 19, 1978, the Administrator determined that work practice standards rather than emission standards are appropriate in the regulation of asbestos, 43 Fed. Reg. 26372 (1978), and therefore, pursuant to Section 112 of the CAA, the USEPA has adopted National Emission Standards for Hazardous Air Pollutants (NESHAPs), including asbestos, 40 CFR 61, Subpart M.

10. Section 61.141 of the USEPA's NESHAPs, 40 CFR 61.141 (July 1, 1994), provides in part as follows:

All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in subpart A of this part.

Asbestos means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized

Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Demolition means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

Facility means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

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Owner or operator of a demolition or renovation activity means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

Regulated asbestos-containing material (RACM) means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting or abrading, or (d) Category II nonfriable ACM that has a

high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

Remove means to take out RACM or facility components that contain or are covered with RACM from any facility.

Structural member means any load-supporting member of a facility, such as beams and load supporting walls; or any nonload-supporting member, such as ceilings and nonload-supporting walls.

11. Cary Corners Shopping Center is a facility as that term is defined in 40 CFR 61.141

12. The removal of the canopy at the facility constituted a demolition as that term is defined in 40 CFR 61.141.

13. Cary Corners, as the owner of the facility, was the owner of a demolition activity, as that term is defined in 40 CFR 61.141.

14. Thus, the requirements of 40 CFR 61.145(b) apply to Respondent Cary Corners.

15. Section 61.145(b) of USEPA's NESHAPs, 40 CFR 61.145(b) (July 1, 1991), as adopted in Section 9.1(d) of the Act, titled Standard for demolition and renovation: Notification requirements, provides in pertinent part as follows:

Each owner or operator of a demolition or renovation activity to which this section applies shall:

- (1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery service is acceptable.
- (2) Update notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent.
- (3) Postmark or deliver the notice as follows:
 - (i) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break

up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (a) (1) and (4) (except (a) (4) (iii) and (a) (5) (iv)) of this section. If the operation is as described in paragraph (a) (2) of this section, notification is required 10 working days before demolition begins.

16. At a time prior to September 22, 1994, the demolition operation began without Cary Corners having properly notified the Agency or the USEPA of the demolition activities.

V.

VIOLATIONS

Complainant alleges that prior to September 22, 1994, the demolition operation at Cary Corners Shopping Center began, without Cary Corners having properly notified the Agency or the USEPA in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (1994), and 40 CFR 61.145(b).

VI.

NATURE OF RESPONDENT'S OPERATION

Cary Corners Partnership is in the business of owning a shopping center.

VII.

EXPLANATION OF PAST FAILURES TO COMPLY

Cary Corners had an agreement with United Insulated Structures Corp. ("United") that United would comply with all applicable laws and regulations and obtain all approvals and permits when removing the canopy from Cary Corners Shopping Center. Furthermore, Cary Corners maintains that the asbestos NESHAP notification requirements

do not apply to the removal of the canopy from Cary Corners Shopping Center.

VIII.

FUTURE PLANS OF COMPLIANCE

Cary Corners shall conform with all requirements of the Act, any and all Illinois Pollution Control Board Air Pollution Regulations, 35 Ill. Adm. Code Subtitles A through H, and the NESHP for asbestos, 40 CFR 61, Subpart M.

IX.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (1994), provides as follows:

- c. 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 state as follows:

1. The effect of Cary Corners' noncompliance was that the Agency was unaware of Cary Corners' demolition activities until after they had already commenced. This prevented the Agency from conducting an inspection prior to or at the start of the demolition activity. The Agency inspection process is an important tool in the control asbestos emissions from demolition and renovation projects.
2. Cary Corners Shopping Center has social and economic benefit.
3. Cary Corners Shopping Center is suitable to the area in which it is located.
4. It was technically practical and economically reasonable for Cary Corners to notify the Agency or the USEPA prior to removing the canopy from Cary Corners Shopping Center.
5. Cary Corners was unable to come into subsequent compliance with the Act and the NESHP for asbestos notification requirements, because the notification must be filed prior to the commencement of the demolition activities.

X.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (1994), provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2) or (b)(3) of 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 violator 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 violator because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this act by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors the parties state as follows:

1. The violations, as set forth in Section V herein, occurred on or about September 22, 1994. The gravity of the violation was that the Agency was unable to inspect the building prior to or at the start of the project because Cary Corners failed to provide notice to the Agency of the demolition activity.

2. Once Cary Corners was informed by the Agency that a notification of demolition activities was required, Cary Corners was diligent in causing the removal activities to be ceased until proper notification was filed.

3. Cary Corners did not accrue a substantial economic benefit by not complying with the Act and the NESHP for asbestos.

4. A civil penalty of Five Thousand Two Hundred Dollars (\$5,200.00) will serve to deter any future violations of the Act and the NESHP for asbestos, and will enhance voluntary compliance with the law.

5. We are not aware of any previously adjudicated violations of the Act by Respondent.

XI.

TERMS OF SETTLEMENT

1. Cary Corners does not admit to the violations alleged by the Complainant herein.

2. Cary Corners shall pay a civil penalty of Five Thousand Two Hundred Dollars (\$5,200.00) into the Illinois Environmental Protection Trust Fund within thirty (30) days from the date the Board adopts a final opinion and order approving this Stipulation and Proposal for Settlement. Payment shall be made by certified check or money order, payable to the Treasurer of the State of Illinois, designated to the Illinois Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Section
2200 Churchill Road
P.O. Box 19276
Springfield, Illinois 62794-9276

A copy of the check shall be sent to:

Thomas S. Gozdziaik
Assistant Attorney General
Environmental Bureau
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601

The Court case number, Cary Corners' FEIN # and "Payment from Cary Corners Partnership - DLC File # 353-95" shall appear on the face of the certified check or money order.

3. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (1994), interest shall accrue on any amount not paid, within the

time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (1994).

a. Interest on unpaid amounts shall begin to accrue from the date the penalty payment is due and continue to accrue to the date payment is received.

b. Where partial payment is made on any payment amount that is due, such partial payment shall be first applied to any interest on unpaid amounts then owing.

c. All interest on amounts owed the Plaintiff, shall be paid by certified check payable to the Treasurer of the State of Illinois for deposit in the Environmental Protection Trust Fund and delivered in the same manner as described in Section XI, paragraph 2 herein.

4. Cary Corners shall comply with the following reporting requirements:

a. The owner/operator must, in the future, provide the Agency with written notification of demolition/renovation activities in a timely and complete manner as required by the NESHAP for asbestos.

b. The owner/operator shall provide a monthly report summarizing each renovation or demolition activity that is completed during the month and state the following information:

i. The location of the demolition or renovation activity, specifically number, street address, city, county and state;

ii. An estimate of the amount of RACM in the facility; and

iii. The actual start and completion dates of the renovation or demolition.

The monthly report shall be submitted within fifteen days (15) after the last day of each calendar month, commencing with a report for the first full month following entry of an order in this matter.

Reports shall be sent to:

Illinois Environmental Protection Agency
ATTN: Otto J. Klein, Jr.
1340 North Ninth Street
Springfield, IL 62707

The monthly reports required by this paragraph shall be accompanied by the following statement of certification:

I certify that the following information contained in or accompanying this submission is true, accurate and complete. This certification is based either on my personal preparation, review or analysis of the submission, and/or supervision of persons, who, acting on my direct instructions, made the verification that the information is true, accurate and complete.

c. Only demolition or renovation activities that would require Agency notification under the asbestos NESHAP need be reported under the requirement set forth in Paragraph 4.b. If no demolition or renovation activity occurred during the month, the report should so state. If demolition or renovation activity occurred during the month, but notification was not required under the asbestos NESHAP, the report should so state.

d. The owner/operator shall comply with the reporting requirement set forth in Paragraph 4.b. for a period of one year after the filing of an order in this matter or until such time as

there is a written agreement between the Agency and the owner/operator to cease with the reporting.

e. The owner/operator shall maintain records of all notifications and reports.

5. Cary Corners shall at all times comply with the provisions of the CAA, adopted under Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (1994), and the NESHAP for asbestos, 40 CFR 61, Subpart M.

6. Cary Corners shall cease and desist from further violations of the CAA, adopted under Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (1994), and the NESHAP for asbestos, 40 CFR 61, Subpart M.

XII.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects Respondent's responsibility to comply with any federal, state or local laws and regulations, including but not limited to, the Act, 415 ILCS 5/1 et seq. (1994), and the NESHAP for asbestos, 40 CFR 61, Subpart M.

XIII.

RIGHT OF ENTRY

In addition to any authority at law, the Agency, its employees and representatives, and the Illinois Attorney General, his agents and representatives, shall have the right of entry to the facility at all reasonable times, for the purposes of conducting inspections

of Respondent's operations. The Agency, its employees and representatives, and the Attorney General, his agents and representatives, may take any photographs or samples they deem necessary in order to conduct their inspection.

XIV.

RELEASE FROM LIABILITY

In consideration of Respondent's payment of a Five Thousand Two Hundred Dollars (\$5,200.00) civil penalty and commitment to refrain from further violations of the Act and regulations promulgated thereunder, the Complainant releases, waives and discharges Respondent and its officers, directors, employees, agents, successors and assigns from any further liability or penalties from claimed violations of the Act and regulations which were the subject matter of the Complaint herein. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future violations or obtain penalties with respect thereto.

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


AGREED:

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS


JAMES E. RYAN
Attorney General
State of Illinois

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

By: 
WILLIAM D. SEITH, Chief
Environmental Bureau
Assistant Attorney General

Dated: 5/17/96


ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
JOSEPH E. SVOBODA
General Counsel
Division of Legal Counsel

Dated: 5-14-96

FOR THE RESPONDENT:

CARY CORNERS PARTNERSHIP

By: CC LIMITED PARTNERSHIP
ITS: managing partner
By: 
General Partner

Dated: 5/31/96

RECEIVED
CLERK'S OFFICE
JUN 28 1996
STATE OF ILLINOIS
POLLUTION CONTROL BOARD

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 -vs-)
)
 ATLAS DISMANTLING CORPORATION,)
 an Illinois Corporation, and)
 CARY CORNERS PARTNERSHIP, an)
 Illinois General Partnership,)
)
 Respondents.)

PCB 96-267
(Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, on his own motion, and at the request of the Illinois Environmental Protection Agency ("Agency"), and Respondent, ATLAS DISMANTLING CORPORATION, do hereby submit this Stipulation and Proposal for Settlement. The parties agree that the Complainant's statement of facts contained herein is agreed to only for the purposes of settlement. The parties further state that neither the fact that a party has entered into this stipulation, nor any of the facts stipulated herein, shall be admissible into evidence, or used for any purpose in this, or any other proceeding, except to enforce the terms hereof, by the parties to this agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement, and any Illinois Pollution Control Board ("Board") order accepting same, may be used as a factor to be considered under Section 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(h)(1994), in determining appropriate civil penalties for any future violations of the Act. This Stipulation and Proposal for Settlement shall be null and void unless the Board approves and disposes of this matter on

each and every one of the terms and conditions of the settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 et seq. (1994).

II.

AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal for Settlement and to legally bind them to it.

III.

APPLICABILITY

This Stipulation and Proposal for Settlement shall apply to, and be binding upon, the Complainant and Respondent, and any officer, agent, employee or servant of Respondent, as well as the Respondent's successors and assigns. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this settlement the failure of its officers, directors, agents, servants or employees to take such action as shall be required to comply with the provisions of this settlement.

IV.

STATEMENT OF FACTS

1. The Agency is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (1994), and charged, *inter alia*, with the duty of enforcing the Act.

2. Atlas Dismantling Corporation ("Atlas") is an Illinois Corporation located at 71 Laverne, Hillside, Cook County, Illinois.

3. Sometime prior to September 22, 1994, at a time better known to Respondent, Cary Corners Partnership ("Cary Corners"), the owner of Cary Corners Shopping Center, hired United Insulated Structures Corp. ("United") to remove a canopy from the store fronts at Cary Corners Shopping Center, located at 300-380 Northwest Highway, Cary, McHenry County, Illinois. United sub-contracted the canopy removal project to Atlas.

4. Sometime prior to September 22, 1994, at a time better known to Respondent, Atlas began removing the canopy from Cary Corners Shopping Center.

5. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (1994), provides as follows:

No person shall:

1. Violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto.

6. Pursuant to Section 112(b)(1) of the Clean Air Act ("CAA"), 42 USC 7412(b)(1), the Administrator of the United States Environmental Protection Agency ("USEPA") has listed asbestos as a hazardous air pollutant.

7. Section 112(d) of the CAA, 42 USC 7412(d), titled Emission Standards, provides in pertinent part as follows:

1. The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation . . .

8. Section 112(h) of the CAA, 42 USC 7412(h), titled Work Practice Standards and Other Requirements, provides in pertinent part as follows:

1. For the purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, operation standard, or combination thereof, which in the Administrator's judgment is consistent with the provisions of subsection (d) or (f) of this section . . .

9. On June 19, 1978, the Administrator determined that work practice standards rather than emission standards are appropriate in the regulation of asbestos, 43 Fed. Reg. 26372 (1978), and therefore, pursuant to Section 112 of the CAA, the USEPA has adopted National Emission Standards for Hazardous Air Pollutants (NESHAPs), including asbestos, 40 CFR 61, Subpart M.

10. Section 61.141 of the USEPA's NESHAPs, 40 CFR 61.141 (July 1, 1994), provides in part as follows:

All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in subpart A of this part.

Asbestos means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized

Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Demolition means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

Facility means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

Facility component means any part of a facility including equipment.

Friable asbestos material means any material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR 763 section 1, Polarized Light Microscopy, that, when dry can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

Nonfriable asbestos-containing material means any material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized or reduced to powder by hand pressure.

Owner or operator of a demolition or renovation activity means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

Regulated asbestos-containing material (RACM) means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting or abrading, or (d) Category II nonfriable ACM that has a

high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

Remove means to take out RACM or facility components that contain or are covered with RACM from any facility.

Structural member means any load-supporting member of a facility, such as beams and load supporting walls; or any nonload-supporting member, such as ceilings and nonload-supporting walls.

11. Cary Corners Shopping Center is a facility as that term is defined in 40 CFR 61.141

12. The removal of the canopy at the facility constituted a demolition as that term is defined in 40 CFR 61.141.

13. Atlas, as persons who operated, controlled and supervised the demolition activities, was an operator of a demolition activity, as that term is defined in 40 CFR 61.141.

14. Thus, the requirements of 40 CFR 61.145(b) apply to Respondent Atlas.

15. Section 61.145(b) of USEPA's NESHAPs, 40 CFR 61.145(b) (July 1, 1991), as adopted in Section 9.1(d) of the Act, titled Standard for demolition and renovation: Notification requirements, provides in pertinent part as follows:

Each owner or operator of a demolition or renovation activity to which this section applies shall:

- (1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery service is acceptable.
- (2) Update notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent.
- (3) Postmark or deliver the notice as follows:

- (i) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (a) (1) and (4) (except (a) (4) (iii) and (a) (5) (iv)) of this section. If the operation is as described in paragraph (a) (2) of this section, notification is required 10 working days before demolition begins.

16. At a time prior to September 22, 1994, the demolition operation began without Atlas having properly notified the Agency or the USEPA of the demolition activities.

V.

VIOLATIONS

Complainant alleges that prior to September 22, 1994, the demolition operation at Cary Corners Shopping Center began, without Atlas having properly notified the Agency or the USEPA in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (1994), and 40 CFR 61.145(b).

VI.

NATURE OF RESPONDENT'S OPERATION

Atlas Dismantling Corporation is in the business of demolishing structures.

VII.

EXPLANATION OF PAST FAILURES TO COMPLY

Atlas maintains that it was unaware of the need to notify the Agency or the USEPA prior to removing the canopy at Cary Corners Shopping Center.

VIII.

FUTURE PLANS OF COMPLIANCE

Atlas shall conform with all requirements of the Act, any and all Illinois Pollution Control Board Air Pollution Regulations, 35 Ill. Adm. Code Subtitles A through H, and the NESHAP for asbestos, 40 CFR 61, Subpart M.

IX.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (1994), provides as follows:

- c. In making its orders and determinations, the Board shall take into consideration all of 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 state as follows:

1. The effect of Atlas' noncompliance was that the Agency was unaware of Atlas' demolition activities until after they had

already commenced. This prevented the Agency from conducting an inspection prior to or at the start of the demolition activity. The Agency inspection process is an important tool in the control of asbestos emissions from demolition and renovation projects.

2. Atlas' operations have social and economic benefit.

3. Atlas' operations were suitable to the area in which they occurred.

4. It was technically practical and economically reasonable for Atlas to notify the Agency or the USEPA prior to removing the canopy from Cary Corners Shopping Center.

5. Atlas was unable to come into subsequent compliance with the Act and the NESHAP for asbestos notification requirements, because the notification must be filed prior to the commencement of the demolition activities.

X.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (1994), provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b) (1), (b) (2) or (b) (3) of 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 violator 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 violator because of delay in compliance with requirements;

4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this act by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors the parties state as follows:

1. The violations, as set forth in Section V herein, occurred on or about September 22, 1994. The gravity of the violation was that the Agency was unable to inspect the building prior to or at the start of the project because Atlas failed to provide notice to the Agency of the demolition activity.

2. Once Atlas was informed by the Agency that a notification of demolition activities was required, Atlas was diligent in filing a notification.

3. Atlas did not accrue a substantial economic benefit by not complying with the Act and the NESHAP for asbestos.

4. A civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) will serve to deter any future violations of the Act and the NESHAP for asbestos, and will enhance voluntary compliance with the law.

5. We are not aware of any previously adjudicated violations of the Act by Respondent.

X.

TERMS OF SETTLEMENT

1. Atlas admits to the violations alleged by the Complainant herein.

2. Atlas shall pay a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) into the Illinois Environmental Protection Trust Fund, as follows:

a. Three Hundred Dollars (\$300.00) within thirty (30) days from the date the Board adopts a final opinion and order approving this Stipulation and Proposal for Settlement.

b. Three Hundred Dollars (\$300.00) within sixty (60) days from the date the Board adopts a final opinion and order approving this Stipulation and Proposal for Settlement.

c. Three Hundred Dollars (\$300.00) within ninety (90) days from the date the Board adopts a final opinion and order approving this Stipulation and Proposal for Settlement.

d. Three Hundred Dollars (\$300.00) within one hundred twenty (120) days from the date the Board adopts a final opinion and order approving this Stipulation and Proposal for Settlement.

e. Three Hundred Dollars (\$300.00) within one hundred fifty (150) days from the date the Board adopts a final opinion and order approving this Stipulation and Proposal for Settlement.

Payment shall be made by certified check or money order, payable to the Treasurer of the State of Illinois, designated to the Illinois Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Section
2200 Churchill Road
P.O. Box 19276
Springfield, Illinois 62794-9276

A copy of the check shall be sent to:

Thomas S. Gozdziaik
Assistant Attorney General
Environmental Bureau
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601

The Court case number, Atlas' FEIN # and "Payment from Atlas Dismantling Corporation - DLC File # 353-95" shall appear on the face of the certified check or money order.

3. If any payment is missed or late, all remaining payments shall become immediately due and owing.

4. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (1994), interest shall accrue on any amount not paid, within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (1994).

a. Interest on unpaid amounts shall begin to accrue from the date the penalty payment is due and continue to accrue to the date payment is received.

b. Where partial payment is made on any payment amount that is due, such partial payment shall be first applied to any interest on unpaid amounts then owing.

c. All interest on amounts owed the Plaintiff, shall be paid by certified check payable to the Treasurer of the State of Illinois for deposit in the Environmental Protection Trust Fund and delivered in the same manner as described in Section XI.2. herein.

5. Atlas shall comply with the following reporting requirements:

a. The owner/operator must, in the future, provide the Agency with written notification of demolition/renovation activities in a timely and complete as required by the NESHAP for asbestos.

b. The owner/operator shall provide a monthly report summarizing each renovation or demolition activity that is completed during the month and state the following information:

i. The location of the demolition or renovation activity, specifically number, street address, city, county and state;

ii. An estimate of the amount of RACM in the facility; and

iii. The actual start and completion dates of the renovation or demolition.

The monthly report shall be submitted within fifteen days (15) after the last day of each calendar month, commencing with a report for the first full month following entry of an order in this matter.

Reports shall be sent to:

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ATTN: Otto J. Klein, Jr.
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and complete.

c. Only demolition or renovation activities that would require Agency notification under the asbestos NESHAP need be reported under the requirement set forth in Paragraph 5.b. If no demolition or renovation activity occurred during the month, the report should so state. If demolition or renovation activity occurred during the month, but notification was not required under the asbestos NESHAP, the report should so state.

d. The owner/operator shall comply with the reporting requirement set forth in Paragraph 5.b. for a period of one year after the filing of an order in this matter or until such time as there is a written agreement between the Agency and the owner/operator to cease with the reporting.

e. The owner/operator shall maintain records of all notifications and reports.

6. Atlas shall at all times comply with the provisions of the CAA, adopted under Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (1994), and the NESHAP for asbestos, 40 CFR 61, Subpart M.

7. Atlas shall cease and desist from further violations of the CAA, adopted under Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (1994), and the NESHAP for asbestos, 40 CFR 61, Subpart M.

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AGREED:

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
Attorney General
State of Illinois

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

By: 
WILLIAM D. SEITH, Chief
Environmental Bureau
Assistant Attorney General

Dated: 5/17/96

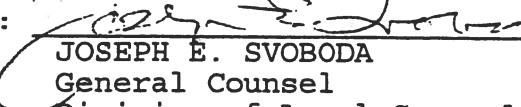
FOR THE RESPONDENT:

ATLAS DISMANTLING CORPORATION

By: 
FRANK J. VENEZIA

Dated: May 31-96

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
JOSEPH E. SVOBODA
General Counsel
Division of Legal Counsel

Dated: 5-14-96

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