

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,  
*ex rel.* LISA MADIGAN, Attorney  
General of the State of Illinois,

Complainant,

v.

ACI ENVIRONMENTAL CORPORATION, an Illinois corporation, and ASBESTOS CONTROL, INC., an Illinois corporation,

### Respondents.

PCB 05-180  
(Enforcement-Air)

**NOTICE OF FILING**

TO: See attached Service List

PLEASE TAKE NOTICE that on April 26, 2006, we filed with the Illinois Pollution Control Board, Complainant's Motion to Request Relief from Hearing Requirement and Stipulation and Proposal for Settlement, true and correct copies of which are attached hereto and hereby served upon you.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

**BY:**

Evan J. McGinley  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
312.814.3153

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

SERVICE LIST

Peter G. Swan  
Emalfarb, Swan & Bain  
440 Central Avenue  
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Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 West Randolph Street  
Chicago, Illinois 60601

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
ex. rel. LISA MADIGAN, Attorney General	)	
of the State of Illinois,	)	
	)	
Complainant,	)	
vs.	)	No. PCB 05 - 180
	)	(Enforcement - Air)
ACI ENVIRONMENTAL CORPORATION,	)	
an Illinois Corporation, and ASBESTOS	)	
CONTROL, INC., an Illinois corporation,	)	
	)	
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 March 29, 2005, a Complaint was filed with the Pollution Control Board ("Board") in this matter. On April 26, 2006, a Stipulation and Proposal for Settlement of this matter was filed with the Board.
2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2), (2004), 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. Other than a status hearing which is set for April 27, 2006, there are no other hearings set for this matter.

4. The Complainant requests the relief conferred by Section 31(c)(2) of the Act.

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), (2004).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General of the State of Illinois

By:

  
EVAN J. MCGINLEY  
Assistant Attorney General

Environmental Bureau  
188 W. Randolph St., 20th Fl.  
Chicago, Illinois 60601  
(312) 814-1511  
312.814.3153  
Dated: April 24, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,  
ex rel. Lisa Madigan, Attorney  
General of the State of Illinois

Complainant,

v.

ACI ENVIRONMENTAL CORPORATION, an Illinois corporation, and ASBESTOS CONTROL Inc., an Illinois Corporation,

**Respondents.**

PCB 05-180

(Enforcement – Air)

## 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 ACI ENVIRONMENTAL CORPORATION and ASBESTOS CONTROL, INC., ("Respondents"), 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. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that the parties have entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding

the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

### **I. JURISDICTION**

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2004).

### **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 to legally bind them to it.

### **III. STATEMENT OF FACTS**

#### **A. Parties**

1. On March 29, 2005, 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(2004), 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 (2004).

3. At the time of the alleged violations, Respondent ACI ENVIRONMENTAL CORP. is an Illinois corporation and is located at 501 W. Carboy, Mt. Prospect, Illinois. At the time of the of the alleged violations, Respondent ASBESTOS CONTROL, INC. is an Illinois corporation at 145 Weiler Road, Arlington Heights, Cook County, Illinois.

**B. Site Description**

In August 2003, the Respondents engaged in a renovation in the boiler room of the Oak Meadows Golf Course Country Club, located at 900 Wood Dale Road, Addison, DuPage County, Illinois ("facility").

**C. Allegations of Non-Compliance**

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

- |           |   |
|-----------|---|
| Count I:  | Emission of asbestos constituting air pollution, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2004) and 35 Ill. Adm. Code 201.141.   |
| Count II: | Failure to comply with National Emission Standards for Hazardous Air Pollutants, in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002), and 40 C.F.R. § 61.145(c) (3) & (6) (2004). |

**D. Admissions 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 III.C herein, and this Stipulation shall not be interpreted as including such admission.

**E. Compliance Activities**

On or about August 15, 2003, the Illinois EPA received a Notification of Demolition and Renovation that indicated a renovation was to occur at the facility starting on August 26, 2003. The notification indicated that the asbestos removal contractor was ACI Environmental Corporation. The notification further indicated that regulated asbestos containing material of 80 linear feet from pipes and 600 square feet from surface area were to be removed from the facility.

As of the date of the filing of this Stipulation, the asbestos renovation project that was the subject of Respondents' August 15, 2003 Notification of Demolition and Renovation has been completed, and all asbestos-containing waste material and asbestos contamination found on site has been removed and disposed of.

**IV. APPLICABILITY**

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



**V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

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, 35 Ill. Adm. Code, Subtitles A through H, or the federal asbestos NESHAP.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2004), 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 state the following

1. Complainant contends that human health and the environment were threatened by Respondents' violations of regulations governing the renovation, handling and/or disposal of asbestos-containing material ("ACM"). However, the threat of ACM contamination was abated by the proper cleanup and disposal of the ACM.

2. The asbestos abatement work which Respondents performed is of social and economic benefit, and when done in accordance with applicable regulations and statutes, is beneficial to human health and the environment, as well.
3. The suitability of Respondents' operations to this location is not at issue in this matter.
4. It is both technically practicable and economically reasonable for Respondents to follow work practices and procedures to properly handle, remove and dispose of RACM and ACWM in compliance with all applicable provisions of the Act, the Board Air Pollution Regulations and 40 CFR Part 63, Subpart M.
5. Respondents have subsequently complied with the Act by undertaking actions that adequately address the Illinois EPA's technical concerns.

#### **VII. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h)(2004), 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 state as follows:

1. A significant amount of RACM was disturbed during the Respondents' renovation of the facility, exposing any and all workers to carcinogenic asbestos fibers. However, the removal area was under containment. The Illinois EPA inspection conducted an inspection of the facility on August 27, 2003, while the asbestos renovation and removal work was ongoing. On or about November 21, 2003, Respondents' counsel submitted copies of worker licenses, daily logs, clearance analyses and waste shipment records for the project to Illinois EPA.
2. Complainant asserts that Respondents did not act diligently in that they failed to ensure that all RACM was adequately wetted prior to removal.
3. The quantifiable economic benefit to the Respondents resulting from their failure to conduct the renovation project in compliance with the Act, Board Air Pollution Regulations and asbestos NESHP was nominal and the penalty obtained includes any economic benefit received.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Two Thousand Five Hundred (\$2,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondents have no adjudicated cases alleging violations of the Act, Board Regulations or asbestos NESHAP.

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

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

#### **VIII. TERMS OF SETTLEMENT**

##### **A. Penalty Payment**

1. The Respondents shall pay a civil penalty in the sum of Two Thousand Five Hundred Dollars (\$2,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondents stipulate that payment has been tendered to Respondents' attorney of record in this matter in a form acceptable to that attorney. Further, Respondents stipulate that said attorney has been directed to make the penalty payment on behalf of Respondents, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The penalty amount of \$2,500.00 described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund. Payment shall be submitted to:

Illinois Environmental Protection Agency  
Fiscal Services Section  
1021 North Grand Avenue East  
P.O. Box 19276

Springfield, IL 62794-9276

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), 36-3090607, shall appear on the checks. A copy of the certified checks, money orders or records of electronic funds transfer and any transmittal letters shall be sent to:

Evan J. McGinley  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

Christopher Pressnall  
Assistant Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2004). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

3. For purposes of payment and collection, Respondents may be reached at the following address:

Michael Wilkin  
c/o Wilkin Insulation Co.  
501 West Carboy  
Mt. Prospect, IL 60056

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

**B. Future Compliance**

Respondents' Illinois Department of Public Health-issued asbestos contractor licenses have now lapsed and Respondents agree that they will never again seek to obtain such licensing from the Illinois Department of Public Health.

**C. Future Use**

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.E, below, the Respondents hereby agree that 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 promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h)(2004). Further, Respondents agree to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

**D. Cease and Desist**

The Respondents shall cease and desist from committing any future violations of the Act, Board Regulations or the federal asbestos NESHAP that were the subject matter of the Complaint as outlined in Section III.C ("Allegations of Non-Compliance") of this Stipulation.

**E. Release from Liability**

In consideration of the Respondents' payment of the \$2,500.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.D and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for 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 March 29, 2005. 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 or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), or entity other than the Respondent.

**F. Enforcement of Board Order**

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, that Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced as such through any and all available means.

2. Respondents agree that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Respondents that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.



**H. Execution of Document**

This document shall become effective only when executed by all parties. This document may be executed by the parties in one or more counterparts, all of which taken together, shall constitute one and the same instrument.

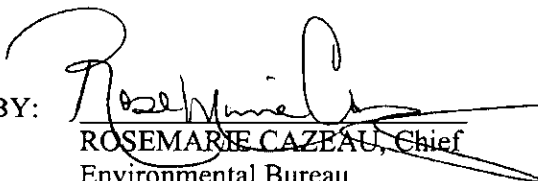
WHEREFORE, Complainant and Respondents request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

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

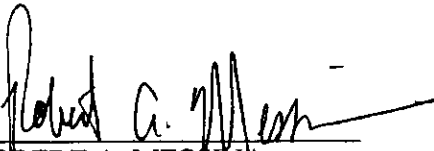
BY:

  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: \_\_\_\_\_

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

BY:

  
ROBERT A. MESSINA  
Chief Legal Counsel

DATE:

3/18/06

ACI ENVIRONMENTAL CORPORATION and  
ASBESTOS CONTROL, INC.

BY: Michael Wilkin

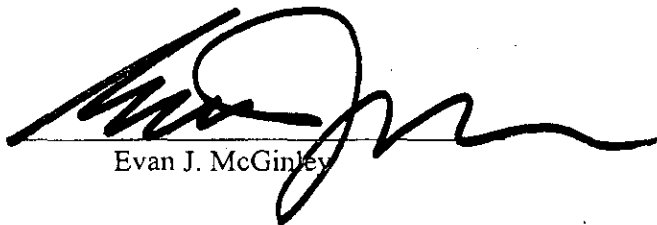
Name: Michael Wilkin

Title: PRESIDENT

DATE: 4-6-06

CERTIFICATE OF SERVICE

I, Evan J. McGinley, an Assistant Attorney General, certify that on this 26<sup>th</sup> day of April, 2006, I caused to be served by First Class Mail, the foregoing Motion to Request Relief From Hearing Requirement and Stipulation and Proposal for Settlement to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



Evan J. McGinley