



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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CLERK'S OFFICE

OCT 10 2007

STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

October 4, 2007

John T. Therriault
Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Provena Hospitals, et al.***
PCB No. 07-28

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT in regard to the above-captioned matter. Please return a file-stamped copy of the document to our office in the enclosed, self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to be "T. Davis", is written over a horizontal line.

Thomas Davis, Chief
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

TD/pjk
Enclosures

CERTIFICATE OF SERVICE

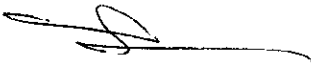
I hereby certify that I did on October 4, 2007, send by *US* mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT

To: Edward R. Gower
Attorney at Law
400 South Ninth Street, Ste. 200
Springfield, IL 62701-1908

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

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



Thomas Davis
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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OCT 10 2007

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 PROVENA HOSPITALS, d/b/a PROVENA)
 UNITED SAMARITANS MEDICAL CENTER,)
 an Illinois not-for-profit corporation, and)
 RESURRECTION CATHOLIC CEMETERY)
 ASSOCIATION OF DANVILLE, ILLINOIS,)
 an Illinois not-for-profit corporation,)
)
 Respondents.)

PCB NO. 07-28
(Enforcement)

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2006), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2006). In support of this motion, Complainant states as follows:

1. The Complainant and PROVENA HOSPITALS have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 4, 2007

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OCT 10 2007

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
-vs-)
)
PROVENA HOSPITALS d/b/a PROVENA)
UNITED SAMARITANS MEDICAL CENTER,)
an Illinois not-for-profit corporation, and)
RESURRECTION CATHOLIC CEMETERY)
ASSOCIATION OF DANVILLE, ILLINOIS,)
an Illinois not-for-profit corporation,)
)
Respondents.)

PCB No. 07-28
(Enforcement)

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 PROVENA HOSPITALS, 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 a party has 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, the settling Respondent agrees to be bound by the

Stipulation and Board Order and not to contest its validity in any subsequent proceeding to implement or enforce its 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.* (2006).

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 October 24, 2006, 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 (2006), 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 (2006).

3. At all times relevant to the Complaint, each Respondent was and is an Illinois not-for-profit corporation that is authorized to transact business in the State of Illinois.

B. Site Description

At all times relevant to the Complaint, Provena Hospitals (“Provena”) has operated a hospital, the Provena United Samaritans Medical Center, located at 812 North Logan Avenue in

Danville, Vermilion County, Illinois. Provena is a generator of potentially infectious medical waste (“PIMW”).

C. Allegations of Non-Compliance

Complainant contends that the settling Respondent has violated the following provisions of the Act and Board regulations:

Count I: By causing or allowing the disposal of PIMW consisting of human pathological wastes and body parts at the cemetery, the Respondent has violated Section 56.1(A)(a) of the Act, 415 ILCS 5/56.1(A)(a) (2006), and Section 1420.104 of the Board’s Biological Materials Regulations, 35 Ill. Admin. Code 1420.104.

Count II: By causing or allowing the delivery or transfer of PIMW for transport without strict compliance with the Board’s Biological Materials Regulations, without a permit issued by the Illinois EPA, without a completed PIMW manifest, and the payment of the required fee, the Respondent has violated Sections 56.1(A)(b), 56.1(A)(d), 56.1(A)(h) and 56.1(A)(I) of the Act, 415 ILCS 5/56.1(A)(b), (d), (h) and (I) (2006), and Section 1420.104 of the Board’s Biological Materials Regulations, 35 Ill. Admin. Code 1420.104.

D. Non-Admission of Violations

The settling Respondent represents that it has 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 settling Respondent does 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 to Date

The settling Respondent represents that it has revised its written procedures to ensure strict compliance with the Board’s Biological Materials Regulations and the statutory prohibitions and requirements.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the settling Respondent, and any officer, director, agent, or employee of the Respondent, as well as any

successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of 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.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties state the following:

1. Human health and the environment were threatened by the settling Respondent's violations.
2. There is social and economic benefit to the hospital and the cemetery.
3. Operation of the facilities are suitable for the area in which each is located.

4. The proper handling of PIMW is both technically practicable and economically reasonable.

5. The settling Respondent has subsequently complied with the Act and the Board Regulations.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the 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 Respondents;
6. whether the Respondents voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
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.

In response to these factors, the parties state as follows:

1. PIMW consisting of human pathological wastes and body parts from Provena had several times been buried by Resurrection along the fence at the cemetery and, on occasions when the ground was frozen, interred within the graves of persons being buried on those occasions. This practice

of allowing the burial of body parts in the cemetery was a major deviation from compliance with the Board's Biological Materials Regulations and the statutory prohibitions and requirements.

2. The settling Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the practice of allowing the burial of body parts in the cemetery was discovered.

3. Provena accrued only a marginal economic benefit by not including the body parts in the routine shipments of PIMW being sent for proper disposal.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Seventy Thousand Dollars (\$70,000.00) against the settling Respondent will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, the settling Respondent has no previously adjudicated violations of the Act.

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

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

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. Provena shall pay a civil penalty in the sum of Seventy Thousand Dollars (\$70,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The penalty described in this Stipulation shall be paid by certified check or money order payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and 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 the Respondent's Federal Employer Identification Number ("FEIN") shall appear on the check. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau
500 South Second Street
Springfield, Illinois 62702
Assistant Counsel Kyle Davis
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

B. 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.D, below, the settling Respondent hereby agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations 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)(2006). Further, the settling Respondent agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegation that these alleged violations were adjudicated.

C. Cease and Desist

The settling Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C (“Allegations of Non-Compliance”) of this Stipulation.

D. Release from Liability

In consideration of the settling Respondent’s payment of the \$70,000.00 penalty and agreement to Cease and Desist as contained in Section VIII.C 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 Respondent 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 October 24, 2006. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondents’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 or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the settling Respondent.

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, present or future, in law or in equity, which the State of Illinois or any of its political subdivisions have or may have based upon any tax assessment, liability or liens, for the years including but not limited to 2002 and subsequent thereto. Further, this Stipulation does not resolve any claims or defenses which have been or may be raised in the following matters: *Provena Covenant Medical Center, et al. v. The Department of Revenue of the State of Illinois, et al.*, No. 4-07-0763, and *Provena Health v. Illinois Health Facilities Planning Board*, No. 1-07-1952, pending in the Appellate Courts.

E. 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. The Respondent agrees 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 no party is bound by the terms herein.

4. It is the intent of the Complainant and Respondent 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. WHEREFORE, Complainant and the settling Respondent

requests that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

DATE: 9/20/07

LISA MADIGAN
Attorney General
State of Illinois

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

BY: [Signature]
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

DATE: 9/4/07

BY: [Signature]
ROBERT A. MESSINA
Chief Legal Counsel

PROVENA HOSPITALS

DATE: 7-19-07

BY: [Signature]

Name: M. Meghan Kieffer, J.D.

Title: Senior V.P. General Counsel