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STATE OF ILLINOIS  
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

December 22, 2008

John T. Therriault, Assistant Clerk  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 West Randolph  
Chicago, Illinois 60601

Re: ***People v. Vithalbhai Patel***  
**PCB No. 07-131**

Dear Clerk:

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 file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen J. Janasie", written over a horizontal line.

Stephen J. Janasie  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031

SJJ/pjk  
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
VITHALBHAI PATEL, )  
 )  
Respondent. )

PCB No. 07-131  
(Enforcement - Air)

NOTICE OF FILING

RECEIVED  
CLERK'S OFFICE  
DEC 24 2008  
STATE OF ILLINOIS  
Pollution Control Board

To: Bill Wimmer  
Attorney at Law  
2 Park Place  
Professional Center  
Belleville, IL 62226

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY:   
STEPHEN J. JANASIE  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: December 22, 2008

## CERTIFICATE OF SERVICE

I hereby certify that I did on August 19, 2008, send by First Class 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:

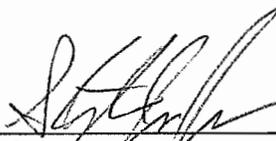
To: Bill Wimmer  
Attorney at Law  
2 Park Place  
Professional Center  
Belleville, IL 62226

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

To: John T. Therrault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

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

  
\_\_\_\_\_  
Stephen J. Janasie  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
vs. )  
)  
VITHALBHAI PATEL, )  
Respondents. )

PCB No. 07-131  
(Enforcement Air)

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CLERK'S OFFICE

DEC 24 2008

MOTION FOR RELIEF FROM HEARING REQUIREMENT STATE OF ILLINOIS  
Pollution Control Board

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 parties 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: 

STEPHEN J. JANASIE  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: December 22, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 VITHALBHAI PATEL, )  
 )  
 Respondent. )

PCB No. 07-131  
(Enforcement) )  
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DEC 24 2008

STATE OF ILLINOIS  
Pollution Control Board

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 VITHALBHAI PATEL ("Respondent"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2006), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

## I. STATEMENT OF FACTS

### A. Parties to the Stipulation

1. On June 8, 2007, 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 Respondent.

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, Respondent was the owner and/or operator of a Howard Johnson Express Inn ("facility") located at 301 North Bluff Road, Collinsville, Madison County, Illinois.

4. On November 5, 2003, the Respondent was conducting the demolition of the office portion of the facility. The Respondent ceased work at the request of the Illinois EPA and retained Farmer Environmental Services to thoroughly inspect for the presence of asbestos. It was determined that over 200 square feet of sprayed on ceiling material contained asbestos. A proper abatement of the office portion was subsequently accomplished.

5. On July 21 and 22, 2005, the Illinois EPA inspected the facility at the request of Koman Properties. Walls throughout the hallways and within the 72 individual rooms had been damaged and the copper plumbing lines had been removed. Several elbows had been cut from the pipes and discarded on the floor. Thermal pipe insulation suspected to be asbestos-containing was present on elbows as well as discarded on the floor after having been stripped from the plumbing lines. Three samples of the insulation were subsequently analyzed and determined to contain 10% to 15% asbestos. The Illinois EPA estimated that the scrapped plumbing lines had contained 576 linear feet of RACM.

**B. Allegations of Non-Compliance**

Complainant contends that the Respondent has violated the following provisions of the Act and the regulations on National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for asbestos in that Respondent:

Count I: Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006), 40 CFR 61.145(a), 40 CFR 61.145(b)(1).

Prior to the November 5, 2003 demolition described in the Complaint, Respondent did not thoroughly inspect the affected facility or part of the facility where the demolition activities occurred for the presence of asbestos. The Respondent also did not provide written notification to the Illinois EPA prior to the commencement of demolition activities at the facility.

Count II: Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006), 40 CFR 61.145(a), 40 CFR 61.145(b)(1), 40 CFR 61.145(c)(6), 40 CFR 61.150(b)(1).

Prior to the demolition described in the Complaint on or about June 10, 2005, and on dates thereafter better known to the Respondent, the Respondent failed to thoroughly inspect the affected facility or part of the facility where the demolition occurred for the presence of asbestos prior to the commencement of the demolition. The Respondent also did not provide written notification to the Illinois EPA prior to the commencement of demolition activities. The Respondent also failed to collect, contain and deposit as soon as practicable all RACM and asbestos-containing waste materials generated during the removal at a site permitted to accept such waste.

**C. Non-Admission of Violations**

The Respondent neither admits nor denies the violation(s) alleged in the Complaint filed in this matter and referenced within Section III.C herein.

**D. Compliance Activities to Date**

Midwest Asbestos Abatement Company commenced remediation of the facility on August 15, 2005 and the remediation was completed on September 12, 2005. Upon completion of the remediation the building was demolished.

## **II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the 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. 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 for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

## **III. 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. During the June 2005 asbestos disturbance described in the Complaint, and on dates thereafter better known to the Respondent, a significant amount of dry, friable regulated asbestos-containing material ("RACM") was disturbed and improperly handled without any use of emission control procedures. Anyone that entered the hotel portion of the facility was potentially exposed to the asbestos fibers.
2. Any quantifiable economic benefit was nominal.
3. Operation of the facility was suitable for the area in which it occurred.
4. An inspection prior to the November 2003 demolition and the June 2005 asbestos disturbance, written notification to IEPA and proper remediation prior to commencement of the November 2003 demolition and the June 2005 asbestos disturbance were all technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations.

#### **IV. 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 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. Respondent failed to conduct an inspection prior to commencement of the November 2003 demolition of the office portion of the former Howard Johnson's motel, which was remediated on or about November 20, 2003 and subsequently demolished. Prior to the disturbance of piping covered with asbestos in the hotel portion of the former Howard Johnson's, Respondent failed to provide notice to the Illinois EPA thereby hindering the Agency's ability to gather compliance information and perform timely inspections. Furthermore, during the June 2005 asbestos disturbance described in the Complaint anyone that entered the facility without personal protective equipment was potentially exposed to asbestos fibers. Midwest Asbestos Abatement Company commenced remediation of the facility pursuant to a plan approved by the Illinois EPA on August 15, 2005 and the remediation was completed on September 12, 2005.

2. Respondent showed no diligence in timely complying with the Act and asbestos NESAHF regulations in that it failed to perform an asbestos inspection, failed to provide written

notification to Illinois EPA, and failed to properly conduct asbestos removal activities prior to renovation and demolition activities.

3. The Respondent's economic benefit of noncompliance was nominal.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Thirty Thousand Dollars (\$30,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

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

6. There was no self-disclosure in this matter.

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

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of Thirty Thousand Dollars (\$30,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

### **B. Interest and Default**

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2006), interest shall accrue on any payment not paid within the time period prescribed herein. Interest on unpaid

penalties shall begin to accrue from the date such are due and continue to accrue until the date full payment is received. When partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid payment then owing.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF").

Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name, case number and the Respondent's federal tax identification numbers shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

**E. Release from Liability**

In consideration of the Respondent's payment of the \$30,000.00 penalty, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant and the Illinois EPA releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act and Board Regulations that were the

subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on June 8, 2007. 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 Respondent's failure to satisfy the requirements of

this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois 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 Respondent.

#### **F. Enforcement of Stipulation**

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

#### **G. Execution of Stipulation**

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

WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

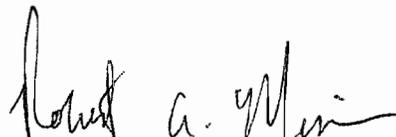
MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

BY:



THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

BY:



ROBERT A. MESSINA  
Chief Legal Counsel

DATE:

12/22/08

DATE:

12/12/08

VITHALBHAI PATEL

BY:



VITHALBHAI PATEL  
Respondent

DATE:

12/19/08

