

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 PRAIRIELAND INVESTMENT GROUP, )  
 LLC., an Illinois limited liability )  
 company, and KEVIN COOK, d/b/a KC )  
 CONSTRUCTION, )  
 )  
 Respondents. )

PCB No. 11-21  
(Enforcement - Air)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List


PLEASE TAKE NOTICE that on October 20, 2011, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT-COOK, 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

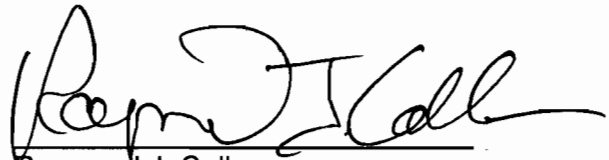
MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:   
Raymond J. Callery  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: October 20, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I did on October 20, 2011, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT- COOK upon the persons listed on the Service List.

  
Raymond J. Callery  
Assistant Attorney General

This filing is submitted on recycled paper.

**SERVICE LIST**

Jennifer M. Martin  
Hodge Dwyer & Driver  
3150 Roland Avenue  
P.O. Box 5776  
Springfield, IL 62705-5776

Claire A. Manning  
Brown, Hay & Stephens, LLP  
205 S. Fifth St., Suite 700  
P.O. Box 2459  
Springfield, IL 62705-2459

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB No. 11-21
	)	(Enforcement - Air)
PRAIRIELAND INVESTMENT GROUP,	)	
LLC., an Illinois limited liability	)	
company, and KEVIN COOK, d/b/a KC	)	
CONSTRUCTION,	)	
	)	
Respondent.	)	

**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) (2010), 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) (2010). In support of this motion, Complainant states as follows:

1. A Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter on November 9, 2010.
2. Complainant and Respondent, Kevin Cook, have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. Complaint and Respondent Cook 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) (2010).

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) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

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

BY: 

Raymond J. Callery  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB NO. 11-21
	)	(Enforcement - Air)
PRAIRIELAND INVESTMENT GROUP, LLC,	)	
an Illinois limited liability company, and	)	
KEVIN S. COOK, d/b/a KC Construction,	)	
	)	
Respondents.	)	

STIPULATION AND PROPOSAL FOR SETTLEMENT- COOK

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 KEVIN S. COOK, d/b/a KC Construction ("Parties to the Stipulation"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2008), the Board's regulations, and the Asbestos National Emissions Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR Part 61, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter relative to KEVIN S. COOK, d/b/a KC Construction.

**I. STATEMENT OF FACTS**

**A. Parties**

1. On November 9, 2010, a Complaint was filed in this matter 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 (2008), against PRAIRIELAND INVESTMENT GROUP, LLC and KEVIN S. COOK, d/b/a KC Construction.

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 (2008).

3. At all times relevant to the Complaint, KEVIN S. COOK, d/b/a KC Construction ("COOK") was a building contractor with his principal place of business located in Carthage, Illinois.

4. At all times relevant to the Complaint, PRAIRIELAND INVESTMENT GROUP, LLC owned the former Robert Morris College facility located in the northeastern portion of the City of Carthage, Hancock County, Illinois ("Facility").

5. COOK was employed by PRAIRIELAND INVESTMENT GROUP, LLC to demolish Moser Hall, Heating Plant No. 1 and the Campus Cafeteria at the Facility and to remove and dispose of demolition debris and waste.

6. COOK utilized a backhoe to knock down each building and to load a portion of the demolition debris into a trailer.

7. On March 26, 2009, the Illinois EPA inspected the Facility. At that time, demolition activities had ceased. The Illinois EPA took two bulk samples of suspect asbestos containing material.

8. On March 31, 2009, the Illinois EPA received from TEM, Incorporated the results of the analytical testing of the bulk samples taken on March 26, 2009. Both samples were positive for asbestos.

9. Complainant alleges that the demolition of Moser Hall, Heating Plant No. 1 and the Campus Cafeteria at the Facility was conducted without properly removing or disposing of the asbestos containing material present in the buildings and without notice to the Illinois EPA.

**B. Allegations of Non-Compliance**

Complainant contends that COOK violated the following provisions of the NESHAP for asbestos, the Act and the Board's regulations:

Count III: Asbestos NESHAP Violations  
415 ILCS 5/9.1(d)(1) - Failed to Comply with Asbestos NESHAP  
40 CFR 61.145(b)(1) - Failed to Provide Notification  
40 CFR 61.145(c)(1) - Failed to Remove RACM Before Demolition  
40 CFR 61.145(c)(2)(i)(ii) - Failed to Adequately Wet RACM  
40 CFR 61.145(c)(3) - Failed to Maintain RACM Wet  
40 CFR 61.145(c)(6)(i) - Failed to Ensure RACM Wet Until  
Containerized  
40 CFR 61.145(c)(8) - Failed to Have Trained Representative  
40 CFR 61.150(a)(1)(iii) - Failed to Use Leak Tight Containers  
40 CFR 61.150(a)(1)(iv) - Failed to Properly Label Containers  
40 CFR 61.150(a)(1)(v) - Failed to Properly Label Containers  
40 CFR 61.150(b) - Failed to Properly Transport ACM Waste

Count IV: Air Pollution Violations  
415 ILCS 5/9(a) – Caused or Allowed Emission of Asbestos  
35 Ill. Adm. Code 201.141- Caused or Allowed Emission of  
Asbestos

**C. Admission of Violations**

COOK admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.



**D. Compliance Activities to Date**

1. On August 18, 2009, the Illinois EPA received a revised asbestos remediation design plan submitted on behalf of PRAIRIELAND INVESTMENT GROUP, LLC.
2. On August 28, 2009, the Illinois EPA accepted the remediation plan.
3. On May 6, 2010, the Illinois EPA received documentation that removal of all regulated asbestos containing material and asbestos contamination at the Facility had been completed.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. COOK 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 COOK in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board's 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 (2008).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2008), provides as follows:

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

1. The character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;

2. The social and economic value of the pollution source;
3. The suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. Any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. If the Complainant's allegations are accepted as correct, Complainant contends that human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by COOK's violations.
2. Moser Hall, Heating Plant No. 1 and the Campus Cafeteria at the Facility have now been demolished.
3. Moser Hall, Heating Plant No. 1 and the Campus Cafeteria at the Facility have now been demolished.
4. The Parties to the Stipulation agree that complying with the NESHAP for asbestos, the Act and the Board's regulations is technically practicable and economically reasonable; and
5. The remediation of all regulated asbestos containing waste material and asbestos contamination resulting from the alleged improper asbestos removal and demolition activities that are the subject of the Complaint has been completed.

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

Section 42(h) of the Act, 415 ILCS 5/42(h) (2008), 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 to the Stipulation state as follows:

1. From approximately December 23, 2008 through March 26, 2009, Complainant alleges that COOK failed to conduct demolition and asbestos removal activities at the Facility in compliance with asbestos NESHAP notification, emission control and disposal requirements.
2. COOK ceased all work at the Facility when directed to do so by the Illinois EPA. PRAIRIELAND INVESTMENT GROUP, LLC acted to remove and dispose of all RACM and asbestos contamination at the Facility in compliance with the remediation plan accepted by the Illinois EPA.
3. Complainant does not allege that COOK realized an economic benefit as a result of his noncompliance with the NESHAP for asbestos, the Act, and the Board's regulations.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Eight Thousand Dollars (\$8,000.00) will serve to deter further violations and aid in future voluntary compliance with the NESHAP for asbestos, the Act and the Board's regulations.

5. To Complainant's knowledge, COOK 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.

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

COOK shall pay a civil penalty in the sum of Eight Thousand Dollars (\$8,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

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

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

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by COOK not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

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 COOK's federal tax identification number 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 Enforcement Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

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

2. COOK shall cease and desist from future violations of the NESHAP for asbestos, the Act and the Board's regulations that were the subject matter of the Complaint.

**E. Release from Liability**

In consideration of COOK's payment of the \$8,000.00 penalty, his commitment to cease and desist as contained in Section V, paragraph D above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges COOK

from any further liability or penalties for the violations of the NESHAP for asbestos, the Act and the Board's 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 November 9, 2010. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against COOK 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 COOK's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), or entity other than COOK.

**F. Enforcement**

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

**G. Execution of Stipulation**

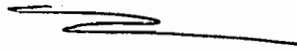
The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 10/19/11

THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

LISA BONNETT, Interim Director  
Illinois Environmental Protection Agency

BY:   
JOHN J. KIM  
Chief Legal Counsel

DATE: 10/17/11

KEVIN S. COOK, d/b/a KC Construction

BY:   
KEVIN S. COOK

DATE: 9/20/11