

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
MIDWEST ENVIRONMENTAL)
CONSULTING SERVICES, INC., an)
Illinois corporation, and)
UNIVERSAL ASBESTOS REMOVAL,)
INC., an Illinois corporation,)
)
Respondents.)

PCB NO. 13-51
(Enforcement - Air)

NOTICE OF MOTION

TO: **Via Regular Mail**
Scott E. Nemanich, Esq.
Hinshaw & Culbertson LLP
4343 Commerce Court, Suite 415
Lisle, IL 60532

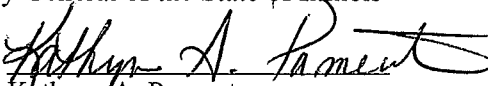
Via Regular Mail
Timothy J. Rathbun, Esq.
Rathbun, Cservenyak & Kozol, LLC
3260 Executive Drive
Joliet, Illinois 60431

Via E-Mail
Bradley P. Halloran, Esq.
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
Brad.Halloran@illinois.gov

PLEASE TAKE NOTICE that on the 14th day of August, 2013, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, filed the attached Motion for Relief from Hearing Requirement Regarding Stipulation With Universal Asbestos Removal, Inc., a true and correct copy of which is attached hereto and is hereby served upon you.

RESPECTUFLY SUBMITTED,

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

BY: 
Kathryn A. Pament
Environmental Bureau
Assistant Attorney General
69 W. Washington Street, #1800
Chicago, Illinois 60602
(312) 814-0608

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Complainant,)

v.)

PCB NO. 13-51
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MIDWEST ENVIRONMENTAL)

CONSULTING SERVICES, INC., an)

Illinois corporation, and)

UNIVERSAL ASBESTOS REMOVAL,)

INC., an Illinois corporation,)

Respondents.)

**MOTION FOR RELIEF FROM HEARING REQUIREMENT REGARDING STIPULATION
WITH UNIVERSAL ASBESTOS REMOVAL, INC.**

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) (2012), moves that the Illinois Pollution Control Board (“Board”) grant relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2012). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Sections 9(a) and 9.1(d)(1) of the Act, 415 ILCS 5/9(a), 9.1(d)(1) (2012), Sections 61.145(a) and 61.145(c)(1) of the National Emissions Standards for Hazardous Air Pollutants for asbestos, 40 C.F.R. §§ 61.145(a), 61.145(c)(1), and Section 201.141 of the Board’s air pollution regulations, 35 Ill. Adm. Code 201.141.

2. Complainant is filing this Motion with the Board simultaneously with a Stipulation and Proposal for Settlement with Universal Asbestos Removal, Inc., attached hereto as Exhibit A, which sets forth the parties’ agreement on all outstanding issues in this case as

against Universal Asbestos.

3. Complainant and Universal Asbestos 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) (2012).

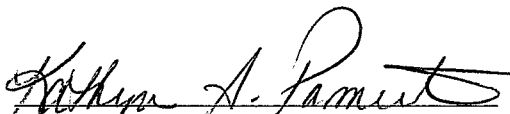
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2012).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General, State of Illinois

BY:


Kathryn A. Pamerter
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0608

DATE: August 14, 2013

EXHIBIT A

I. STATEMENT OF FACTS

A. Parties

1. On March 29, 2013, 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 (2012), against Universal Asbestos.

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 (2012).

3. At all times relevant to the Complaint, Universal Asbestos was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Universal Asbestos has been and is an asbestos abatement contractor licensed by the Illinois Department of Public Health.

4. In or about March 2010, the Bureau Valley Community Unit School District #340 hired Universal Asbestos as the asbestos abatement contractor for asbestos removal at the Sheffield Elementary School located at 306 South East Street, Sheffield, Bureau County, Illinois (the "School").

B. Allegations of Non-Compliance

Complainant contends that Universal Asbestos has violated the following provisions of the Act and Board regulations:

Count I: Air Pollution
Violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2010), and Section 201.141 of the Illinois Pollution Control Board's ("Board") air pollution regulations ("Board Air Pollution Regulations"), 35 Ill. Adm. Code 201.141.

Count II: Failure to Conduct a Thorough Inspection
Violation of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010), and Section 61.145 of the National Emissions Standards for Hazardous Air Pollutants for asbestos found in 40 C.F.R. Part 61, Subpart M (the "Asbestos NESHAP"), 40 C.F.R. § 61.145(a).

Count III: Failure to Properly Remove Regulated Asbestos-Containing Materials
Violation of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2010), and Section 61.145(c)(1) of the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(1).

C. Non-Admission of Violations

Universal Asbestos 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, Universal Asbestos does not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

On February 25, 2011, the Illinois EPA approved a project design addressing the remediation of asbestos-containing material disturbed during demolition activities, asbestos-contaminated materials, and asbestos-containing materials that were not removed prior to demolition. On March 31, 2011, the remediation project to remove the remaining disturbed and intact asbestos-containing materials from the School was completed and clearance sample results were submitted demonstrating that the remediation plan was completed to the satisfaction of the Illinois EPA.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. Universal Asbestos 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 Universal Asbestos 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 (2012).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2012), 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. Universal Asbestos conducted asbestos removal work at the School between July 19, 2010 and August 6, 2010. During a January 3, 2011 inspection of the partially demolished School, the Illinois EPA discovered (a) disturbed, crushed and crumbled transite panels, (b) pipe insulation and (c) ceiling material at the School that contained asbestos. The Complainant

alleges that human health and the environment were thereby threatened.

2. There was a social and economic benefit in the proper asbestos removal at the School.

3. The third factor is inapplicable as the School was demolished.

4. Compliance with the asbestos NESHAP is both technically practicable and economically feasible.

5. Universal Asbestos 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) (2012), 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;
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; and

8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. Universal Asbestos conducted asbestos removal work at the School between July 19, 2010 and August 6, 2010. During a January 3, 2011 inspection of the partially demolished School, the Illinois EPA discovered (a) disturbed, crushed and crumbled transite panels, (b) pipe insulation and (c) ceiling material at the School that contained asbestos, which the Complainant alleges thereby threatening human health and the environment with the discharge or emission of asbestos into the environment. The remediation project to remove the remaining disturbed and intact asbestos-containing materials at the School was completed on March 31, 2011 and clearance sample results were submitted demonstrating that the remediation plan was completed to the satisfaction of the Illinois EPA.

2. Universal Asbestos was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations.

3. Any economic benefit obtained by Universal Asbestos is accounted for in the \$15,000.00 civil penalty that Universal Asbestos has agreed to pay in this matter.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Fifteen Thousand Dollars (\$15,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Universal Asbestos 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.
8. A Compliance Commitment Agreement was not at issue in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. Universal Asbestos shall pay a civil penalty in the sum of Fifteen Thousand Dollars (\$15,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest, and Default

1. If Universal Asbestos fails to make any payment required by this Stipulation on or before the date upon which the payment is due, Universal Asbestos 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 Universal Asbestos 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.

3. The stipulated penalties shall be enforceable by the Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

C. Payment Procedures

1. 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, Illinois 62794-9276

2. The case name, case number and Universal Asbestos's FEIN No. shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Kathryn A. Pamerter
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

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

2. Universal Asbestos shall cease and desist from future violations of the Act and Board regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of Universal Asbestos's payment of the \$15,000.00 penalty and its commitment to cease and desist as contained in Section V.D.2 above, and upon the Board's

approval of this Stipulation, the Complainant releases, waives and discharges Universal Asbestos 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 March 29, 2013 as against Universal Asbestos, and the Complainant specifically reserves all rights as against Defendant Midwest Environmental Consulting Services Inc. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Universal Asbestos 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 Universal Asbestos'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, or entity other than Universal Asbestos.

F. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Kathryn A. Pamerter
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office

69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

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

As to Universal Asbestos

Timothy J. Rathbun
Rathbun, Cservenyak & Kozol, LLC
3260 Executive Drive
Joliet, Illinois 60431

G. 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.

H. 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.

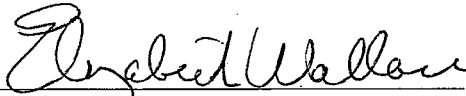
WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

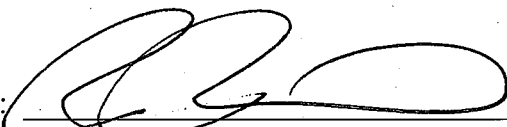
PEOPLE OF THE STATE OF ILLINOIS ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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

LISA BONNETT, Director

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 8/6/13

DATE: 8/1/13

RESPONDENT

UNIVERSAL ASBESTOS REMOVAL,
INC.

BY: _____
Its: _____

DATE: _____

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
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LISA BONNETT, Director

BY: _____
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

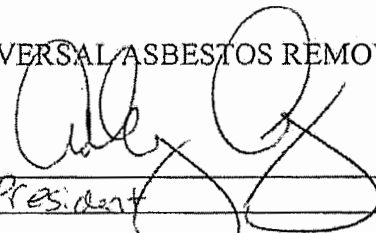
BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

RESPONDENT

UNIVERSAL ASBESTOS REMOVAL,
INC.

BY: 
Its: President

DATE: 8-13-13

CERTIFICATE OF SERVICE

I, Kathryn A. Pamentor, an Assistant Attorney General, do certify that I caused to be served this 14th day of August, 2013, the Notice of Motion and Motion for Relief from Hearing Requirement Regarding Stipulation With Universal Asbestos Removal, Inc. upon (a) Scott E. Nemanich, Esq. and Timothy J. Rathbun, Esq. *via regular mail* at the addresses set forth below by placing a true and correct copy in an envelope, first class postage prepaid, and depositing same with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m. and (b) Bradley P. Halloran, Esq. *via email*.

Via Regular Mail

Scott E. Nemanich, Esq.
Hinshaw & Culbertson LLP
4343 Commerce Court
Suite 415
Lisle, IL 60532

Via Regular Mail

Timothy J. Rathbun, Esq.
Rathbun, Cservenyak & Kozol, LLC
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KATHRYN A. PAMENTER