

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )

Complainant, )

v. )

PCB NO. 13-51  
(Enforcement - Air)

MIDWEST ENVIRONMENTAL )

CONSULTING SERVICES, INC., an )

Illinois corporation, and )

UNIVERSAL ASBESTOS REMOVAL, )

INC., an Illinois corporation, )

Respondents. )

NOTICE OF MOTION

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

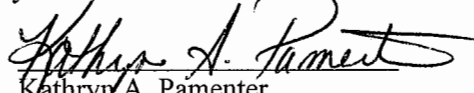
**Via Regular Mail**  
Timothy J. Rathbun, Esq.  
Rathbun, Cservenyak & Kozol, LLC  
3260 Executive Drive  
Joliet, Illinois 60431

**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 Midwest Environmental Consulting Services, 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. Pamenter  
Environmental Bureau  
Assistant Attorney General  
69 W. Washington Street, #1800  
Chicago, Illinois 60602  
(312) 814-0608

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PEOPLE OF THE STATE OF ILLINOIS, )

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**MOTION FOR RELIEF FROM HEARING REQUIREMENT REGARDING STIPULATION  
WITH MIDWEST ENVIRONMENTAL CONSULTING SERVICES, 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 Midwest Environmental Consulting Services, Inc., attached hereto as Exhibit A, which sets forth the parties’ agreement on all outstanding issues in

this case as against Midwest Environmental.

3. Complainant and Midwest Environmental 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).

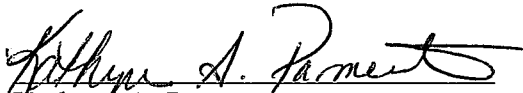
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2012).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General, State of Illinois

BY:



Kathryn A. Pamentér  
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 Midwest Environmental.

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, Midwest Environmental was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Midwest Environmental has been and is a full-service environmental consulting firm specializing in asbestos, lead, mold and industrial hygiene services, as well as site development.

4. In or about March 2010, the Bureau Valley Community Unit School District #340 hired Midwest Environmental as the environmental consultant and project manager 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 Midwest Environmental 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**

Midwest Environmental 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, Midwest Environmental 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. Midwest Environmental 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 Midwest Environmental 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. Midwest Environmental supervised 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. Midwest Environmental 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. Midwest Environmental supervised 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 threatened 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. Midwest Environmental was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations.

3. Any economic benefit obtained by Midwest Environmental is accounted for in the \$15,000.00 civil penalty that Midwest Environmental 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, Midwest Environmental 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. Midwest Environmental 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 Midwest Environmental fails to make any payment required by this Stipulation on or before the date upon which the payment is due, Midwest Environmental 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 Midwest Environmental 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 Midwest Environmental'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. Pamenter  
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 Midwest Environmental to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board regulations.

2. Midwest Environmental 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 Midwest Environmental'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 Midwest Environmental 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 Midwest Environmental, and the Complainant specifically reserves all rights as against Universal Asbestos Removal, Inc. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Midwest Environmental 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 Midwest Environmental'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 Midwest Environmental.

**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 Midwest Environmental

Scott E. Nemanich  
Hinshaw & Culbertson LLP  
4343 Commerce Court  
Suite 415  
Lisle, IL 60532-1099

Blake G. Mellecker  
Midwest Environmental Consulting Services, Inc.  
4 Bonnie Lane  
Yorkville, IL 60560

**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: 8/11/13

RESPONDENT

MIDWEST ENVIRONMENTAL CONSULTING SERVICES, 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

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Attorney General  
State of Illinois

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

BY: \_\_\_\_\_  
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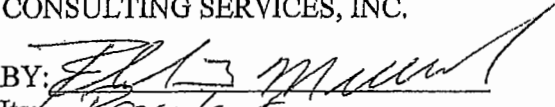
BY: \_\_\_\_\_  
JOHN J. KIM  
Chief Legal Counsel

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

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

RESPONDENT

MIDWEST ENVIRONMENTAL  
CONSULTING SERVICES, INC.

BY:   
Its: President

DATE: 8/9/13.

**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 Midwest Environmental Consulting Services, 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.  
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3260 Executive Drive  
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***Via E-Mail***

Bradley P. Halloran, Esq.  
Hearing Officer  
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James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
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Brad.Halloran@illinois.gov

  
KATHRYN A. PAMENTER