

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 14 - 127
)	
REMEDIATION AND MANAGEMENT)	(Enforcement - Air)
SERVICES CORPORATION, an Illinois)	
corporation,)	
)	
Respondent.)	

MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On April 24, 2014, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter. On July 9, 2015, a Stipulation and Proposal for Settlement with Respondent, REMEDIATION AND MANAGEMENT SERVICES CORPORATION, was filed with the Board.
2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2014), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement.
3. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2014), provides as follows:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a

stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

4. No hearing is currently scheduled in the instant case.
5. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2014).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2014).

Respectfully submitted,

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

BY: _____


NANCY J. TIRKALSKI
Assistant Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
312-814-8567

DATE: July 9, 2015

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

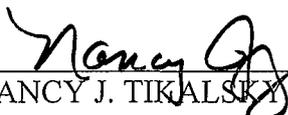
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NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 9th day of July 2015, I filed with the Clerk of the Illinois Pollution Control Board Stipulation and Proposal for Settlement, and a Motion to Request Relief from Hearing Requirement with Respondent, REMEDIATION AND MANAGEMENT SERVICES CORPORATION, copies of which are attached hereto and are hereby served upon you.

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

BY: 

NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
312-814-8567

DATE: July 9, 2015

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Bradley Halloran
Chief Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, 11th Floor
Chicago, IL 60601
via email attachment Brad.Halloran@Illinois.gov

Lawrence Stein
20 N. Clark Street
Suite 1725
Chicago, IL 60602
via email attachment (steinlawrence163@gmail.com)

Illinois Environmental Protection Agency
Dennis Brown
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
via email attachment (dbrown@illinois.gov)

CERTIFICATE OF ELECTRONIC SERVICE

I, NANCY J. TIKALSKY, an Assistant Attorney General, do certify that I caused to be mailed this 9th day of July 2015 the foregoing Motion to Request Relief from Hearing, Stipulation and Proposal for Settlement and Notice of Filing with Respondent, REMEDIATION AND MANAGEMENT SERVICES CORPORATION, by electronic mail.



NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau
69 W. Washington, Suite 1800
Chicago, IL 60602
312-814-8567
ntikalsky@atg.state.il.us

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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 REMEDIATION AND MANAGEMENT SERVICES CORPORATION (“Respondent” or “RAMSCO”), (collectively “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. (2014), National Emission Standards for Hazardous Air Pollutants for Asbestos (“Asbestos NESHAP”) and the Board Air Pollution Regulations, 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.

I. STATEMENT OF FACTS

A. Parties

1. On April 24, 2014, 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 (2014), 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 (2014).

3. At all times relevant to the Complaint, Respondent was and is an Illinois corporation that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent owned and operated a business located at 902 South Randall Road, Suite C282, St. Charles, Kane County, Illinois that was retained by the U.S. Fish and Wildlife Service ("FWS") to remove regulated asbestos-containing materials ("RACM") from buildings at the former Savanna Army Depot located in the Upper Mississippi River National Wildlife and Fish Refuge located in Savanna, Carroll County, Illinois ("Abatement Site").

B. Allegations of Non-Compliance

Complainant alleges that the Respondent has violated the following provisions of the Act, Asbestos NESHAP, and Board Air Pollution Regulations:

Count I: **AIR POLLUTION**
Violations of the Act, 415 ILCS 5/9(a) (2014), and Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141;

Count II: **FAILURE TO ADEQUATELY WET ASBESTOS DURING REMOVAL**
Violations of the Act, 415 ILCS 5/9.1(d)(1) (2014), and Asbestos NESHAP, C.F.R. § 61.145(c)(2)(i) and (c)(6)(i);

- Count III: **FAILURE TO PREVENT DAMAGE TO ASBESTOS DURING REMOVAL**
Violations of the Act, 415 ILCS 5/9.1(d)(1) (2014), and the Asbestos NESHAP, 40 C.F.R. § 61.145(c)(2)(ii) and (c)(6)(ii);
- Count IV: **FAILURE TO PROPERLY CONTAIN ASBESTOS**
Violations of the Act, 415 ILCS 5/9.1(d)(1) (2014), and the Asbestos NESHAP, 40 C.F.R. § 61.150(a)(1);
- Count V: **FAILURE TO TIMELY DISPOSE OF ASBESTOS**
Violations of the Act, 415 ILCS 5/9.1(d)(1) (2014), and the Asbestos NESHAP, 40 C.F.R. § 61.150(b);

C. Non-Admission of Violations

The 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 Respondent 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

By November 19, 2012, Respondent completed the proper removal and disposal of all regulated asbestos-containing waste material and asbestos contamination consistent with the Act, Asbestos NESHAP and Board Air Pollution Regulations.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. 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, Asbestos NESHAP and Board Air Pollution 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 (2014).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2014), 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. The Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations thereby threatening human health and the environment.
2. There is social and economic benefit to the facility.
3. Operation of the demolition was and is suitable for the area in which it is located.
4. Properly removing and disposing asbestos-containing materials from the Abatement Site in compliance with the Act, Asbestos NESHAP and Board Air Pollution Regulations is both technically practicable and economically reasonable.

5. Respondent has subsequently complied with the Act, Asbestos NESHAP and Board Air Pollution Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2014), 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. The Complainant alleged in its Complaint that Respondent failed to properly handle and remove RACM during demolition activities at the Abatement Site in violation of provisions of the Act, NESHAP, and Board Air Pollution Regulations. The alleged violations began on or around September 10, 2012, and were resolved by November 19, 2012.
2. Respondent was diligent to ensure compliance with the Act, Asbestos NESHAP, and Board Air Pollution Regulations once the Illinois EPA notified it of its noncompliance.
3. The civil penalty takes into account any economic benefit realized by the Respondent as a result of avoided or delayed compliance.
4. Complainant has determined, based upon the specific facts of this matter that a penalty of Twelve Thousand dollars (\$12,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act, Asbestos NESHAP and Board Air Pollution Regulations.
5. To Complainant's knowledge, 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.
8. A Compliance Commitment Agreement was proposed by Respondent, but rejected by the Illinois EPA.

V. TERMS OF SETTLEMENT

A. Penalty Payment

The Respondent shall pay a civil penalty in the sum of Twelve Thousand dollars (\$12,000.00) 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, interest shall accrue on any penalty amount owed by the Respondent 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

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 and case number 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:

Nancy J. Tikalsky
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 the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act, Asbestos NESHAP, and Board Air Pollution Regulations.

2. The Respondent shall cease and desist from future violations of the Act, Asbestos NESHAP, and Board Air Pollution Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$12,000.00 penalty, its commitment to cease and desist as contained in Section V.D.3 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act, Asbestos NESHAP, and Board Air Pollution 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 the Complaint filed on

April 24, 2014. 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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2014), 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 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: _____

DATE: _____

RESPONDENT

REMEDICATION AND MANAGEMENT SERVICES CORPORATION

By: Steven K. [Signature]
Its: President

DATE: 6/23/15

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

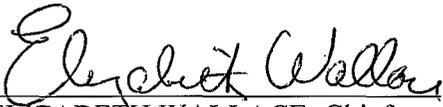
PEOPLE OF THE STATE OF ILLINOIS

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: 7/6/15

DATE: 6/29/15

RESPONDENT

REMEDICATION AND MANAGEMENT SERVICES CORPORATION

By: _____

Its: _____

DATE: _____