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SEP 03 2003

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 28, 2003

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Village of Rantoul***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to be "Thomas Davis", is written over a horizontal line.

Thomas Davis, Chief
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

TD/pp
Enclosures

SEP 03 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

VILLAGE OF RANTOUL, an Illinois
municipal corporation,

Respondent.

PCB NO. 04-28
(Enforcement)

NOTICE OF FILING

To: Kenneth N. Beth
Evans, Froehlich, Beth & Chamley
44 Main Street, Third Fl.
Champaign, IL 61820


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 COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, a copy of which is 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: 
THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: August 28, 2003

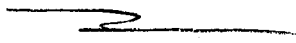
CERTIFICATE OF SERVICE

I hereby certify that I did on August 28, 2003, 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, COMPLAINT, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: Kenneth N. Beth
Evans, Froehlich, Beth & Chamley
44 Main Street, Third Fl.
Champaign, IL 61820

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

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



Thomas Davis, Chief
Environmental Bureau
Assistant Attorney General

This filing is submitted on recycled paper.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD SEP 03 2003
CHAMPAIGN COUNTY, ILLINOIS

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

VILLAGE OF RANTOUL, an Illinois
municipal corporation,

Respondent.

No. PCB 04-28
(Air -- Enforcement)

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of the Respondent, VILLAGE OF RANTOUL, as follows:

COUNT I
NOTIFICATION VIOLATION

1. This count is brought on behalf of the People of the State of Illinois, by Lisa Madigan, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent, Village of Rantoul, is an Illinois municipal corporation located in Champaign County, Illinois, with approximately 12,857 residents.

4. Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), provides:

No person shall:

- a. Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

* * *

5. Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002), provides:

(d) No person shall:

1. Violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto;

* * *

6. Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141 (2002), provides:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

7. Section 3.115 of the Act, 415 ILCS 3.115 (2002), provides the following definition:

'AIR POLLUTION' is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

8. The National Emission Standards for Hazardous Air Pollutants ("NESHAP") regulations governing asbestos, 40 CFR Part 61, Subpart M (2002), were adopted pursuant to Section 112 of the Clean Air Act, 42 U.S.C. §7412. Asbestos is regulated as a hazardous air

pollutant because it is a carcinogen. Regulated asbestos-containing materials ("RACM") contain more than one percent asbestos and are generally "friable," which means such materials, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

9. 40 CFR §61.145 (2002), provides, in pertinent part:

- (a) *Applicability.* To determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

* * *

(4) In a facility being renovated, including any nonscheduled renovation operation, all the requirements of paragraphs (b) and (c) of this section apply if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is

(i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or

(ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

* * *

(b) *Notification requirements.* Each owner or operator of a demolition or renovation activity to which this section applies shall:

- (1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

* * *

10. The Respondent, Village of Rantoul, has leased the former Chanute Air Force Base in Rantoul, Champaign County, Illinois, from the United States Air Force Base Conversion

Agency. Demolition and renovation activities are governed by a provision in the lease which entitles the Air Force to review and approve any plans due to the presence of lead and asbestos-containing materials ("ACM") within the buildings. As part of its environmental restoration efforts, the Air Force conducted surveys of the building interiors to identify ACM.

11. An asbestos inspection of Building #826 located at 306 Tuskegee Avenue in Rantoul had been performed in 1990 by a consultant retained by the Air Force to determine the presence and location of ACM. These materials were subsequently estimated to be at least 1 cubic meter (35 cubic feet).

12. The Village of Rantoul submitted an application for open burning permit dated August 23, 2000, to the Illinois EPA, seeking to demolish Building #826 and two other buildings as part of its fire department's "ongoing training program teaching firefighters."

13. The Air Force notified the Village of Rantoul by a letter dated August 25, 2000, that the demolition of Building #826 and the two other buildings must be postponed until the lead and ACM are removed

14. On January 10, 2001, the Illinois EPA issued a permit to the Village of Rantoul to demolish, by open burning, three structures, including Building #826, explicitly conditioned upon strict compliance with the notification and asbestos handling and disposal requirements of the federal asbestos NESHAP regulations.

15. On December 9, 2001, the Village of Rantoul began the demolition of Building #826 by intentional burning.

16. The Village of Rantoul is an "operator" of a "demolition" and Building #826 is a "facility" as the terms are defined at 40 CFR §61.141.

17. Although an operator of a demolition is required by 40 CFR §61.145(b)(1) to provide written advance notification, the Respondent, Village of Rantoul, did not submit, and the Illinois EPA did not receive, the required notification for the demolition of Building #826; the

Village of Rantoul thereby violated 40 CFR §60.145(b)(1) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2002).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that this Board grant the following relief:

A. Find that Respondent, Village of Rantoul, has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002), and 40 CFR §61.145.

B. Order the Respondent to cease and desist from further violations of the Act and associated regulations;

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), and after the adjudication of the violations, impose upon the Respondent a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), and after the adjudication of the violations, award the Complainant its costs in this matter, including reasonable attorney's fees and expert witness costs; and

E. Grant such other and further relief as the Board deems appropriate.

COUNT II **ASBESTOS REMOVAL AND WASTE HANDLING VIOLATIONS**

1-16. Complainant realleges and incorporates herein by reference paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count II.

17. 40 CFR §61.145(c) (2002), provides, in pertinent part:

(c) *Procedures for asbestos emission control.* Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

- (1) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.

* * *

- (3) When RACM is stripped from a facility component while it remains in place in the facility, adequately wet the RACM during the stripping operation.

* * *

- (6) For all RACM, including material that has been removed or stripped:

- (i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with [section] 61.150;

* * *

- (10) If a facility is demolished by intentional burning, all RACM including Category I and Category II nonfriable ACM must be removed in accordance with the NESHAP before burning.

18. 40 CFR §61.150 (2002), provides, in pertinent part:

Each owner or operator of any source covered under the provisions of [sections] 61.144, 61.145, and 61.147 shall comply with the following provisions:

- (a) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in paragraphs (a)(1) through (4) of this section.

- (1) Adequately wet asbestos-containing waste material as follows:

- (i) Mix control device asbestos waste to form a slurry ; adequately wet other asbestos-containing waste material; and

- (ii) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the

methods specified by [section] 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and

- (iii) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and
- (iv) Label the containers or wrapped materials specified in paragraph (a)(1)(iii) of this section using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(j)(2) or 1926.58(k)(2)(iii). The labels shall be printed in letters of sufficient size and contrast to be readily visible and legible.
- (v) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

* * *

(b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

- (1) A waste disposal site operated in accordance with the provisions of [section] 61.145, or
- (2) An EPA-approved site that converts RACM asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of [section] 61.155.

* * *

19. The Illinois EPA inspected Building #826 in February 2001 and explicitly informed the Village of Rantoul's economic development director, Raymond Boudreaux, that not only the ACM identified by the 1990 survey, but also the exterior transite materials identified at that time by the Illinois EPA inspector, must be properly removed prior to demolition.

20. Through a contractor, the Village of Rantoul arranged for the ACM identified by

the 1990 survey to be removed by an abatement firm. However, the exterior transite materials identified by the Illinois EPA were not removed by the abatement firm.

21. The exterior transite materials on Building #826 are considered to be category II nonfriable ACM pursuant to 40 CFR §61.141 and must be removed prior to demolition by intentional burning.

22. On December 11, 2001, the Illinois EPA conducted an inspection of the facility and observed burned debris including dry and friable regulated ACM and exterior transite material. The Illinois EPA inspector collected samples of the ACM and also observed that no emission controls were in place for the facility.

23. The Village of Rantoul failed to remove, wet and contain all regulated ACM and Category II nonfriable ACM prior to the demolition of Building #826, thereby causing, threatening or allowing the emission or airborne migration of asbestos fibers, in violation of 40 CFR §§61.145(c)(3), (6) and (10), and 61.150(a)(1), and of Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2002).

24. The Village of Rantoul failed to transport to a waste disposal site as soon as practical all asbestos-containing waste material generated during the demolition of Building #826, in violation of 40 CFR §61.150(b) and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2002).

25. The Village of Rantoul accrued an economic benefit by failing to remove all regulated ACM and Category II nonfriable ACM from Building #826 prior to its demolition.

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that this Board grant the following relief:

A. Find that Respondent, Village of Rantoul, has violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002), 40 CFR §§61.145 and 61.150.

B. Order the Respondent to cease and desist from further violations of the Act and associated regulations;

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), and after the adjudication of the violations, impose upon the Respondent a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), and after the adjudication of the violations, award the Complainant its costs in this matter, including reasonable attorney's fees and expert witness costs; and

E. Grant such other and further relief as the Board deems appropriate.

COUNT III
AIR POLLUTION VIOLATIONS

1-16. Complainant realleges and incorporates herein by reference paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count III.

17-24. Complainant realleges and incorporates herein by reference paragraphs 17 through 24 of Count II as paragraphs 17 through 24 of this Count III

25. By failing to properly remove, handle, contain, and dispose of ACM prior to the demolition of Building #826, and of the resulting asbestos-containing waste material subsequent to the demolition of Building #826, the Respondent, Village of Rantoul, has caused, threatened or allowed the discharge or emission of contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human health, or to property, or to unreasonably interfere with the enjoyment of life or property, into the environment so as to

cause or tend to cause air pollution in Illinois, and has thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and 35 Ill. Adm. Code 201.141(2002).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that this Board grant the following relief:

A. Find that Respondent, Village of Rantoul, has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and 35 Ill. Adm. Code 201.141 (2002).

B. Order the Respondent to cease and desist from further violations of the Act and associated regulations;

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), and after the adjudication of the violations, impose upon the Respondent a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), and after the adjudication of the violations, award the Complainant its costs in this matter, including reasonable attorney's fees and expert witness costs; and

E. Grant such other and further relief as the Board deems appropriate.

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: _____

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: August 28, 2003

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SEP 03 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

VILLAGE OF RANTOUL, an Illinois
municipal corporation,

Respondent.

PCB NO. 04-28
(Enforcement)

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) (2002), 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) (2002). In support of this motion, Complainant states as follows:

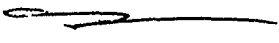
1. On this date, Complainant is filing a Complaint with the Board, alleging violations by the Respondent of the air pollution control requirements.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. 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) (2002).

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) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: August 28, 2003

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,

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Complainant,

)

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vs.

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)

VILLAGE OF RANTOUL, an Illinois
municipal corporation,

)

)

)

Respondent.

)

No. PCB 04-28

(Air -- Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA M. MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, VILLAGE OF RANTOUL, have agreed to the making of this Stipulation and Proposal for Settlement and submit it to the Illinois Pollution Control Board ("Board") for approval. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and not to contest its validity in any subsequent proceeding to implement or enforce its terms.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2002).

II.

AUTHORIZATION

The undersigned representatives for each party 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.

III.

STATEMENT OF FACTS

A. Parties

1. Contemporaneously with this pleading, 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 (2002), 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 (2002).

3. At all times relevant to the Complaint, Respondent was and is an Illinois municipal corporation located in Champaign County.

B. Site Description

1. At all times relevant to the Complaint, the Respondent, Village of Rantoul, has leased the relevant part of the former Chanute Air Force Base in Rantoul, Champaign County, Illinois, from the United States Air Force Base Conversion Agency; the subject of the Complaint is Building #826 located at 306 Tuskegee Avenue ("site").

C. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board Regulations:

- Count I: Failure to provide written notification of demolition as required by the asbestos NESHAP regulations in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).
- Count II: Failure to comply with asbestos removal and waste handling practices as required by the asbestos NESHAP regulations in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2002).
- Count III: Caused or allowed air pollution in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2002).

D. Admission of Violations

The Respondent admits to the violations alleged in the Complaint filed in this matter and referenced herein.

E. Compliance Activities to Date

The Respondent expended approximately \$71,000 to remediate the site. The Respondent has also voluntarily instituted internal controls to ensure that all buildings within the Village are properly inspected and, if necessary, abated prior to demolition.

IV.

APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer or agent 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 or agents to take such action as shall be required to comply with the provisions of this Stipulation.

V.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

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, 35 Ill. Adm. Code, Subtitles A through H.

VI.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c)(2002), 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. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.

4. The removal of asbestos-containing materials from the building the site prior to demolition is both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations.

VII.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2002), 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 violator 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 violator because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors, the parties state as follows:

1. The Respondent failed to notify the Illinois EPA prior to commencing demolition activities at the site, and failed to first remove asbestos-containing materials. The violations began on December 9, 2001, and were resolved at various times in the following year.
2. Respondent was diligent in attempting to come back into compliance with the Act, Board Regulations and applicable Federal regulations, once the Illinois EPA notified it of its noncompliance.

3. The economic benefit realized by the Respondent from its noncompliance is estimated to be \$4,446.00.

4. Complainant has determined that a penalty of \$4,446.00 will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent has previously adjudicated violations of the Act in a prior circuit court action (98 CH 178) and Board enforcement case (PCB 01-165).

VIII.

TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a penalty in the sum of Four Thousand Four Hundred and Forty Six Dollars (\$4,446.00) within thirty days after the date the Board adopts and accepts this Stipulation. The penalty described in this Stipulation shall be paid by certified check payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to:

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

The name and number of the case and Respondent's Federal Employer Identification Number (FEIN), 37-6000510, shall appear on the check. A copy of the certified check or money order and the transmittal letter shall be sent to:

Attorney General's Office
Environmental Bureau
500 South Second Street
Springfield, Illinois 62702

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2002). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received.

4. For purposes of payment and collection, Respondent may be reached at the following address: Post Office Box 38, Rantoul, Illinois 61866.

5. In the event of default, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

B. Future Use

Notwithstanding any other language in this Stipulation to the contrary, this Stipulation may be used against the Respondent in any subsequent enforcement action as evidence of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder, for purposes of Section 39(i) and/or 42(h) of the Act, 415 ILCS 5/39(i) and/or 5/42(h)(2002).

C. Right of Entry

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

D. Cease and Desist

The Respondent shall cease and desist from future violations of the Act and Board Regulations, including but not limited to those sections of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C. of this Stipulation.

E. Release from Liability

In consideration of the Respondent's payment of the \$4,446.00 penalty, and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for 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 _____. 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 3.26 of the Act, 415 ILCS 5/3.26, or entity other than the Respondent.

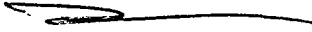
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA M. MADIGAN
Attorney General
State of Illinois

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

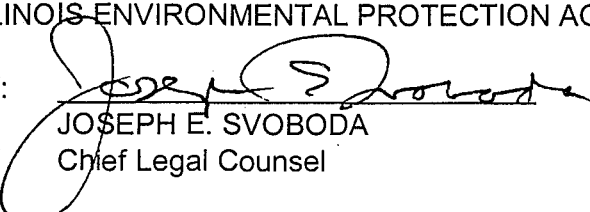
BY:


THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: 8/28/03

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

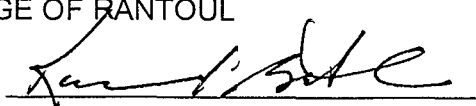
BY:


JOSEPH E. SVOBODA
Chief Legal Counsel

DATE: 8-12-03

VILLAGE OF RANTOUL

BY:


Name: Kenneth N. Beth
Title: Village Attorney

DATE: 8/28/03