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CLERK'S OFFICE

JUL 30 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 C & S RECYCLING, INC., an Illinois )  
 corporation, FLOOD BROTHERS )  
 DISPOSAL COMPANY, INC., an )  
 Illinois Corporation, WILLIAM )  
 FLOOD, Individually, and as )  
 treasurer of C & S Recycling, )  
 and BRIAN FLOOD, Individually, )  
 and as president of C & S )  
 Recycling, )  
 )  
 Respondents. )

PCB 97 - 9  
(Enforcement - Land)

STATE OF ILLINOIS  
Pollution Control Board

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that today I have filed with the Pollution Control Board the following Stipulation and Proposal for Settlement, Request for Relief from the Hearing Requirement, and Certificate of Service, on behalf of the People of the State of Illinois, a copy of which is attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:



JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
(312) 814-6986

DATE: July 30, 2003

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Brad Halloran, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street, Suite 11-500  
Chicago, IL 60601

Mr. Peter Orlinsky, Esq.  
Illinois Environmental Protection Agency  
9511 Harrison Street  
Des Plaines, IL 60016

Mr. Harvey Sheldon, Esq.  
Hinshaw & Culbertson  
222 N. LaSalle Street, Suite 300  
Chicago, IL 60601-1801

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD CLERK'S OFFICE

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Pollution Control Board

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PCB 97 - 9  
(Enforcement - Land)

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 ("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. The Complaint in this matter alleges violations of the Board's solid waste regulations in addition to Sections 21(a) and 21(d) of the Environmental Protection Act ("Act").
2. Complainant is filing this Motion and a Stipulation and Proposal for Settlement with the Board.
3. The parties have reached agreement on all outstanding issues in this matter.
4. This agreement is presented to the Board in a

Stipulation and Proposal for Settlement which is filed contemporaneously with this Motion.

5. 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).

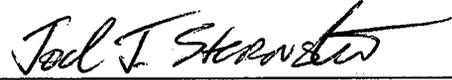
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:



JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
(312) 814-6986

DATE: July 30, 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
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 Complainant, )  
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JUL 30 2003

STATE OF ILLINOIS  
PCB 97 - 9 *Pollution Control Board*  
(Enforcement)

**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA  
 MADIGAN, Attorney General of the State of Illinois, at the  
 request of the Illinois Environmental Protection Agency  
 (collectively, the "State"), and Respondents for purposes of this  
 Stipulation and Proposal for Settlement, C & S RECYCLING, INC.,  
 ("C & S") and FLOOD BROTHERS DISPOSAL COMPANY, INC. ("Flood  
 Brothers") do hereby agree to this Stipulation and Proposal for  
 Settlement ("Agreement"). The parties further stipulate that  
 this statement of alleged facts is made and agreed upon for  
 purposes of settlement only and that neither the fact that a

party has entered into this Agreement, nor any of the alleged facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms of this Agreement. Notwithstanding the previous sentence, this Agreement and any Illinois Pollution Control Board ("Board") order accepting same may be used in any future enforcement action by Complainant as evidence of a past adjudication of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2002), for purposes of Sections 39(i) and 42(h) of the Act, 415 ILCS 5/39(i), 42(h) (2002). This Agreement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

I.

JURISDICTION

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

II.

AUTHORIZATION

The undersigned representative for each party certifies that he or she is fully authorized by the party whom he or she

represents to enter into the terms of this Agreement and to legally bind them to it.

III.

APPLICABILITY

This Agreement shall apply to and be binding upon Complainant and Respondents, and any officer, director, agent and employee or servant of Respondents, as well as Respondents' successors and assigns. Respondents shall not raise as a defense to any enforcement action taken pursuant to this Agreement the failure of their officers, directors, agents, servants or employees to take such action as shall be required to comply with the provisions of this Agreement.

IV.

STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois brings this action on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and pursuant to the statutory authority vested in her under Section 31 of the Act, 415 ILCS 5/31 (2002).

2. The Illinois EPA is an administrative agency in the

executive branch of the State government of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this settlement, Respondents C & S and FLOOD BROTHERS were Illinois corporations in good standing.

4. At all times relevant to this settlement until 2002, Respondents have been engaged in the operation of a Site located at 4009 West Taylor Street, Chicago, Cook County, Illinois ("Site") at which recyclable and non-recyclable materials are received, sorted and transferred for further treatment or disposal.

5. The Site is not permitted by the Illinois EPA for the operation of a solid waste management Site.

**B. Alleged Violations**

1. In its Complaint, Complainant alleges the following violations of the Act:

Count I: Open dumping, in violation of Section 21(a) of the Act, 415 ILCS 5/21(a) (2002).

Count II: Development of a solid waste management site without a permit, in violation of Section 21(d) of the Act, 415 ILCS 5/21(d) (2002), and 35 Ill. Adm. Code 807.201.

Count III: Operation of a solid waste management site without a permit, in violation of Section 21(d) of the Act, 415 ILCS 5/21(d) (2002), and 35 Ill. Adm. Code 807.202.

2. For purposes of this Settlement, the Respondents do not contest the alleged violations.

V.

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. Although human health and the environment were potentially threatened and the Illinois EPA's information gathering responsibilities were hindered by Respondents' activities, there is no evidence of actual negative impact to the public resulting from Respondents' alleged noncompliance.

2. There is social and economic benefit to the community from the Site.

3. Upon effectuating the changes as contemplated by this Agreement, the Site will be suitable for the area in which it operates. Past Site operation has sometimes involved the receipt of garbage. The Site does not currently meet the setback requirements now imposed by law for garbage-related solid waste management units.

4. Obtaining the requisite permits prior to the development and operation of the Site was both technically practicable and economically reasonable.

5. Pursuant to this agreement, Respondents have committed to returning to compliance with the Act and the Board Regulations

by agreeing to become a recycling center as that term is defined at Section 3.375 of the Act, 415 ILCS 5/3.375 (2002).

VI.

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. Respondents have operated a solid waste management site without a permit from at least October 20, 1992 until 2002.

2. Respondents were not diligent in attempting to comply with the Act, Board Regulations and applicable Federal regulations.

3. Respondents have realized an economic benefit from their operation of the Site. The amount of that benefit, however, is unquantifiable.

4. Complainant has determined that a penalty of Forty-Five Thousand Dollars (\$45,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondents have committed no previously adjudicated violations of the Act.

## VII.

### TERMS OF SETTLEMENT

#### A. Penalty Payment

1. Respondents shall be jointly and severally liable for and pay a penalty in the sum of Forty-Five Thousand Dollars (\$45,000.00). Respondents shall pay the Forty-Five Thousand Dollar (\$45,000.00) penalty within thirty (30) days of the date

the Board adopts and accepts this Agreement. The penalty described in this Agreement shall be paid by certified check payable to the Illinois Environmental Protection Agency, 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 remitting Respondent's Federal Employer Identification Number (FEIN), 36-3670247, shall appear on the check.

2. Respondents shall secure a letter of credit regarding the \$45,000.00 penalty prior to the filing of this Stipulation and Proposal for Settlement with the Board. Respondents shall provide the letter of credit to

Joel Sternstein  
Assistant Attorney General  
Environmental Bureau North  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

3. For purposes of payment and collection, Respondents may be reached at the following addresses:

C & S Recycling, Inc.  
4009 W. Taylor Street  
Chicago, IL 60624-3904

Flood Brothers Disposal Company, Inc.  
Attn: Mr. Robert Flood  
17 W. 697 Butterfield Road, Suite E  
Oakbrook Terrace, IL 60181

**B. Compliance**

Respondent C & S shall maintain compliance with the prohibition against management of municipal solid waste without a permit as follows:

1. The Site shall not accept further recyclables until Respondent C & S has made any necessary repairs, installations and arrangements for recycling prior to restarting Site operation. Respondents shall provide notice to Complainant at least fourteen (14) days in advance of their intended restart date and shall allow inspection of the Site by Complainant to confirm that necessary changes have occurred to enable lawful unpermitted recycling to occur.

2. Respondent C & S shall be allowed to accept at the Site, in accordance with City of Chicago license, ordinance, and permit, the following recyclable source-separated materials: dry paper, dry cardboard, glass, plastics, wood and metals.

3. Immediately upon filing of this Agreement, Respondents shall not accept any "garbage" at the Site as that term is defined in Section 3.200 of the Act, 415 ILCS 5/3.200 (2002).

4. Respondent, C & S, shall diligently inspect all future incoming loads of materials at the Site to determine whether any garbage or garbage-contaminated materials have been accidentally included in any load.

5. Within 24 hours of starting operations, Respondent C & S shall have trained its employees in the recognition, proper handling and disposal of garbage and garbage-contaminated waste.

6. If any garbage is received at the Site, Respondent C & S shall, upon discovery, remove it from the recycling stream along with any recyclables which it has visibly contaminated.

7. Respondent C & S shall, upon discovery, place all garbage and garbage-contaminated waste in segregated containers, remove it from the Site within twenty-four (24) hours of receipt, and send it to a landfill permitted to accept such waste. Garbage and garbage-contaminated recyclables or waste so removed shall not be deemed "accepted" for purposes of this Consent Order.

8. Respondent C & S shall keep detailed records of any

garbage received at the Site including, if determinable, the generator of the garbage, the truck and driver that transported the garbage to C & S, the type and amount of garbage in pounds (lbs.), and the time, method and location of disposal of the garbage.

**C. Stipulated Penalties**

1. If Respondent C & S:

- a. Fails to complete any activity by the date specified in Section VII.B. of this Consent Order; or
- b. Accepts any material at its Site which does not comport with the definition of recycling center at Section 3.375 of the Act, 415 ILCS 5/3.375 (2002) then Respondent C & S shall provide notice to Complainant of each failure to comply with this Consent Order. In addition, Respondent C & S shall pay to Complainant, for payment into the Environmental Protection Trust Fund, stipulated penalties per violation for each day of violation in the amount of One Thousand Dollars (\$1,000.00) until such time that compliance is achieved.

2. Following Complainant's determination that Respondent C & S has failed to complete performance of any task or other portion of work or failed to provide a required submittal,

including any report or notification, Complainant may make a demand for stipulated penalties upon Respondent C & S for its noncompliance with this Consent Order. Failure by Complainant to make this demand shall not relieve Respondent C & S of the obligation to pay stipulated penalties.

3. All penalties owed to Complainant under this section of this Consent Order that have not been paid shall be payable within thirty (30) days of the date Respondent C & S knows or should have known of its noncompliance with any provision of this Consent Order.

4a. All stipulated penalties shall be paid by certified check or money order payable to the Illinois EPA for deposit in the Environmental Protection Trust Fund and delivered to:

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

4b. The name and number of the case and Respondent C & S's FEIN shall appear on the face of the check. A copy of the check(s) and the transmittal letter shall be sent to:

Joel Sternstein  
Assistant Attorney General  
Environmental Bureau North  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

5. The stipulated penalties shall be enforceable by 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 Consent Order.

**D. Interest on Penalties**

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any penalty or stipulated penalty amount owed by Respondents not paid within the time prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002).

2. Interest on unpaid penalty or stipulated penalty shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Illinois' EPA.

3. Where partial payment is made on any penalty or stipulated penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties or stipulated penalties then owing.

4. All interest on penalties or stipulated penalties owed

to Complainant shall be paid by certified check or money order payable to the Illinois EPA for deposit in the Environmental Protection Trust Fund at the above-indicated address. The name, case number, and remitting Respondent's FEIN shall appear on the face of the certified check or money order. A copy of the certified check or money order and the transmittal letter shall be sent to:

Joel Sternstein  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

**E. Cease and Desist**

Respondents shall cease and desist from future violations of the Act, 415 ILCS 5/1 et seq. (2002), and the Board's Rules and Regulations, 35 Ill. Adm. Code Subtitles A through H, 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 IV.B. of this Agreement.

**F. Right of Entry**

In addition to any other authority, the Illinois EPA, its employees and representatives, the Illinois Attorney General, and his/her agents and representatives, shall have the right of entry

or access to the Site at all reasonable times, for the purposes of conducting inspections. In conducting any inspection of the Site, the Illinois EPA, its employees and representatives, the Attorney General, and his/her agents and representatives, may take any photographs, samples and collect information as they deem necessary. Respondents shall never deny Complainant entry or delay Complainant's access to the Site at any time the Site is operating.

#### VIII.

##### COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Agreement in no way affects the responsibility of Respondents to comply with any Federal, State or local regulations, including but not limited to the Act, 415 ILCS 5/1 *et seq.* (2002), and the Board regulations, 35 Ill. Adm. Code Subtitles A through H.

#### IX.

##### RELEASE FROM LIABILITY

In consideration of Respondents' payment of the penalty specified herein and compliance with the terms of this Agreement, Complainant releases, waives and discharges Respondents from any further liability or penalties for the alleged violations of the Act and Board Regulations which are the subject matter of the Complaint. This release shall be effective upon receipt by Complainant of all monies owing pursuant to Section VII.A. of

this Agreement and work performed thereunder. Nothing in this Agreement shall be construed as a waiver by the Attorney General or the Illinois EPA of the right to redress future or heretofore undiscovered violations, if any, or to obtain penalties with respect thereto.

X.

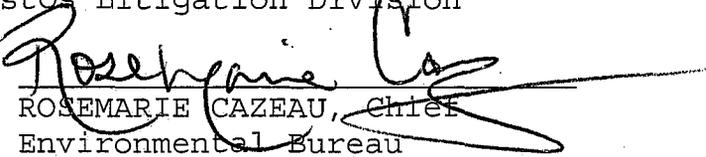
ENFORCEMENT OF SETTLEMENT

Upon the Board's acceptance and entry of this Agreement, Complainant, upon motion to the Board or Complaint to the appropriate Circuit Court, may reinstate these proceedings solely for purposes of enforcing the terms and conditions of this Agreement. This Agreement is a binding and enforceable Order of the Board and may be enforced as such through any and all available means.

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

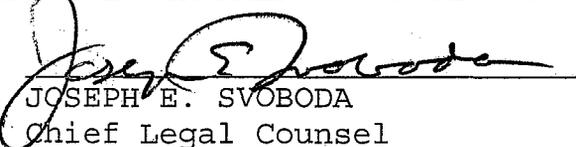
PEOPLE OF THE STATE OF ILLINOIS,  
LISA MADIGAN,  
Attorney General  
State of Illinois

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

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 6/27/03

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY:   
JOSEPH E. SVOBODA  
Chief Legal Counsel

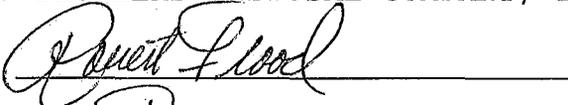
DATE: 6-23-03

C & S RECYCLING, INC.

BY:   
Name: Brian Flood  
Title: President

DATE: 7-15-03

FLOOD BROTHERS DISPOSAL COMPANY, INC.

BY:   
Name: ROBERT FLOOD  
Title: President

DATE: 7/21/03

CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 30<sup>th</sup> day of July, 2003, I caused to be served by First Class Mail the foregoing Stipulation and Proposal for Settlement, Request for Relief from the Hearing Requirement, and Notice of Filing to the parties named on the attached Service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



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JOEL J. STERNSTEIN