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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD OCT 08 2003

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
CHICAGO DIVERSIFIED PROJECTS, INC.,)
an Illinois Corporation,)
)
Respondent.)

STATE OF ILLINOIS
Pollution Control Board

No. PCB 03-13

NOTICE OF FILING


TO: See Attached Service List

PLEASE TAKE NOTICE that on October 8, 2003, we filed with the Illinois Pollution Control Board a Stipulation and Proposal for Settlement, a true and correct copy of which is attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY:


MITCHELL L. COHEN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-5282

SERVICE LIST

Norman Chimenti
Martin, Craig, Chester & Sonnenschein
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Illinois Pollution Control Board
JRTC, Suite 11-500
Chicago, IL 60601

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD CLERK'S OFFICE

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PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant,)
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 v.)
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 CHICAGO DIVERSIFIED PROJECTS, INC.,)
 an Illinois Corporation,)
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 Respondents.)

STATE OF ILLINOIS
Pollution Control Board

PCB 03-13
(Enforcement - Air)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, CHICAGO DIVERSIFIED PROJECTS, INC. ("CDP"), an Illinois Corporation, 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. 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 trial 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. Insolvency of the Respondent by filing a petition for bankruptcy shall not be deemed a proceeding to contest the validity of this Stipulation.

I.

JURISDICTION

The Board has jurisdiction over 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 Agreement and to legally bind them to it.

III.

STATEMENT OF FACTS

A. Parties

1. On July 31, 2002, a Complaint was filed on behalf of the People of the State of Illinois by James E. Ryan, Attorney General of the State of Illinois, on his 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, including December 20, 1999, Respondent, CDP, was and is an Illinois Corporation.

B. Business and Site Description

1. At all times relevant to this Complaint, Respondent CDP was and is a licensed and bonded asbestos and lead abatement contractor located at 6015 North Ridge, Chicago, Illinois.

2. In 1999, CDP was hired to remove and dispose of asbestos at a former office/apartment complex located at 3335-3341 North Halsted, Chicago, Illinois 60657 ("site").

3. CDP notified the Illinois EPA that demolition and renovation would start on December 20, 1999, and end on December 21, 1999, and that CDP would remove 250 linear feet of asbestos pipe insulation from the former office/apartment complex using wet method bag removal techniques.

4. At least some of the pipe insulation was dry, friable, regulated asbestos containing material (RACM").

5. On December 20, 1999, an Illinois EPA field inspector measured the total project at 286 linear feet.

6. The Illinois EPA field inspector also states that he observed CDP workers removing pipe insulation without the use of water. He also states that he observed 37 bags of previously removed dry friable pipe insulation, and that all of the pipe insulation in the bags was dry.

7. The Illinois EPA field inspector collected three samples of the alleged dry pipe insulation. Analysis of the samples showed chrysotile asbestos ranging in concentrations of 30 to 50 per cent.

C. Allegations of Non-Compliance

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

Count I: Improper Removal of Regulated Asbestos Containing Material in violation of Section 9.1(d) of the Act and 40 CFR 61.145(c)(3) and (6).

D. Admission of Violations

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

The Respondent represents that it has entered into this Stipulation and Proposal for Settlement for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and Proposal for Settlement and complying with its terms, the Respondent does not affirmatively admit the

allegations of violation within the Complaint, and this Stipulation shall not be interpreted as including any admission of liability.

IV.

IMPACT ON THE PUBLIC RESULTING FROM 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:

1. The Parties state that the impact to the public resulting from Respondent's alleged non-compliance was that harm to human health and the environment was threatened by

Respondent's alleged improper removal of asbestos containing material.

2. The Parties agree that Respondent's business is of social and economic benefit.

3. The parties agree that Respondents work performed at the site was suitably located for asbestos removal when done in accordance with the Act and relevant regulations.

4. The parties agree that complying with the requirements of the Act and relevant regulations is both technically practicable and economically reasonable.

5. The parties state that they are not aware of any alleged non-compliance on Respondent's part since this incident on December 20, 1999.

V.

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:

1. The Parties state that the duration of the alleged violation for the improper removal of asbestos containing material was one day: December 20, 1999.

2. The parties agree that they are not aware of any non-compliance of Respondent's part since the violation alleged in the Complaint.

3. The Parties agree Respondents received economic benefit by allegedly not complying with the statutes.

4. The Parties agree that the appropriate penalty which will serve to deter future violations of the Act and enhance voluntary compliance is \$10,000.00.

5. The Parties agree that Respondents have no prior adjudications for violations of the Act.

VI.

APPLICABILITY

A. This Stipulation Agreement shall apply to and be binding

upon the Complainant and the Respondent, and any officer, director, agent, or employee 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 Agreement the failure of any of its officers, directors, agents, or employees to take such actions as shall be required to comply with the provisions of this Stipulation.

B. No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation. In the event of any conveyance of title, easement or other interest in the facility, the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondent and a contemplated future owner or operator of the facility may jointly request, and the Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondent.

VII.

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.

VIII.

TERMS OF SETTLEMENT

A. Penalty

1. a. The Respondent shall pay a civil penalty of Ten Thousand Dollars (\$10,000.00). Within thirty (30) days after the date on which the Board adopts a final order approving this Stipulation, Respondent shall pay \$5,000.00. Respondent shall pay an additional \$2,500.00 within 60 days and the final \$2,500.00 within 90 days of the date on which the Board adopts a final order approving this Stipulation. Payments shall be made as follows:

b. Payments shall be made by certified check or money order, payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF") and 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, IL 62794-9276

c. The name, case number, and the Respondent's Federal Employer Identification Number ("FEIN"), _____, shall appear on the face of the certified checks or money orders. A copy of the certified checks or money orders and the transmittal letter shall be sent to:

Mitchell L. Cohen
Assistant Attorney General
Environmental Bureau
188 West Randolph, Suite 2001
Chicago, Illinois 60601

3. For purposes of payment and collection, the Respondent's attorney may be reached at the following address:

Norman V. Chimenti
Martin, Craig, Chester & Sonnenschein
2215 York Road, Suite 550
Oak Brook, Illinois 60523

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

Chicago Diversified Projects, Inc.
c/o Don Gors, President
6015 North Ridge
Chicago, Illinois 60660

5. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

B. Interest on Penalties

1. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42 (g) (2002), interest shall accrue on any penalty amount owed by the Respondent 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 penalties 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 amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. All interest on penalties owed the Complainant shall be paid by certified check or money order payable to the Illinois EPA for deposit in the EPTF at the above-indicated address. The name, case number, and the 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:

Mitchell L. Cohen
Assistant Attorney General
Environmental Bureau
188 West Randolph St., Suite 2001
Chicago, Illinois 60601

C. Future Use

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

D. Cease and Desist

The Respondent shall cease and desist from all future violations of the Act and Board Regulations, including, but not

limited to those violations alleged and outlined in Section III.C. of this Stipulation.

E. Release from Liability

In consideration of the Respondents' payment of a \$10,000.00 penalty, the Complainant releases, waives and discharges the Respondent from further liability or penalties for any alleged 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 July 31, 2002. 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 resource 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 Agreement.

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 (2002), or entity other than the Respondent.

F. Retention of Jurisdiction

The Board shall retain jurisdiction of this matter for the purpose of interpreting and enforcing the terms and conditions of the Stipulation.

G. Enforcement of Stipulation

1. Upon the entry of this Stipulation, any party hereto, upon motion, may reinstate these proceedings solely for the purpose of enforcing the terms and conditions of this Stipulation. This Stipulation is a binding and enforceable order of the Board and may be enforced by the Illinois Circuit Court through any and all available means.

2. Respondent agrees that notice of any subsequent proceeding to enforce this Stipulation may be made by mail and waives any requirement of service of process.

WHEREFORE, the parties, by their representatives, enter into this Stipulation and submit it to the Board that it may be approved and entered.

AGREED:

FOR THE COMPLAINANT:

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

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

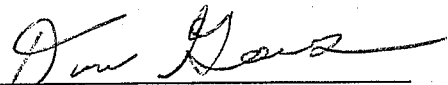
BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
JOSEPH E. SVOBODA
Chief Legal Counsel

DATE: _____

DATE: _____

FOR THE RESPONDENT:
CHICAGO DIVERSIFIED PROJECTS, INC.

BY: 
Don Gors
Its President

DATE: 9-22-03

WHEREFORE, the parties, by their representatives, enter into this Stipulation and submit it to the Board that it may be approved and entered.

AGREED:

FOR THE COMPLAINANT:

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

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

BY: Rose Marie Cazeau
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: Joseph E. Svoboda
JOSEPH E. SVOBODA
Chief Legal Counsel

DATE: 7/14/03

DATE: 7/7/03

FOR THE RESPONDENT:
CHICAGO DIVERSIFIED PROJECTS, INC.

BY: _____
Don Gers
Its President

DATE: _____

CERTIFICATE OF SERVICE

I, MITCHELL COHEN, an Assistant Attorney General, certify that on the 8th day of October, 2003, I caused to be served by First Class Mail the foregoing Stipulation and Proposal for Settlement 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.


MITCHELL L. COHEN