

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD FEB 17 2004

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

STATE OF ILLINOIS
Pollution Control Board

Complainant,)

v.)

No. PCB 04-4
(Enforcement - Air)

BEST-WAY CONSTRUCTION &)
REMEDICATION, INC.,)
an Illinois corporation; and)
CLINTON 6 L.L.C., an Illinois)
limited liability company,)

Respondents.)

NOTICE OF FILING

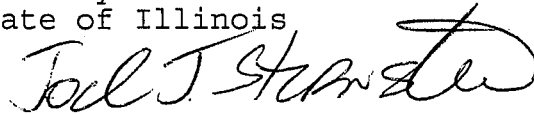
TO: See Attached Service List

PLEASE TAKE NOTICE that today we have filed with the
Pollution Control Board the following Stipulation and Proposal
for Settlement and Request for Relief from the Hearing
Requirement on behalf of the People of the State of Illinois,
copies 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: February 17, 2004

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. Chris Pressnall, Esq.
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Mr. James Brusslan, Esq.
Levenfield Pearlstein
2 North LaSalle Suite 1300
Chicago, IL 60602

Mr. Matthew Connelly
Mr. Cory Anderson
Connelly, Roberts & McGivney
1 North Franklin, Suite 1200
Chicago, IL 60606

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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ex rel. LISA MADIGAN, Attorney)
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STATE OF ILLINOIS
Pollution Control Board

No. PCB 04-4
(Enforcement - Air)

MOTION FOR RELIEF FROM HEARING REQUIREMENT

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) (2004), 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) (2004). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of the Board's air pollution regulations in addition to Sections 9(a), 9(b), 9.8(b), and 39.5(b)(6) of the Act, 415 ILCS 5/9(a), 9(b), 9.8(b), and 39.5(b)(6) (2004).
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) (2004).

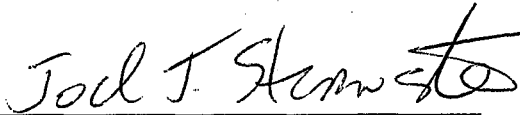
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2004).

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: February 17, 2004

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)
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No. PCB 04-4
(Enforcement - Air)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois and Respondents, BEST-WAY CONSTRUCTION & REMEDIATION, INC., an Illinois corporation ("Best-Way") and CLINTON 6 L.L.C., an Illinois limited liability company ("Clinton 6"), do hereby submit this Stipulation and Proposal for Settlement ("Stipulation") to the Illinois Pollution Control Board ("Board") for approval. The parties agree that Complainant's statement of facts contained herein is agreed to only for the purposes of settlement. This Stipulation 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 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. The subject Complaint was brought by the Attorney General pursuant to the terms and provisions of Section 31 of the Act, 415 ILCS 5/31 (2002).

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 Best-Way was an Illinois corporation conducting asbestos abatement activities.

4. At all times relevant to the Complaint, Respondent Best-Way was an Illinois corporation in good standing.

5. At all times relevant to the Complaint, Respondent Clinton 6 was an Illinois limited liability company in good standing and the beneficial owner of the property located at 612 South Clinton Street, Chicago, Cook County, Illinois ("Facility").

B. SOURCE DESCRIPTIONS

1. Sometime on or prior to January 5, 2000, or on other dates better known to Respondents, Complainant alleges that workers employed by Respondent Best-Way were engaged in the removal of asbestos at the Facility.

2. On or about January 5, 2000, Complainant alleges that there were approximately 4,353 square feet of suspect floor tiles at the Facility which had been removed with spud bars. The floor tiles were dry and had been crumbled, ground, and/or pulverized rendering them friable.

3. Complainant alleges that subsequent testing of those floor tiles indicated that they contained anywhere from 5% to 20% chrysolite asbestos.

4. On or about January 28, 2000, Complainant alleges that there was a trail of floor tiles and tile crumbs from the ground of the storage waste dumpster to the loading dock at the Facility.

5. By causing or allowing dry friable asbestos floor tiles to be deposited, uncontrolled, on floors at the Facility, Complainant alleges that Respondents caused, threatened and allowed asbestos fibers to be released into the environment.

C. VIOLATIONS

This Stipulation is intended to resolve the allegations in the Complaint filed in this matter. The Complaint alleges violations of the Act and of the Board's Air Pollution Regulations outlined as follows:

COUNT I Air pollution in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and Section 201.141 of the Board Regulations, 35 Ill. Adm Code 201.141;

COUNT II Violation of asbestos emission control procedures in violation of Section 9.1(d) (1) of the Act, 415 ILCS 5/9.1(d) (1) (2002) and Sections 61.145 (c) (3) and (c) (6) of the asbestos National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR 61.145 (c) (3) and (c) (6);

COUNT III Failure to follow the asbestos NESHAP renovation notification requirements in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (1) (2002), and Section 61.145(b) of the NESHAP, 40 CFR 61.145(b); and

COUNT IV Improper disposal of asbestos in violation of Section 9.1(d) (1) of the Act, 415 ILCS 5/9.1(d) (1) (2002), and Section 61.150(b) of the asbestos NESHAP, 40 CFR 61.150(b).

IV.

APPLICABILITY

This Stipulation shall apply to and be binding upon Complainant and Respondents, and any agent, director, officer,

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 settlement the failure of their agents, directors, officers, servants or employees to take such action as shall be required to comply with the provisions of this settlement.

V.

ADMISSION/DENIAL OF VIOLATIONS

Respondents neither admit nor deny the allegations in the complaint.

VI.

FUTURE PLANS OF COMPLIANCE

Respondents shall comply with the approved procedures to control asbestos emissions during asbestos removal. Respondents shall also comply with the Act, the Board's regulations, and the asbestos NESHAP.

VII.

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 as follows:

1. Complainant contends that the impact to the public as a result of the allegations against Respondents in the Complaint was that Respondents allowed asbestos fibers to be released into the environment both inside and outside of the Facility.

2. The parties agree that Respondents' operation is of social and economic value.

3. The parties agree that the Facility is suitable to the area where it is located.

4. The parties agree that compliance with the requirements of the Act, Board regulations, and the asbestos NESHAP is both technically practicable and economically reasonable.

5. The parties agree that Respondents subsequently complied with the Act, Board regulations, and the asbestos NESHAP.

VIII.

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 subdivisions (a), (b) (1), (b) (2), (b) (3), or (b) (5) of this Section, the Board is authorized to consider any matters or 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. Complainant alleges that the gravity of the alleged violations is significant in that the Act, the applicable Board Regulations, and the asbestos NESHAP were not complied with which resulted in air pollution. The parties agree that the duration is equally significant, as the alleged violations began sometime on or prior to January 5, 2000 and continued throughout January

of 2000.

2. Complainant alleges that Respondents did not initially exercise due diligence in complying with the Act, the Board's regulations, and the asbestos NESHP. However, Respondents subsequently cleaned up the asbestos contamination at the Facility.

3. Complainant alleges that Respondents derived economic benefits by not using the proper and approved method for asbestos removal.

4. The parties agree that an eleven thousand dollar (\$11,000.00) civil penalty is adequate to deter Respondents from future violations.

5. Complainant is unaware of any previously adjudicated violations by Respondent Clinton 6.

6. Complainant and Respondent Best-Way entered into a Consent Order in the Circuit Court of Cook County on May 28, 2003 regarding an asbestos remediation project at 1500 Skokie Boulevard in Northbrook, Illinois.

IX.

TERMS OF SETTLEMENT

1. Respondents shall jointly and severally pay a civil penalty of eleven-thousand dollars (\$11,000.00) within thirty (30) days of the date of entry of this Stipulation and Proposal for Settlement. Payment of eleven-thousand dollars (\$11,000.00)

shall be made by certified check or money order payable to the "Illinois Environmental Protection Agency" and designated to the Environmental Protection Trust Fund. The certified check or money order shall include Respondents' federal employer identification numbers and be sent by first class mail to:

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

A copy of the check shall be sent to:

Joel Sternstein
Assistant Attorney General
Environmental Bureau
188 West Randolph Street 20th Floor
Chicago, Illinois 60601

On the checks and/or money orders, Respondents shall include the case name and case number.

2. For the purposes of collection, inquiries can be addressed to Respondent Best-Way's attorney at:

Matthew Connelly
Connelly Roberts & McGivney LLC
One N. Franklin St. Suite 1200
Chicago, IL 60606

Inquiries can also be addressed to Respondent Clinton 6's attorney at:

James D. Brusslan
Levenfeld Pearlstein
2 N. LaSalle Suite #1300
Chicago, IL 60602

3. Pursuant to Section 42 (g) of the Act, 415 ILCS 5/42

(g) (2002), interest shall accrue on any amount 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).

a. Interest on unpaid amounts shall begin to accrue from the date the penalty payment is due and continue to accrue to the date payment is received.

b. Where partial payment is made on a payment amount that is due, such partial payment shall be first applied to any interest on unpaid amounts then owing.

c. All interest on amounts owed Complainant shall be paid by certified checks payable to the "Illinois Environmental Protection Agency" for deposit in the Environmental Protection Trust Fund and delivered in the same manner as described in Section IX.1 herein.

d. In the event that Respondents fail to make all or part of the payment set forth in Section IX.1, Respondents shall be in default and the unpaid balance owed, plus any accrued interest, shall become due and owing Complainant immediately.

4. Respondents shall in the future operate in compliance with the Act, Board Regulations, and the asbestos NESHAP.

5. Respondents shall cease and desist from further violations of the Act, Board regulations, and the asbestos NESHAP, including, but not limited to, those Sections of the Act,

Board regulations, and the asbestos NESHP that were the subject matter of the Complaint as outlined in Section III.C of this Stipulation.

X.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects Respondents' responsibility to comply with any federal, state or local laws and 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.

XI.

FUTURE USE

Notwithstanding any other language in this Stipulation and Proposal for Settlement to the contrary, this Stipulation and Proposal for Settlement may be used against Respondents in any subsequent enforcement action or permit proceeding as evidence of a past adjudication of violation of the Act, the Board Regulations, and the asbestos NESHP.

XII.

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 Facility, which is the subject of this Stipulation

and Proposal for Settlement, at all reasonable times for the purposes of carrying out environmental 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.

XIII.

RELEASE FROM LIABILITY

In consideration of Respondents' payment of the \$11,000.00 penalty, Plaintiff releases, waives and discharges Respondents from any further liability or penalties for violations of the Act, Board Regulations, and asbestos NESHP 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 Plaintiff's Complaint filed on July 7, 2003. Plaintiff reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Respondents 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 Respondents' 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 3.315 of the Act, 415 ILCS 5/3.315 (2002), or entity other than Respondents.

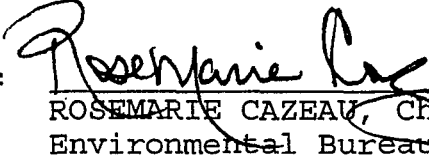
WHEREFORE, Complainant and Respondents request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

AGREED:

FOR COMPLAINANT:

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


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


By:  Date: 12/1/03
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By:  Date: 11-19-03
JOESPH E. SVOBODA
Chief Legal Counsel

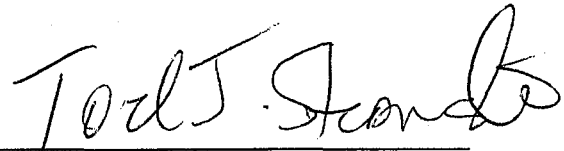
FOR RESPONDENTS:

By:  Date: _____
JOHN CISERELLA
President
Best-Way Construction & Remediation, Inc.

By:  Date: 1-29-04
SCOTT GOODMAN
President *Mem. B102*
Clinton 6 L.L.C.

CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 17th day of February 2004, 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.



JOEL J. STERNSTEIN