

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
DENNIS ELAHI d/b/a PARAMOUNT )  
MANAGEMENT AND CONSTRUCTION )  
COMPANY, )  
)  
Respondent. )

PCB 05- 15  
(Enforcement - Air)

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OCT 22 2004  
STATE OF ILLINOIS  
Pollution Control Board


NOTICE OF FILING

TO: Michelle D. Jordan  
Attorney at Law  
7750 South Hoyne  
Chicago, IL 60620

PLEASE TAKE NOTICE that on the 22<sup>nd</sup> day of October, 2004, I filed with the Clerk of the Illinois Pollution Control Board a Complaint, Stipulation and Proposal for Settlement, and Motion to Request Relief From Hearing Requirement, copies of which are attached hereto and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General of the  
State of Illinois

By:   
REBECCA A. BURLINGHAM  
Senior Assistant Attorney General  
Environmental Bureau  
100 W. Randolph St., 11th Fl.  
Chicago, Illinois 60601  
(312) 814-3776

Date: October 22, 2004

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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**MOTION TO REQUEST RELIEF  
FROM HEARING REQUIREMENT**

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

1. On October 22, 2004, a Complaint was filed with the Pollution Control Board ("Board") in this matter. On October 22, 2004, a Stipulation and Proposal for Settlement was filed with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement. Section 31(c)(2) provides:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1).


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

3. No hearing is currently scheduled in the instant case.
4. The Complainant requests the relief conferred by Section 31(c)(2) of the Act.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2), effective August 1, 1996.

Respectfully submitted,

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

By:   
REBECCA A. BURLINGHAM  
Senior Assistant Attorney General

Environmental Bureau  
188 W. Randolph St., 20th Fl.  
Chicago, Illinois 60601  
(312) 814-3776



was the owner and/or operator of an eight-unit apartment building located at 5636 South Prairie Avenue, Chicago, Illinois ("facility").

4. On July 24, 2003, the Illinois Environmental Protection Agency ("Illinois EPA") received a complaint regarding renovation activities at the facility.

5. On July 24, 2003, an Illinois EPA inspector inspected the facility while accompanied by Elahi.

6. Elahi and the Illinois EPA inspector went to the facility basement, where the inspector observed what appeared to be thermal insulation on the floor throughout the basement and also on pipes that had been dismantled and placed on the floor of the basement.

7. The Illinois EPA inspector measured approximately 180 linear feet of thermal insulation on the disturbed pipes and more than 1 cubic meter that had been stripped from facility components and placed on the floor.

8. Upon information and belief, Elahi had instructed his workers to renovate two apartments that were located in the basement of the facility, resulting in the removal and handling of the material observed in the facility basement.

9. During the course of this renovation work, Elahi's workers on the project were exposed to the material the Illinois EPA inspector observed on the floor and on pipes in the basement of the facility.

10. The Illinois EPA inspector collected three samples of the thermal insulation present in the facility basement.

11. After securing the samples, the Illinois EPA inspector tested them and confirmed that all three samples were dry and friable.

12. Subsequent testing of the three samples by an analytical testing laboratory confirmed that each sample contained between 20% and 25% chrysotile asbestos.

13. After the Illinois EPA inspector's visit on July 24, 2003, Elahi stopped the renovation work at the facility until he retained a licensed contractor to conduct an asbestos assessment of the facility basement and common areas and properly remove the asbestos-containing material as necessary to complete the facility renovation project.

14. Section 9(a) of the Act, 415 ILCS 5/9(a) (2004), provides as follows:

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.

15. Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides in pertinent part as follows:

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 . . .

16. Section 3.115 of the Act, 415 ILCS 5/3.115 (2004), defines air pollution as:

"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.

17. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), defines contaminant as:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

18. Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), defines person as:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

19. Elahi is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2004).

20. Asbestos is a "contaminant" as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2004).

21. Elahi caused, threatened or allowed the discharge or

allowed air pollution in Illinois, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2004) and 35 Ill. Adm. Code 201.141.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, DENNIS ELAHI d/b/a PARAMOUNT MANAGEMENT AND CONSTRUCTION COMPANY, on this Count I:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent has caused or allowed violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2004), and 35 Ill. Adm. Code 201.141;
3. Ordering the Respondent to cease and desist from any further violations of Section 9(a) of the Act and 35 Ill. Adm. Code 201.141;
4. Assessing a civil penalty of \$50,000.00 against Respondent for each violation of the Act and pertinent Board regulations, with an additional penalty of \$10,000.00 per day for each day that the violations continued;
5. Taxing all costs in this action, including expert witness, consultant and attorneys fees, against Respondent; and
6. Granting such other relief as the Board deems appropriate and just.



COUNT II

INSPECTION AND NOTIFICATION VIOLATIONS

1 - 15. Complainant realleges and incorporates herein by reference paragraphs 1 through 13 and 18 through 19 of Count I as paragraphs 1 through 15 of this Count II.

16. Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1)(2004), provides as follows:

No person shall:

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

17. Section 112(b)(1) of the Clean Air Act ("CAA"), 42 USC 7412(b)(1)(2002), provides in pertinent part as follows:

(b) List of Pollutants. -

- (1) Initial list. - The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

CAS number	Chemical name
* * *	
1332214	Asbestos
* * *	

18. Section 112(c) of the CAA, 42 USC 7412(c)(2002), provides in pertinent part as follows:

(c) List of Source Categories. -

- (1) In general. - Not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish, and shall from time to time, but no less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b).

- (2) Requirement for emissions standards.- For the categories and subcategories the Administrator lists, the Administrator shall establish emissions standards under subsection (d), according to the schedule in this subsection and subsection (e).
- (3) Area sources.- The Administrator shall list under this subsection each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section. . .
- (4) Previously regulated categories.- The Administrator may, in the Administrator's discretion, list any category or subcategory of sources previously regulated under this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

\* \* \*

19. Section 112(d)(1) of the CAA, 42 USC 7412(d)(1)(2002), provides in pertinent part as follows:

- (d) Emission standards.-
  - (1) In general.- The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) in accordance with the schedules provided in subsections (c) and (e). . . .

20. Section 112(h)(1) of the CAA, 42 USC 7412(h)(1)(2002), provides in pertinent part as follows:

- (h) Work practice standards and other requirements. -
  - (1) In general. - For purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate an design, equipment, work practice, or operational standard, or combination thereof, which in the

Administrator's judgment is consistent with the provisions of subsection (d) or (f) of this section...

21. On June 19, 1978, the Administrator determined that work practice standards rather than emission standards are appropriate in the regulation of asbestos.

22. Section 112(f)(4) of the CAA, 42 USC 7412(f)(4)(2002), provides in pertinent part as follows:

(4) Prohibition.- No air pollutant to which a standard under this subsection applies may be emitted from any stationary source in violation of such standard. . . .

23. Pursuant to section 112 of the CAA, the United States Environmental Protection Agency has promulgated National Emission Standards for Hazardous Air Pollutants ("NESHAPs") at 40 CFR Part 61 (July 1, 2003).

24. USEPA's NESHAP regulation applicable to the production, use, removal, and disposal of asbestos is promulgated at 40 CFR Part 61, Subpart M - National Emission Standards for Asbestos. 40 CFR 61, Subpart M (July 1, 2003).

25. USEPA's NESHAP regulation applicable to all stationary sources for which a standard is prescribed under 40 CFR Part 61, including sources subject to 40 CFR 61 Subpart M, is promulgated at 40 CFR 61, Subpart A - General Provisions. 40 CFR 61, Subpart A (July 1, 2003).

26. Section 61.02 of the NESHAP general provisions, 40 CFR 61.02 (July 1, 2003), provides in pertinent part as follows:

The terms used in this part are defined in the [Clean Air] Act or in this section as follows:

\* \* \*

Administrator means the Administrator of the [U.S.] Environmental Protection Agency or his authorized representative.

\* \* \*

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant which has been designated as hazardous by the Administrator.

\* \* \*

27. Section 61.04 of the NESHAP general provisions, 40 CFR 61.04 (July 1, 2003), provides in pertinent part as follows:

(a) All requests, reports, applications, submittals, and other communications to the Administrator pursuant to this part shall be submitted in duplicate to the appropriate Regional Office of the U.S. Environmental Protection Agency to the attention of the Director of the Division indicated in the following list of EPA Regional Offices. . . .

\* \* \*

(b) . . . If the authority to implement and enforce a standard under this part has been delegated to a State, all information required to be submitted to [US]EPA under paragraph (a) of this section shall also be submitted to the appropriate State agency.

28. USEPA has granted the Illinois EPA delegated authority to implement and enforce the 40 CFR Part 61 NESHAPs for stationary sources located within Illinois. 40 CFR 61.04(b)(O) (July 1, 2003).

29. Section 61.141 of the asbestos NESHAP, 40 CFR 61.141 (July 1, 2003), provides in pertinent part as follows:

All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in subpart A of this part.

\* \* \*

*Asbestos* means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

\* \* \*

*Category I nonfriable asbestos-containing material (ACM)* means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy.

*Category II nonfriable asbestos-containing material (ACM)* means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

\* \* \*

*Demolition* means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

\* \* \*

*Facility* means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

*Facility component* means any part of a facility including equipment.

*Friable asbestos material* means any material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR 763 section 1, Polarized Light Microscopy, that, when dry

can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

\* \* \*

*Owner or operator of a demolition or renovation activity* means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

\* \* \*

*Regulated asbestos-containing material (RACM)* means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

*Remove* means to take out RACM or facility components that contain or are covered with RACM from any facility.

*Renovation* means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

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30. ~~The apartment building located at 5636 South Prairie Avenue, Chicago, Illinois 60637 is a "facility" as that term is defined in 40 CFR 61.141 and a "stationary source" as that term is defined in 40 CFR 61.02.~~

31. The removal of pipes and the cutting and stripping of asbestos-containing material from facility components at the facility constituted "renovation" as that term is defined in 40 CFR 61.141.

32. Elahi, as the owner and/or operator of the facility being renovated, and as the person operating, controlling or supervising the renovation operation, was the "owner or operator of a renovation activity," as that term is defined in 40 CFR 61.141.

33. The asbestos-containing material observed in the facility basement by the Illinois EPA inspector on July 24, 2003 was "regulated asbestos-containing material" ("RACM") as that term is defined in 40 CFR 61.141, because (a) it contained greater than 1% asbestos and (b) it was friable and/or was Category II nonfriable ACM that had a high probability of becoming or had become crumbled, pulverized, or reduced to powder as a result of forces applied to the material in the course of Respondent's renovation project.

34. Section 61.145(a) of the asbestos NESHAP, 40 CFR 61.145(a) (July 1, 2003), provides in pertinent part as follows:

(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 individual 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.

\* \* \*

35. Section 61.145(b) of the asbestos NESHAP, 40 CFR 61.145(b) (July 1, 2003), provides in pertinent part as follows:

(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.

\* \* \*

(3) Postmark or deliver the notice as follows:

- (i) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (a) (1) and (4) (except (a) (4) (iii) and (a) (4) (iv)) of this section. . . .

36. Elahi, as owner or operator of a renovation activity, failed to conduct a thorough inspection of the facility for the presence of asbestos and the quantity of asbestos present prior to commencing renovation activities, in violation of Section 112(f)(4) of the CAA, 42 USC 7412(f)(4)(2002), Section 61.145(a) of the asbestos NESHAP, 40 CFR 61.145(a) (July 1, 2003), and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004).



37. Elahi, as owner or operator of a renovation activity, failed to provide the Illinois EPA with written notice of its intention to renovate a facility containing more than 1 cubic meter of asbestos at least 10 working days before asbestos stripping or removal work began, in violation of Section 112(f)(4) of the CAA, 42 USC 7412(f)(4) (2002), Section 61.145(b) of the asbestos NESHAP, 40 CFR 61.145(b) (July 1, 2003), Section 61.04(b) of the NESHAP general provisions, 40 CFR 61.04(b) (July 1, 2003), and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, DENNIS ELAHI d/b/a PARAMOUNT MANAGEMENT AND CONSTRUCTION COMPANY, on this Count II:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent caused or allowed violations of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004), Section 112(f)(4) of the CAA, 42 USC 7412(f)(4) (2002), and 40 CFR 61.04(b) and 61.145(a) and (b) (July 1, 2003);
- ~~3. Ordering the Respondent to cease and desist from any further violations of Section 9.1(d) of the Act, Section 112(f)(4) of the CAA, and 40 CFR 61.04(b) and 61.145(a) and (b);~~
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each and every violation of the Act and pertinent regulations, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of violation;

5. Ordering Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as this Board deems appropriate and just.

COUNT III

FAILURE TO FOLLOW PROPER EMISSION CONTROL PROCEDURES

1 - 34. Complainant realleges and incorporates herein by reference paragraphs 1 through 13 and 18 through 19 of Count I and paragraphs 16 through 34 of Count II as paragraphs 1 through 34 of this Count II.

35. Section 61.145(c) of the asbestos NESHAP, 40 CFR 61.145(c) (July 1, 2003), provides in pertinent part as follows:

(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.

\* \* \*

(2) When a facility component that contains, is covered with, or is coated with RACM is being taken out of the facility as a unit or in sections:

- (i) Adequately wet all RACM exposed during cutting or disjoining operations; and
- (ii) Carefully lower each unit or section to the floor and to ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the RACM.

- (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 §61.150; and
  - (ii) Carefully lower each unit or section to the floor and to ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the RACM.

\* \* \*

- (8) Effective 1 year after promulgation of this regulation, no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one onsite representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present.

\* \* \*

36. Elahi, as owner or operator of a renovation activity, failed to remove all RACM from a facility being renovated before beginning an activity that would break up, dislodge, or similarly disturb the material, in violation of Section 112(f)(4) of the CAA, 42 USC 7412(f)(4) (2002), Section 61.145(c)(1) of the asbestos NESHAP, 40 CFR 61.145(c)(1) (July 1, 2003), and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004).

37. Elahi, as owner or operator of a renovation activity, failed to adequately wet RACM exposed during cutting or disjoining operations

during removal of facility components which were being taken out of the facility in sections, in violation of Section 112(f) (4) of the CAA, 42 USC 7412(f) (4) (2002), Section 61.145(c) (2) of the asbestos NESHAP (July 1, 2003), 40 CFR 61.145(c) (2), and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004).

38. Elahi, as owner or operator of a renovation activity, failed to adequately wet all RACM and ensure that it remained wet until collected and contained or treated in preparation for disposal in accordance with Section 61.150 of the asbestos NESHAP, in violation of Section 112(f) (4) of the CAA, 42 USC 7412(f) (4) (2002), Section 61.145(c) (6) of the asbestos NESHAP, 40 CFR 61.145(c) (6) (July 1, 2003), and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004).

39. Elahi, as owner or operator of a renovation activity, failed to ensure that at least one on-site representative trained in the provisions of the asbestos NESHAP and the means of complying with its requirements was present at the facility while RACM was being stripped, removed, or otherwise handled or disturbed at the facility, in violation of Section 112(f) (4) of the CAA, 42 USC 7412(f) (4) (2002), Section 61.145(c) (8) of the asbestos NESHAP, 40 CFR 61.145(c) (8) (July 1, 2003), and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, DENNIS ELAHI d/b/a PARAMOUNT MANAGEMENT AND CONSTRUCTION COMPANY, on this Count III:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent caused or allowed violations of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004), Section 112(f)(4) of the CAA, 42 USC 7412 (2002), and 40 CFR 61.145(c)(1), (2), (6), and (8) (July 1, 2003);
3. Ordering the Respondent to cease and desist from any further violations of Section 9.1(d) of the Act, Section 112(f)(4) of the CAA, and 40 CFR 61.145(c)(1), (2), (6), and (8);
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each and every violation of the Act and pertinent regulations, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of violation;
5. Ordering Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as this Board deems appropriate and just.

#### COUNT IV

##### IMPROPER STORAGE AND DISPOSAL OF ASBESTOS-CONTAINING WASTE MATERIAL

1 - 34. Complainant realleges and incorporates herein by reference paragraphs 1 through 13 and 18 through 19 of Count I and paragraphs 16 through 34 of Count II as paragraphs 1 through 34 of this Count II.

35. Section 61.150 of the asbestos NESHAP, 40 CFR 61.150 (July 1, 2003), provides in pertinent part as follows:

Each owner or operator of any source covered under the provisions of §§61.144, 61.145, 61.146, 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 §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 so as 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 §61.154, or
- (2) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of §61.155.

\* \* \*

36. Elahi, as owner or operator of a renovation activity, failed to properly handle and store the asbestos-containing waste material observed by the Illinois EPA inspector on July 24, 2003 by adequately wetting it, sealing it in leak-tight containers or a leak-tight wrapping while wet, providing legible and readily visible warning labels for the containers or wrapped materials in accordance with OSHA regulations, and labeling the containers or wrapped materials with the name of the waste generator and the location where the asbestos-containing waste material was generated, in violation of Section 112(f)(4) of the CAA, 42 USC 7412(f)(4)(2002), Section 61.150(a)(1) of the asbestos NESHAP, 40 CFR 61.150(a)(1)(July 1, 2003), and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d)(2004).

37. Elahi, as owner or operator of a renovation activity, failed to dispose of the asbestos-containing waste as soon as practical at a waste disposal site operated in accordance with Section 61.154 or approved by USEPA in accordance with Section 61.155 of the asbestos NESHAP, in violation of Section 112(f)(4) of the CAA, 42 USC 7412(f)(4)(2002), Section 61.150(b) of the asbestos NESHAP, 40 CFR

61.150(b) (July 1, 2003), and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, DENNIS ELAHI d/b/a PARAMOUNT MANAGEMENT AND CONSTRUCTION COMPANY, on this Count IV:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent caused or allowed violations of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004), Section 112(f) (4) of the CAA, 42 USC 7412 (2002), and 40 CFR 61.150(a) (1) and (b) (July 1, 2003);
3. Ordering the Respondent to cease and desist from any further violations of Section 9.1(d) of the Act, Section 112(f) (4) of the CAA, and 40 CFR 61.150(a) (1) and (b);
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each and every violation of the Act and pertinent regulations, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of violation;
5. Ordering Respondent to pay all costs, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and




6. Granting such other relief as this Board deems appropriate and just.

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:

  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel:

REBECCA A. BURLINGHAM  
Senior Assistant Attorney General  
Environmental Bureau  
188 West Randolph Street, 20th Floor  
Chicago, IL 60601  
(312) 814-3776



Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their 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. (2004).

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. Concurrently with this Stipulation, 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 (2004), against Elahi.

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

(2004).

3. At all times relevant to the Complaint, Elahi was and is an individual doing business as Paramount Management and Construction Company.

**B. Facility Description**

At all times relevant to the Complaint, Elahi owned and/or operated an eight-unit apartment building located at 5636 South Prairie Avenue, Chicago, Cook County, Illinois, 60637 ("facility").

**C. Allegations of Non-Compliance**

1. Complainant contends that Elahi has violated the following provisions of the Act and Board regulations:

Count I: Air Pollution, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2004), and 35 Ill. Adm. Code 201.141.

Count II: Asbestos Inspection and Notification Violations, in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004), and 40 CFR 61.04(b) and 61.145(a) and (b) (July 1, 2003).

Count III: Asbestos Emission Control Violations, in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004), and 40 CFR 61.145(c) (1), (2), (6), and (8) (July 1, 2003).

Count IV: Asbestos-Containing Waste Storage and Disposal Violations, Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004), and 40 CFR 61.150(a) (1) and (b) (July 1, 2003).

**D. Admission of Violations**

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

E. Compliance Activities to Date

After the Illinois EPA inspector's visit on July 24, 2003, Elahi stopped the renovation work at the facility until the company retained a properly-licensed contractor to conduct an asbestos assessment of the facility basement and common areas and properly remove asbestos-containing material as necessary to complete the facility renovation project.

IV.

APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent.

V.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of Elahi 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) (2004), 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 Elahi'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. Compliance by Elahi with the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos is both technically

practicable and economically reasonable.

5. Elahi 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) (2004), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means

an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

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

1. The gravity of the alleged violations was severe because a significant amount of regulated asbestos-containing material ("RACM") was disturbed during renovation of the facility, exposing workers to carcinogenic asbestos fibers. The RACM was observed throughout the basement of the facility. The violations began on or around July 24, 2003, and were resolved in or around October 2003.

2. After Elahi received the Illinois EPA's September 11, 2003 violation notice, he retained a consultant to inspect the facility, design an asbestos remediation plan and perform air monitoring. He also retained an asbestos removal contractor to implement the remediation plan.

3. Complainant has determined that the economic benefit Elahi realized by delaying compliance with the Act and the NESHAP for asbestos did not exceed \$30,000.00.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Thirty Thousand Dollars (\$30,000.00) will serve to recover any economic benefit accrued by Elahi, will deter further violations and will aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Elahi has no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.



7. The settlement of this matter does not include a supplemental environmental project.

VIII.

TERMS OF SETTLEMENT

A. Penalty Payment

1. Elahi shall pay a civil penalty in the sum of Thirty Thousand Dollars (\$30,000.00) within thirty (30) days after the date the Board adopts and accepts this Stipulation. The penalty described in this Stipulation shall be paid by certified check, money order or wire transfer 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

A copy of the certified check or money order and the transmittal letter shall be sent to:

Rebecca A. Burlingham  
Senior Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601

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

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), 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 (2004).

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. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check or money order, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

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

Dennis Elahi  
Paramount Management and Construction Company  
6900 South Stony Island Avenue  
Chicago, IL 60649

4. In the event of default of this Section VIII.A, 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, Elahi agrees that this Stipulation may be used against him in any subsequent enforcement action as proof of a past adjudication

of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h) (2004). Further, Elahi agrees to waive any rights to contest, in any subsequent enforcement action, any allegations that these alleged violations were adjudicated.

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 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

Elahi shall cease and desist from future violations 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 Elahi's payment of the \$30,000.00 penalty, and upon the Board's acceptance and approval of the terms of this Stipulation, the Complainant releases, waives and discharges Elahi

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 concurrently with this Stipulation. 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 3.315 of the Act, 415 ILCS 5/3.315, or entity other than Elahi.

**F. Enforcement of Board Order**

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

2. Elahi agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

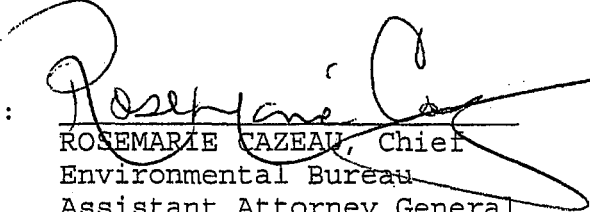
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA 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:

9/27/04

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

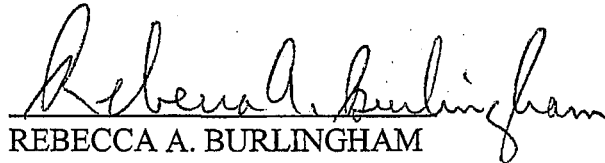
DATE: 9-22-04

DENNIS ELAHI d/b/a PARAMOUNT  
MANAGEMENT AND CONSTRUCTION COMPANY

Dennis Elahi DATE: 10-13-04

**CERTIFICATE OF SERVICE**

I, REBECCA A. BURLINGHAM, an Assistant Attorney General in this case, do certify that I caused to be served this 22<sup>nd</sup> day of October, 2004, the foregoing Complaint, Stipulation and Proposal for Settlement, Motion to Request Relief From Hearing Requirement and Notice of Filing upon the person listed on said Notice by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.

  
REBECCA A. BURLINGHAM