

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. 06-27
)	
JOEL HILLMAN, individually,)	(Enforcement - Air)
)	
Respondent.)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 31st day of August, 2006, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief From Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

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

BY: 
 STEPHEN J. SYLVESTER
 Assistant Attorney General
 Environmental Bureau North
 188 West Randolph St., 20th Floor
 Chicago, Illinois 60601
 312-814-2087

DATE: August 31, 2006

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Bradley Halloran
Chief Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, 11th Floor
Chicago, IL 60601

Mr. Joel Hillman
3000 Island Blvd, Apt. 2003
Aventura, Florida 33160

AND

Mr. Joel Hillman
15 Franklin Avenue
Quogue, NY 11978

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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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 August 24, 2005, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter. On August 31, 2006, 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) (2004), 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.

3. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2004), provides as follows:

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).

4. No hearing is currently scheduled in the instant case.
5. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415

ILCS 5/31(c)(2) (2004).

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) (2004).

Respectfully submitted,

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

BY: 
STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau North
188 West Randolph St., 20th Floor
Chicago, Illinois 60601
312-814-2087

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and JOEL HILLMAN ("Hillman"), 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 hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Hillman agrees to be bound by the Stipulation and 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. On August 24, 2005, 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 Hillman.

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, Hillman was and is a Florida resident.

B. Site Description

1. At all times relevant to the Complaint, Hillman was and is the owner and/or operator of real property located at 133-135 Park Avenue, Barrington, Lake County, Illinois ("Site").

2. The Site consists of two (2) commercial office buildings, 133 Park Ave and 135 Park Ave, respectively, and a parking lot.

3. On or about October of 2003, or at a time better known to Hillman, Chicago Commercial Services LLC, acting on behalf of Hillman, began the renovation of the buildings at the Site. Renovation of the buildings included the removal and disposal of asbestos-containing floor tile and asbestos-containing thermal system insulation.

C. Allegations of Non-Compliance

Complainant contends that Hillman has violated the following provisions of the Act, Board Air Pollution Regulations, and National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for asbestos, 40 C.F.R. Part 61, Subpart M :

- 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: Failure to Follow Proper Notification Requirements, in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004), and 40 C.F.R. 61.145(b).
- Count III: Failure to Follow Proper Emission Procedures, in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004), and 40 CFR 61.145(a), (c)(1), and (c)(6).
- Count IV: Improper Disposal of Regulated Asbestos Containing Materials, in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004), and 40 C.F.R. 61.150(b).

D. Admission of Violations

Hillman admits to the violations alleged in the Complaint filed in this matter and referenced within Section III.C herein.

IV. APPLICABILITY

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

V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of Hillman 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. The impact to the public resulting from Hillman's noncompliance was that the Illinois EPA and the public were not privy to information that is important to the control of air pollution in Illinois because no notification was received prior to the commencement of renovation activities at the Site. In addition, failure to adhere to the work practice standards of

the NESHAP for asbestos in connection with regulated building renovation activities resulted in the potential release of asbestos fibers, a known carcinogen, into the environment.

2. The Site that is the subject of the Complaint has social and economic value.
3. The Site that is the subject of the Complaint is suitable to the area in which it is located.
4. Complying with the applicable provisions of the Act, the Board's air pollution control regulations and the NESHAP for asbestos is both technically practicable and economically reasonable.
5. Hillman ultimately achieved compliance by abating the asbestos prior to recommencing renovation activities at the Site.

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. Complainant contends that the gravity of the alleged violations is significant in that Hillman's noncompliance with the Act, the Board Air Pollution Regulations, and the NESHAP for asbestos, caused, threatened or allowed air pollution. Complainant contends that the violations began on or about November 2003 and continued through July 17, 2004.
2. Complainant contends that Hillman was not diligent in that he initially failed to provide for an adequate asbestos abatement prior to conducting renovation activities at the Site.
3. The penalty obtained includes the economic benefit accrued as a result of Hillman's non-compliance.
4. Complainant has determined, based upon the specific facts of this matter that a penalty of Forty Thousand Dollars (\$40,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant's knowledge, Hillman has no previously adjudicated violations of the Act.
6. Self disclosure is not at issue in this matter.
7. Settlement of this matter does not include a supplemental environmental project.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. Hillman shall pay a civil penalty in the sum of Forty Thousand Dollars (\$40,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation in the manner prescribed below. The penalty described in this Stipulation shall be paid by certified check, money order or electronic funds 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

The name and number of the case shall appear on the check. Hillman has provided his Social Security Number ("SSN") to the Complainant so as to allow proper tracking of the payment required herein. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Stephen J. Sylvester
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, money order or electronic funds transfer, 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, Respondent may be reached at the following addresses:

Joel Hillman
3000 Island Blvd, Apt. 2003
Aventura, Florida 33160

AND

Joel Hillman
15 Franklin Avenue
Quiogue, NY 11978

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, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.D, below, Hillman hereby agrees that this Stipulation may be used against Hillman in any subsequent enforcement action or permit proceeding 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, Hillman agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

C. Cease and Desist

Hillman 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 (“Allegations of Non-Compliance”) of this Stipulation.

D. Release from Liability

In consideration of Hillman’s payment of the \$40,000.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, and commitment to Cease and Desist as contained in Section VIII.C and upon the Pollution Control Board’s acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges Hillman from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant’s Complaint filed on August 24, 2005. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Hillman 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 Hillman'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 Hillman.

E. 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 Hillman's facility which is the subject of this Stipulation, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

F. Enforcement of Board Order

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

2. Hillman agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement 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 and Proposal for Settlement, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Hillman that the provisions of this Stipulation and Proposal for Settlement 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.

G. Execution of Document

This Stipulation and Proposal for Settlement shall become effective only when executed by all parties and accepted and approved by the Board. This Stipulation and Proposal for Settlement may be executed by the parties in one or more counterparts, all of which taken together, shall constitute one and the same instrument.

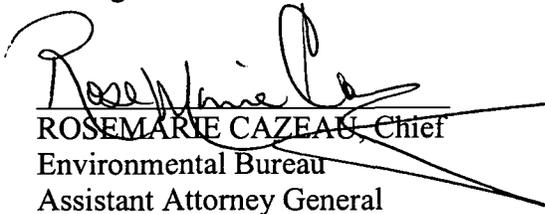
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WHEREFORE, Complainant and Hillman request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

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: 8/24/06

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 8/18/06

JOEL HILLMAN

BY: _____
JOEL HILLMAN

DATE: _____

WHEREFORE, Complainant and Hillman 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: _____

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

JOEL HILLMAN

BY: 
JOEL HILLMAN

DATE: 8/24/06

CERTIFICATE OF SERVICE

I, STEPHEN J. SYLVESTER, an Assistant Attorney General in this case, do certify that I caused to be served this 31st day of August, 2006, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief From Hearing Requirement and Notice of Filing upon the persons 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.



STEPHEN J. SYLVESTER