



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

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OCT 11 2006

STATE OF ILLINOIS
Pollution Control Board

October 6, 2006

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Moore Painting Co. and Illinois-American Water Co.***
PCB No. 06-104

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Motion for Relief from Hearing Requirement, Partial Stipulation and Proposal for Settlement with Moore Painting Co., and Partial Stipulation and Proposal for Settlement with Illinois-American Water Company in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. L. Homan", is written over the typed name and address.

J. L. Homan
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JLH/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
MOORE PAINTING CO., and ILLINOIS-)
AMERICAN WATER COMPANY,)
)
Respondents.)

PCB No. 06-104
(Enforcement)

RECEIVED
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OCT 11 2006
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: Ms. Amy Sholar
Sholar Law Office
510 E. 6th Street
Alton, IL 62002

Ms. Tracy Elzemeyer
Legal Division
Illinois-American Water Company
727 Craig Road
St. Louis, MO 63141

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT, PARTIAL STIPULATION AND PROPOSAL FOR SETTLEMENT WITH MOORE PAINTING CO. and PARTIAL STIPULATION AND PROPOSAL FOR SETTLEMENT WITH ILLINOIS-AMERICAN WATER COMPANY, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

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: 
J.L. HOMAN
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 6, 2006

CERTIFICATE OF SERVICE

I hereby certify that I did on October 6, 2006, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT, PARTIAL STIPULATION AND PROPOSAL FOR SETTLEMENT WITH MOORE PAINTING CO. and PARTIAL STIPULATION AND PROPOSAL FOR SETTLEMENT WITH ILLINOIS-AMERICAN WATER COMPANY

To: Ms. Amy Sholar
Sholar Law Office
510 E. 6th Street
Alton, IL 62002

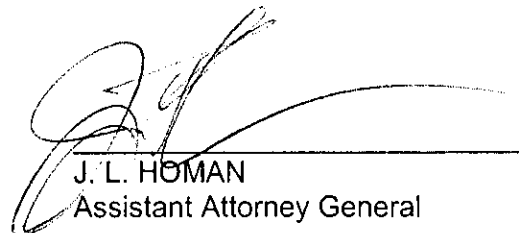
Ms. Tracy Elzemeyer
Legal Division
Illinois-American Water Company
727 Craig Road
St. Louis, MO 63141

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794



J. L. HOMAN
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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vs.)
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MOORE PAINTING CO., and ILLINOIS-)
AMERICAN WATER COMPANY,)
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Pollution Control Board

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2004), moves that the Illinois Pollution Control 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:

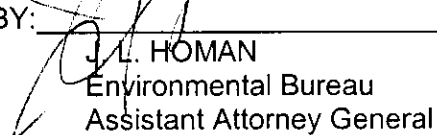
1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in two Stipulations and Proposals for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulations and Proposals for Settlement 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

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

BY: 

J.L. HOMAN
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 6, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PCB 2006-104

(Enforcement - _____)

PARTIAL STIPULATION AND PROPOSAL FOR SETTLEMENT
WITH MOORE PAINTING CO.

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STATE OF ILLINOIS
Pollution Control Board

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(Enforcement - _____)

PARTIAL 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 MOORE PAINTING CO., ("Respondent"), have agreed to the making of this Partial 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, Respondent 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 December 20, 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 the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).

3. At all times relevant to the Complaint, Respondent has been a contractor hired by Illinois-American to remove paint and then repaint a vertical water storage tank. Respondent Moore is an Illinois company in good standing.

B. Site Description

1. At all times relevant to the Complaint, Respondent was a contractor hired to remove paint and then repaint a vertical water storage tank located at 1013 Cardinal Street ("Cardinal St. Tank" or "site") in a residential area of the City of Alton, Madison County, Illinois.

2. The Respondents Moore and Illinois American entered into a "Tank Maintenance Agreement" ("TMA") in March 2004 to govern all aspects of the Cardinal St. Tank project. The TMA stated that Moore must not employ open abrasive blasting or uncontained hydro blasting, that Moore provide for total containment unless alternative methods were approved by Illinois American; and that Moore must collect and ensure that all waste

is transported in covered vehicles to a landfill or facility approved by the appropriate state regulatory authority.

3. On a date better known to the Respondents, Moore submitted to Illinois-American an amendment to the tank maintenance agreement proposing to use an "alternate robotic blast procedure" in conjunction with a "slurry blast" on areas not reached by the robotic blasting. This amendment also included the application of Pretox to the tank. Respondent Moore represents that Illinois-American approved the amendment and thereby allowed Moore to proceed without the necessary total containment.

4. On June 3, 2004, Moore employed uncontained hydro blasting on the lead-based paint on the Cardinal St. Tank.

5. On June 4, 2004, there was an accumulation of the resulting lead-based paint wastes, including the blasting grit or media, on tarps on the ground along the base of the Cardinal St. Tank, on the ground of the vacant lot to the east and the backyard of the residence to the south, and in the street to the north.

6. On June 4, 2004, the Illinois EPA collected a sample of water being discharged from the site and three samples of wastes on the ground of the vacant lot to the east and the backyard of the residence to the south. Lead was subsequently determined to

be present in all four samples, one of which tested to be 1,980 parts per million (ppm), which is over the Illinois EPA's clean-up objective of 400 ppm for lead.

7. On June 7, 2004 and June 11, 2004, the Illinois EPA conducted meetings at the site with representatives of Illinois American and Moore, to discuss the situation.

8. On June 29, 2004, the Illinois EPA conducted a follow-up inspection of the site and observed a significant amount of paint chips and grit in the vacant lot to the east of the tank, and on residences south of the tank.

9. As of today's date, the Respondents represent that they have removed the paint chips and grit previously observed at the site, and have remediated the conditions at the site as required by the Act. On April 27, 2005, a Remedial Action Completion Report was submitted to the Illinois EPA. The Illinois EPA has accepted this report as final and has required no further remedial action.

C. Allegations of Non-Compliance

Complainant contends that the Respondent 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: Water Pollution, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).
- Count III: Waste Disposal Violations, in violation of Section 21 of the Act, 415 ILCS 5/21(a), (e) (2004), and 35 Ill. Adm. Code 722.111 and 808.121(a).
- Count IV: Open Dumping, in violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2004).
- Count V: Hazardous Waste Determination Violations, in violation of 35 Ill. Adm. Code 722.111.
- Count VI: Special Waste Determination Violations, in violation of 35 Ill. Adm. Code 808.121.

D. Admission of Violations

Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section III.A herein, and this Stipulation shall not be interpreted as including such admission.

E. Compliance Activities to Date

As of today's date, the Respondents represent that they have remediated the site as required by the Agency and the Act.

IV. APPLICABILITY

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

1. No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation and Proposal for Settlement. In the event of any conveyance of title, easement or other interest in the facility, the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation.

2. In the event that the Respondent proposes to sell or transfer any real property or operations subject to any Order accepting and adopting the terms of this Stipulation and Proposal

for Settlement, the Respondent shall notify the Complainant 30 days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondent shall make the prospective purchaser or successor's compliance with any Order accepting and adopting the terms of this Stipulation a condition of any such sale or transfer and shall provide a copy of this Stipulation and any Order accepting and adopting the terms of this Stipulation to any such successor in interest. This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

V.COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

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:

- (c) 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:

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- (ii) the social and economic value of the pollution source;
- (iii) 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;
- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- (v) 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 the Respondent's violations. The Defendant's actions posed a significant threat to the health, general welfare and physical property of the people.
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 with the Act and accompanying regulations was both technically practicable and economically reasonable.

5. Respondent 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) (2002), provides as follows:

- (h) 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 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 the 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 Respondent failed to adequately contain lead paint chips and grit during the blasting of the tower.

2. Respondent did attempt to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified it of its noncompliance, although it was not immediately successful in achieving compliance.

3. Noncompliance was of economic benefit to the Respondent. Adequate containment measures for the blasting, while available, are expensive.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of sixteen thousand eight hundred dollars (\$16,800.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent 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. The Respondent shall pay a civil penalty in the sum of sixteen thousand eight hundred dollars (\$16,800.00), upon entry of the Stipulation. The Respondent stipulates that the current payment is tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent as directed, in a 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 and Respondent's Federal Employer Identification Number (FEIN), shall appear on the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

P. Poitevint
Attorney General's Office
Environmental Bureau
500 South Second Street
Springfield, Illinois 62702

Michael Roubitchek
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 address:

Amy Sholar
Attorney for Moore Painting
.2010 State Street
Alton, IL 62002

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, the Respondent hereby agrees that this Stipulation may be used against the Respondent 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, Respondent 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

The Respondent 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 the Respondent's payment of the \$16,800.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.E 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 the Respondent 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 December 20, 2005. 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(2004), or entity other than the Respondent.

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 the Respondent'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. Modification of Stipulation

The parties may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.H. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

G. 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. Respondent 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.

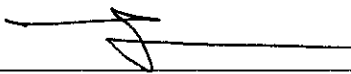
4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal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

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,

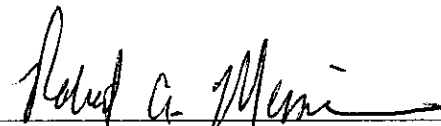
LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
Thomas Davis, Chief
Environmental Bureau
Assistant Attorney General

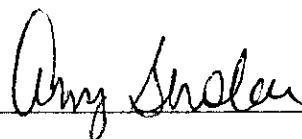
DATE: 10/05/06

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: 
Robert A. Messina
Chief Legal Counsel

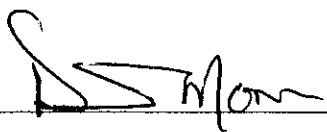
DATE: 9/30/06

Moore Painting Company

BY: 
Name: Amy Sholar
Title: Attorney

DATE: 9/12/04

Moore Painting Company

BY: 

DATE: 9/13/06

Name: Dennis Moore

Title: President

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PCB 2006-104

(Enforcement - _____)

PARTIAL 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 ILLINOIS-AMERICAN WATER COMPANY("Respondent" or "Illinois-American"), have agreed to this Partial 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, Respondent 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 December 20, 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 the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).

3. At all times relevant to the Complaint, Respondent was and is a public utility providing potable water and sanitary sewer services to various communities in Illinois.

B. Site Description

1. At all times relevant to the Complaint, Respondent owned and operated a vertical water storage tank located at 1013 Cardinal Street ("Cardinal St. Tank" or "site") in a residential area of the City of Alton, Madison County, Illinois.

2. The Respondent entered into a "Tank Maintenance Agreement" ("TMA") in March 2004 with Moore Painting Company ("Moore") to govern all aspects of the Cardinal St. Tank project. The TMA stated, among other things, that Moore must not employ open abrasive blasting or uncontained hydro blasting, that Moore provide for total containment unless alternative methods were approved by Illinois-American; and that Moore must collect and ensure that all waste is transported in covered vehicles to a

landfill or facility approved by the appropriate state regulatory authority.

3. On a date better known to Respondent and Moore, Moore submitted to Illinois-American an amendment to the tank maintenance agreement proposing to use an "alternate robotic blast procedure" in conjunction with a "slurry blast" on areas not reached by the robotic blasting. This amendment also included the application of Pretox to the tank. Complainant alleges that Illinois-American either approved or failed to reject the amendment and thereby allowed Moore to proceed without the necessary total containment.

4. On or about the first week of June, 2004, Moore employed uncontained hydro blasting on the lead-based paint on the Cardinal St. Tank.

5. On June 4, 2004, an Illinois EPA inspection report detailed the accumulation of the lead-based paint wastes, including blasting grit or media, on tarps on the ground along the base of the Cardinal St. Tank, on the ground of the vacant lot to the east and the backyard of the residence to the south, and in the street to the north.

6. On June 4, 2004, the Illinois EPA collected one water sample and three waste/soil samples from the neighboring properties. While lead was subsequently determined to be present

in all four samples, the results showed that the samples were non-hazardous except for one waste/soil sample which had a lead level of 1,980 parts per million (ppm) total lead, which is over the Illinois EPA's clean-up objective of 400 ppm for total lead.

7. On June 7, 2004 and June 11, 2004, the Illinois EPA conducted meetings at the site with representatives of Illinois-American and Moore, to discuss the situation.

8. On June 29, 2004, the Illinois EPA conducted a followup investigation of the site and alleges that it observed the same waste material observed on the previous inspection.

9. The Respondents developed a remediation action plan. As of today's date, Respondent represents that it has removed the paint chips and grit previously observed at the site, and has remediated the conditions at the site as required by the Act. On April 27, 2005, a Remedial Action Completion Report was submitted to the Illinois EPA by Respondent. The Illinois EPA has accepted this report as final and has required no further remedial action.

C. Allegations of Non-Compliance

Complainant contends that the Respondent 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: Water Pollution, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

Count III: Waste Disposal Violations, in violation of Section 21 of the Act, 415 ILCS 5/21(a), (e) (2004), and 35 Ill. Adm. Code 722.111 and 808.121(a).

Count IV: Open Dumping, in violation of Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2004).

Count V: Hazardous Waste Determination Violations, in violation of 35 Ill. Adm. Code 722.111.

Count VI: Special Waste Determination Violations, in violation of 35 Ill. Adm. Code 808.121.

D. Non-Admission of Violations

Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section III herein, and this Stipulation shall not be interpreted as including such admission.

E. Compliance Activities to Date

As of today's date, the Respondent represents that it has remediated the site as required by the Agency and the Act. Respondent submitted a Remedial Action Completion Report to Illinois EPA, and Illinois EPA has accepted the report as final and has required no further remedial action.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as

shall be required to comply with the provisions of this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation and Proposal for Settlement. In the event of any conveyance of title, easement or other interest in the facility, the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation.

V.COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

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:

- (c) 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:

- (i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- (ii) the social and economic value of the pollution source;
- (iii) 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;
- (iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- (v) any subsequent compliance.

In response to these factors, the Illinois Environmental Protection Agency alleges the following:

1. Human health and the environment were threatened by the Respondent's violations. The Defendant's actions posed a threat to the health, general welfare and physical property of the people.

2. Respondent's facility provides a social and economic benefit to the community by being an integral part of the water supply system in the area.

3. Operation of the facility was suitable for the area in which it occurred.

4. Compliance with the Act and accompanying regulations was both technically practicable and economically reasonable.

5. Respondent 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) (2002), provides as follows:

- (h) 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 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 the 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 Illinois Environmental Protection Agency alleges as follows:

1. The Respondent failed to adequately contain lead paint chips and grit during the blasting of the tower, or to ensure that the contractor selected to conduct the work would adequately perform the work.

2. Respondent did attempt to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified it of its noncompliance, although it was not immediately successful in achieving compliance.

3. Noncompliance was of economic benefit to the Respondent. Adequate containment measures for the blasting, while available, are expensive. However, any economic benefit has been offset by completion of the remedial action plan approved by the Illinois EPA.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of nine thousand two hundred dollars (\$9,200.00) will serve to deter further violations and

aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has one unrelated previously adjudicated violation 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. The Respondent shall pay a civil penalty in the sum of Dollars (\$9,200.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment will be tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a 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 and Respondent's Federal Employer Identification Number (FEIN), shall appear on the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

P. Poitevint
Attorney General's Office
Environmental Bureau
500 South Second Street
Springfield, Illinois 62702

Michael Roubitchek
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 address:

Ms. Tracy Elzemeyer
Legal Division
Illinois-American Water Company
727 Craig Road
St. Louis, MO 63141

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, the Respondent hereby agrees that this Stipulation may be used against the Respondent 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, Respondent 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

The Respondent 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 the Respondent's payment of the \$9,200.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.E 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 the Respondent 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 December 20, 2005. 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(2004), or entity other than the Respondent.

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 the Respondent'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. Modification of Stipulation

The parties may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section VIII.H. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

G. 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. Respondent 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 Respondent 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.

H. No Third Party Rights or Reliance


Nothing in this Stipulation shall be construed to create any rights, or grant any cause of action, to or be relied upon in any way by any person not a party to this Stipulation.

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,

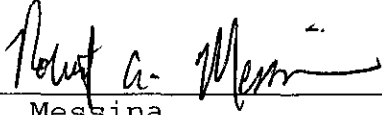
LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
Thomas Davis, Chief
Environmental Bureau
Assistant Attorney General

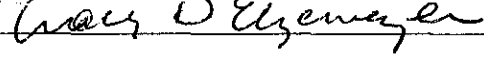
DATE: 10/06/05

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: 
Robert A. Messina
Chief Legal Counsel

DATE: 9/30/06

Illinois-American Water

BY: 
Name: Tracy Elzemeyer
Title: Corporate Counsel

DATE: 9/6/06