



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**RECEIVED**  
CLERK'S OFFICE

AUG 21 2008

STATE OF ILLINOIS  
Pollution Control Board

**Lisa Madigan**  
ATTORNEY GENERAL

August 19, 2008

John T. Therriault, Assistant Clerk  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 West Randolph  
Chicago, Illinois 60601

Re: ***People v. Isaacson Construction, Inc.***  
**PCB No. 07-25**

Dear Clerk:

Enclosed for filing please find the original and one copy of a Notice of Filing, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kristen Laughridge Gale".

Kristen Laughridge Gale  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031

KLG/pjk  
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE

AUG 21 2008

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 ISAACSON CONSTRUCTION, INC., )  
 an Illinois corporation, )  
 )  
 Respondent. )

PCB No. 07-25  
(Enforcement)

NOTICE OF FILING

To: Fred C. Prillaman  
Mohan, Allewelt, Prillaman & Adami  
One North Old State Capital Plaza, Ste. 325  
Springfield, IL 62701

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, 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:   
KRISTEN LAUGHRIDGE GALE  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: August 19, 2008

## CERTIFICATE OF SERVICE

I hereby certify that I did on August 19, 2008, 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 and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: Fred C. Prillaman  
Mohan, Allewelt, Prillaman & Adami  
One North Old State Capital Plaza, Ste. 325  
Springfield, IL 62701

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

To: John T. Therrault, Assistant 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

  
KRISTEN LAUGHRIDGE GALEO  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE  
AUG 21 2008  
STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
vs. )  
)  
ISAACSON CONSTRUCTION, INC., )  
an Illinois corporation, )  
)  
Respondent. )

PCB No. 07-25  
(Enforcement)

**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) (2006), 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) (2006). In support of this motion, Complainant states as follows:

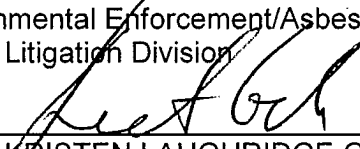
1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2006).

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) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

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

BY:   
KRISTEN LAUGHRIDGE GALE  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: August 19, 2008

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STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
ISAACSON CONSTRUCTION, INC., )  
an Illinois corporation, )  
)  
Respondent. )

PCB NO. 07-25  
(Enforcement)

**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 ISAACSON CONSTRUCTION, INC., ("Respondent"), 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. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2006), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

## I. STATEMENT OF FACTS

### A. Parties to the Stipulation

1. On August 13, 2007, an Amended 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 (2006), 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 (2006).

3. At all times relevant to the Complaint, Respondent was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned and/or leased and operated a facility located at 1300 Fort Jesse Road, Normal, McLean County, Illinois ("site").

### B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act and Board regulations:

Count I: Sections 21(a) and 21(e) of the Act, 415 ILCS 5/21(a), (e).

Count II: Section 21(f) of the Act, 415 ILCS 5/21(f), and Section 703.121(a)(1) of the Board's RCRA Permit Program Regulations, 35 Ill. Adm. Code 703.121(a)(1).

Count III: Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2), and Sections 725.113(a), 725.113(b), and 725.173(a) of the Board's Hazardous Waste Treatment,

Storage, and Disposal Regulations, 35 Ill. Adm. Code 725.113(a), (b), and 725.173(a).

Count IV: Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2), and Section 725.116(a) of the Board's Hazardous Waste Operating Regulations, 35 Ill. Adm. Code 725.116(a).

Count V: Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2), and Sections 725.111 and 725.175 of the Board's Hazardous Waste Treatment, Storage, and Disposal Regulations, 35 Ill. Adm. Code 725.111 and 725.175.

Count VI: Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2), and Sections 725.151, 725.152, and 725.153 of the Board's Hazardous Waste Treatment, Storage, and Disposal Regulations, 35 Ill. Adm. Code 725.151, 725.152, 725.153.

Count VII: Section 12(a) of the Act, 415 ILCS 5/12(a).

Count VIII: Section 12(d) of the Act, 415 ILCS 5/12(d).

### **C. Admission of Violations**

The Respondent admits to the violations of Sections 21(a) and 21(e) of the Act, 415 ILCS 5/21(a), (e), as alleged in paragraphs 23 and 24 of Count I of the Amended Complaint filed in this matter and referenced within Section I.B herein.



#### **D. Compliance Activities to Date**

On April 26, 2004, approximately fifty 55-gallon drums containing contained used motor oil, rainwater, and two types of concrete sealant were excavated and removed from the site for disposal; all of the unearthed drums had been crushed. During excavation, one drum, when punctured during removal, leaked rainwater and used oil; a second drum leaked a small amount of green, semi-solid concrete sealer; and the third drum leaked a small amount of thick, viscous, silver-gray rubbery liquid. Subsequently, all of the crushed drums, together with large quantities of affected soil, were excavated and removed from the site for disposal as non-hazardous waste. A sample of the silver-gray liquid, taken during the April 26, 2004, removal, was later analyzed for ignitability. Complainant takes the position that the Illinois EPA analysis of the silver-gray liquid revealed that it had a flashpoint less than 70° Fahrenheit, and was therefore a hazardous waste pursuant to Section 721.103 of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 721.103, because it exhibited the characteristic of ignitability, but the Respondent disputes the accuracy and reliability of those results.

Based upon groundwater test results obtained by Respondent's consultants and reviewed by Complainant and the Illinois EPA, the parties to this Stipulation agree that, insofar as it relates to Respondent's burial of waste that is the subject of the Amended Complaint:

- (a) Groundwater monitoring conducted after removal of contaminated soils demonstrated groundwater contamination including Arsenic, Cadmium, Chromium, Lead, Mercury and Bis(2-ethylhexyl) phthalate, in excess of

applicable Class I standards within 35 Ill. Admin. Code 620;

- (b) Following removal of contaminated soils, groundwater was sampled on numerous occasions from August 2004 to February 2007. Since December 2004, the only contaminant of concern has been Lead. Respondent has demonstrated four consecutive quarters of groundwater results that are below Class I groundwater standards for Lead in calendar year 2005;
- (c) Lead is not included within the chemical analysis of either of the two concrete sealants used by Respondent; and,
- (d) No further monitoring is required regarding the condition of groundwater as impacted by the allegations contained in the Amended Complaint.

## **II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA 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. 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 for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

### **III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE**

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), 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 to this Stipulation state the following:

1. Human health and the environment were threatened by the Respondent'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. The proper disposal of wastes is both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations.

#### **IV. CONSIDERATION OF SECTION 42(h) FACTORS**

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), 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 to this Stipulation state as follows:

1. The Respondent's burial of waste was illegal and continued for several months.
2. The Respondent was not diligent in its burial of waste but was both cooperative and diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA discovered the burial of waste.
3. The costs of proper disposal of waste avoided by the Respondent's burial of waste were vastly outweighed by the remedial expenditures incurred to remove the waste and soil.
4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of One Hundred Thousand Dollars

(\$100,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's and the Illinois EPA'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.

## **V. TERMS OF SETTLEMENT**

### **A. Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of One Hundred Thousand Dollars (\$100,000.00). Payment shall be made in installments according to the following schedule: The first of five annual payments in the amount of \$20,000.00 within ninety (90) days from the date the Board adopts and accepts this Stipulation and the next four payments on the anniversary dates of the first payment.

### **B. Stipulated Penalties, Interest and Default**

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

**C. Payment Procedures**

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

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

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau  
Illinois Attorney General's Office  
500 South Second Street  
Springfield, Illinois 62706

**D. Future Compliance**

1. In addition to any other authorities, the Illinois EPA, its employees and

representatives, and the Attorney General, her employees 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 conducting inspections and evaluating compliance status. 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.

2. 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.

#### **E. Release from Liability**

Upon completion of the Respondent's payment of the \$100,000.00 penalty, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the 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 Amended Complaint filed on August 13, 2007. 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 other than that settled in the matter of *People v. Isaacson*



*Construction, Inc.*, McLean County Circuit Court No. 06-CF-814;

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 the Respondent.

**F. Enforcement and Modification of Stipulation**

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.

**G. Execution of Stipulation**

The undersigned representatives for each party to this Stipulation 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.

WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.


PEOPLE OF THE STATE OF ILLINOIS

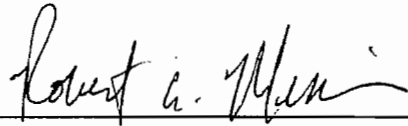
FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

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


BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 8/19/08

DATE: 4/14/08

ISAACSON CONSTRUCTION, INC.

BY:   
Name: DAVID E. ISAACSON

DATE: 08.12.08

Title: PRESIDENT