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JUL 20 2009
STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 16, 2009

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. Richard King, et al.***
PCB No. 09-270

Dear Clerk:

Enclosed for filing please find the original and ten copies 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 that reads "Christine Zeivel".

Christine Zeivel
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

CZ/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
RICHARD KING, KAY KING and)
ISAAC KING,)
)
Respondents.)

PCB No. 09-27
(Enforcement)

NOTICE OF FILING

To: Hodge Dwyer & Driver
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776

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STATE OF ILLINOIS
Pollution Control Board

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 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: 
CHRISTINE ZEWEL
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: July 16, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on July 16, 2009, 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: Hodge Dwyer & Driver
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776

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



CHRISTINE ZEIVEL
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
RICHARD KING, KAY KING and)
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Respondents.)

PCB No. 09-27
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JUL 20 2009

STATE OF ILLINOIS
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) (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).

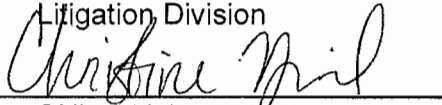
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY:



CHRISTINE ZEIVEL
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: July 16, 2009

upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), against the Respondents.

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, Richard and Kay King were the owners of a vacant three story building, formerly known as the Buck's Building, located at 527 East Washington Street, Springfield, Sangamon County, Illinois ("Buck's Building").

4. At all times relevant to the Complaint, Isaac King supervised and participated in renovation and restoration activities at the Buck's Building.

5. On January 3, 2007, Richard King applied for a building permit with the City of Springfield for demolition of the interior at the Buck's Building.

6. On January 4, 2007, the City of Springfield issued Building Permit Number BP-2007-0030 to Richard and Kay King for demolition at the Buck's Building.

7. On a date better known to the Respondents, the Respondents commenced the removal of wall, ceiling and flooring material, including regulated asbestos-containing material within the Buck's Building, without first notifying the Illinois EPA

8. On January 12, 2007, the Illinois EPA inspected the interior and entrance to the Buck's Building. The building contained debris, including carpet, drywall joint compound, wallpaper and dimensional lumber in an open dumpster, located at the corner of Washington and 6th Streets. In addition, there was broken suspect drywall and plaster at various locations on the ground adjacent to the dumpster and leading to the doorway entrance of the building and significant quantities of dry white dust coating the floor.

9. On January 12, 2007, the Illinois EPA collected a sample of friable suspect drywall from the ground adjacent to an open dumpster located outside of the building. It was capable of being crumbled, pulverized or reduced to powder by hand pressure.

10. The sample drywall was tested and determined to contain a concentration of chrysotile asbestos ranging from 1% to 5%. Additional testing revealed an asbestos concentration in the amount of 2.9% within the sample.

11. On January 29 and 30, 2007, material samples were collected from within the facility during an asbestos survey performed by a contractor retained by the Respondents to identify the presence of asbestos-containing materials or asbestos contaminated debris. Data resulting from analytical testing of the samples, by an analytical testing laboratory utilized by the contractor, revealed the presence of asbestos concentrations within wall paper, paneling mastic, joint compound, floor tile, debris powder, wall plaster finish coat, and baseboard material greater than 1%. In addition, the asbestos survey revealed the presence of asbestos within materials located on each floor and the basement of the building.

B. Allegations of Non-Compliance

Complainant contends that the Respondents have violated the following provisions of the Act, Board regulations and the NESHAP for asbestos.

Count I: Air Pollution

By failing to adequately wet all RACM removed during renovation activities and to deposit all RACM at a site permitted to accept such waste as soon as practicable, thereby causing or tending to cause air pollution in Illinois, the Respondents violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2006) and Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141 (2005).

Count II: Failure to Inspect for Asbestos and Provide Notification of Demolition and Renovation

By failing to thoroughly inspect the Buck's Building for the presence and location of asbestos-containing material ("ACM") prior to commencing asbestos removal and disposal activities at the facility, the Respondents violated 40 C.F.R. 61.145(a), and therefore Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

By failing to notify the Illinois EPA of scheduled asbestos removal activities at the Buck's Building, at least 10 working days prior to commencing such activities, the Respondents violated 40 C.F.R. 61.145(b), and therefore Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

Count III: Failure to Remove and Contain RACM in Compliance with NESHAP Requirements

By failing to properly remove all regulated asbestos-containing material ("RACM"), from the Buck's Building before commencing planned renovation activities, which broke up, dislodged and similarly disturbed the RACM, the Respondents violated 40 C.F.R. 61.145(c)(1), and therefore Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

By failing to adequately wet all RACM and prevent damage or disturbance to the RACM during cutting or disjoining operations at the Buck's Building, the Respondents violated 40 C.F.R. 61.145(c)(2), and therefore Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

By failing to adequately wet and maintain wet all RACM and regulated asbestos-containing waste material at the Buck's Building until collected and contained in preparation for disposal at a site permitted to accept such waste, the Respondents violated 40 C.F.R. 61.145(c)(6), and therefore Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

By failing to have at least one representative at the Buck's Building trained in the provisions of the NESHAP for

asbestos and the means of complying with them, the Respondents violated 40 C.F.R. 61.145(c)(8), and therefore Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

Count IV: Improper Disposal of Regulated Asbestos-Containing Materials

By failing to adequately wet and keep wet, containerize, and label all asbestos-containing material at the Buck's Building, thereby causing or allowing the discharge of visible emissions to the outside air, the Respondents violated 40 C.F.R. 61.150(a)(1)(iii), (iv) and (v), and therefore Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

By failing to transport to a waste disposal site, or Illinois EPA-approved site that converts RACM and asbestos-containing waste material into non-asbestos material, and deposit as soon as practical all asbestos-containing waste material generated during asbestos removal activities at the Buck's Building, the Respondents violated 40 C.F.R. 61.150(b), and therefore Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

C. Non-Admission of Violations

The Respondents represent that they have 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 Respondents do not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

- On March 8, 2007, the Respondents paid the required fees for asbestos demolition or renovation to the Illinois EPA.
- On March 12, 2007, the Respondents submitted an asbestos survey report to the Illinois EPA.

- On March 27, 2007, the Respondents submitted an asbestos remediation design plan to the Illinois EPA. The design plan was accepted by the Illinois EPA on April 24, 2007.
- On June 18, 2007, the Respondents began asbestos remediation activities at the Buck's Building.
- On July 24, 2007, remediation of RACM and asbestos contamination at the Buck's Building that is the subject of the complaint was completed.
- On July 31, 2007, the Respondents submitted final test data to the Illinois EPA documenting remediation of all asbestos contamination consistent with the design plan requirements, which was accepted by the Illinois EPA.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation, and any agent or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its 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 Respondents 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 the Stipulation state the following:

1. Human health and the environment were threatened and the Illinois EPAs' information gathering responsibilities hindered by the Respondents' 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. Obtaining a permit prior to construction at the site and compliance with its terms is both technically practicable and economically reasonable.
5. Respondents have completed the remediation of all regulated asbestos-containing waste material and asbestos contamination resulting from the improper asbestos removal activities that are the subject of the complaint.

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 the Stipulation state as follows:

1. From a date better known by the Respondents, through at least January 12, 2007, the Respondents failed to conduct asbestos removal activities in compliance with asbestos NESHAP notification, emission control and disposal requirements. The violations began on or around January 4, 2007, and were resolved at various times during that same year.
2. Once the Respondents were notified by the Illinois EPA of their non-compliance with the Act, Board regulations and applicable federal regulations, they demonstrated due diligence in attempting to comply with the Act, Board regulations, and the NESHAP for asbestos.
3. The Complainant alleges the Respondents realized an economic benefit of non-compliance by delaying and/or avoiding costs necessary to properly conduct asbestos removal

and disposal activities in compliance with the Act, Board regulations, and the NESHAP for asbestos.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Seventy Thousand Dollars (\$70,000.00) will serve to deter further violations by the Respondents and aid in enhancing voluntary compliance by the Respondents and other persons similarly subject to the Act, Board regulations, and the NESHAP for asbestos.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act, Board regulations, or the NESHAP for asbestos.

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 Respondents shall pay a civil penalty in the sum of Seventy Thousand Dollars (\$70,000.00). The Respondents shall make three payments according to the following payment schedule:

Payment Number 1: \$30,000.00 within thirty (30) days of Board approval.

Payment Number 2: \$20,000.00 within ninety (90) days of Board approval.

Payment Number 3: \$20,000.00 within one hundred and twenty (120) days of Board approval.

B. Interest and Default

1. If the Respondents fail to make any payment required by this Stipulation on or

before the date upon which the payment is due, the Respondents 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 Respondents 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 Respondents' 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. The Respondents shall ensure that the facility is at all times compliant with the NESHAP regulations.

2. This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations, including but not limited to the Act, Board regulations and the NESHAP for asbestos.

3. The Respondents shall cease and desist from future violations of the Act, Board regulations, and the NESHAP for asbestos that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondents' payment of the \$70,000.00 penalty, their commitment to cease and desist as contained in Section V.D. above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for the violations of the Act, Board regulations, and the NESHAP for asbestos 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 October 22, 2008. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and

- d. liability or claims based on the Respondents' failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondents.

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 the Parties to the 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 the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

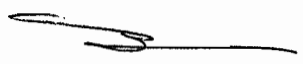
LISA MADIGAN
Attorney General
State of Illinois

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

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY:

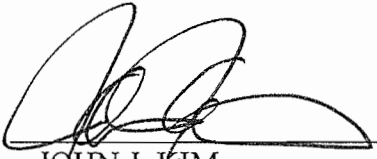


THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE:

7/16/09

BY:



JOHN J. KIM
Chief Legal Counsel

DATE:

7/13/09

BY:



RICHARD KING

DATE:

6/13/09

BY:



KAY KING

DATE:

6/13/09

BY:



ISAAC KING

DATE:

6/13/09