

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
PRAIRIELAND INVESTMENT GROUP,)
LLC., an Illinois limited liability)
company, and KEVIN COOK, d/b/a KC)
CONSTRUCTION,)
)
 Respondents.)

PCB No. 11-21
(Enforcement - Air)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

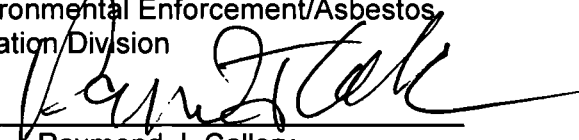
PLEASE TAKE NOTICE that on July 12, 2011, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a MOTION FOR RELIEF FROM HEARING REQUIREMENT 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: 
Raymond J. Callery
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: July 12, 2011

CERTIFICATE OF SERVICE

I hereby certify that I did on July 12, 2011, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.

A handwritten signature in black ink, appearing to read "Raymond J. Callery", written over a horizontal line.

Raymond J. Callery
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Jennifer M. Martin
Hodge Dwyer & Driver
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776

Claire A. Manning
Brown, Hay & Stephens, LLP
205 S. Fifth St., Suite 700
P.O. Box 2459
Springfield, IL 62705-2459

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
vs.)	PCB No. 11-21
)	(Enforcement - Air)
PRAIRIELAND INVESTMENT GROUP,)	
LLC., an Illinois limited liability)	
company, and KEVIN COOK, d/b/a KC)	
CONSTRUCTION,)	
)	
Respondent.)	

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) (2008), 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) (2008). In support of this motion, Complainant states as follows:

1. On November 9, 2010, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. 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) (2008).

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) (2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 

Raymond J. Callery
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: July 12, 2011

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO. 11-21
)	(Enforcement - Air)
PRAIRIELAND INVESTMENT GROUP, LLC,)	
an Illinois limited liability company, and)	
KEVIN S. COOK, d/b/a KC Construction,)	
)	
Respondents.)		

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 PRAIRIELAND INVESTMENT GROUP, L.L.C., an Illinois limited liability company (“PRAIRIELAND”) (“Parties to the Stipulation”), 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.* (2008), the Board’s regulations, and the Asbestos National Emissions Standards for Hazardous Air Pollutants (“NESHAP”), 40 CFR Part 61, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter relative to PRAIRIELAND.

I. STATEMENT OF FACTS

A. Parties

1. On November 9, 2010, a Complaint was filed in this matter 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 (2008), against PRAIRIELAND and KEVIN S. COOK, d/b/a KC Construction.

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 (2008).

3. At all times relevant to the Complaint, PRAIRIELAND was and is an Illinois limited liability company that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, PRAIRIELAND owned the former Robert Morris College facility located in the northeastern portion of the City of Carthage, Hancock County, Illinois ("Facility").

5. KEVIN S. COOK, d/b/a KC Construction, was employed by PRAIRIELAND to demolish Moser Hall, Heating Plant No. 1 and the Campus Cafeteria at the Facility and to remove and dispose of demolition debris and waste.

6. KEVIN S. COOK, d/b/a KC Construction utilized a backhoe to knock down each building and to load a portion of the demolition debris into a trailer.

7. On March 26, 2009, the Illinois EPA inspected the Facility. At that time, demolition activities had ceased. The Illinois EPA took two bulk samples of suspect asbestos containing material.

8. On March 31, 2009, the Illinois EPA received from TEM, Incorporated the results of the analytical testing of the bulk samples taken on March 26, 2009. Both samples were positive for asbestos.

9. Complainant alleges that the demolition of Moser Hall, Heating Plant No. 1 and the Campus Cafeteria at the Facility was conducted without properly removing or disposing of the asbestos containing material present in the buildings and without notice to the Illinois EPA.

B. Allegations of Non-Compliance

Complainant contends that PRAIRIELAND violated the following provisions of the NESHAP for asbestos, the Act and the Board's regulations:

Count I:

Asbestos NESHAP Violations

- 415 ILCS 5/9.1(d)(1) - Failed to Comply with Asbestos NESHAP
- 40 CFR 61.145(b)(1) - Failed to Provide Notification
- 40 CFR 61.145(c)(1) - Failed to Remove RACM Before Demolition
- 40 CFR 61.145(c)(2)(i)(ii) - Failed to Adequately Wet RACM
- 40 CFR 61.145(c)(3) - Failed to Maintain RACM Wet
- 40 CFR 61.145(c)(6)(i) - Failed to Ensure RACM Wet Until Containerized
- 40 CFR 61.145(c)(8) - Failed to Have Trained Representative
- 40 CFR 61.150(a)(1)(iii) - Failed to Use Leak Tight Containers
- 40 CFR 61.150(a)(1)(iv) - Failed to Properly Label Containers
- 40 CFR 61.150(a)(1)(v) - Failed to Properly Label Containers
- 40 CFR 61.150(b) - Failed to Properly Transport ACM Waste

Count II:

Air Pollution Violations

- 415 ILCS 5/9(a) – Caused or Allowed Emission of Asbestos
- 35 Ill. Adm. Code 201.141- Caused or Allowed Emission of Asbestos

C. Non-Admission of Violations

PRAIRIELAND 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, PRAIRIELAND does not 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

1. On August 18, 2009, the Illinois EPA received a revised asbestos remediation

design plan submitted on behalf of PRAIRIELAND.

2. On August 28, 2009, the Illinois EPA accepted the remediation plan.
3. On May 6, 2010, the Illinois EPA received documentation that removal of all regulated asbestos containing material and asbestos contamination at the Facility had been completed.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. PRAIRIELAND 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 PRAIRIELAND in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board's 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 (2008).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2008), 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. If the Complainant's allegations are accepted as correct, Complainant contends that human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by PRAIRIELAND's violations.
2. Moser Hall, Heating Plant No. 1 and the Campus Cafeteria at the Facility have now been demolished.
3. Moser Hall, Heating Plant No. 1 and the Campus Cafeteria at the Facility have now been demolished.
4. The Parties to the Stipulation agree that complying with the NESHAP for asbestos, the Act and the Board's regulations is technically practicable and economically reasonable; and
5. PRAIRIELAND has completed the remediation of all regulated asbestos containing waste material and asbestos contamination resulting from the alleged improper asbestos removal and demolition 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) (2008), 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 approximately December 23, 2008 through March 26, 2009, Complainant alleges that PRAIRIELAND failed to conduct demolition and asbestos removal activities at the Facility in compliance with asbestos NESHAP notification, emission control and disposal requirements.

2. PRAIRIELAND acted diligently to properly remove, handle, and dispose of all RACM and asbestos contamination at the Facility in compliance with the NESHAP for asbestos, the Act, and the Board’s regulations, after the Illinois EPA informed PRAIRIELAND of the violations that are the subject of the Complaint.

3. Complainant alleges that PRAIRIELAND realized an economic benefit of noncompliance by delaying and/or avoiding costs necessary to properly conduct asbestos demolition and disposal activities in compliance with the NESHAP for asbestos, the Act, and the Board’s regulations.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Fifty Thousand Dollars (\$50,000.00) will serve to deter further violations and aid in future voluntary compliance with the NESHAP for asbestos, the Act and the Board's regulations.

5. To Complainant's knowledge, PRAIRIELAND 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. PRAIRIELAND shall pay a civil penalty in the sum of Fifty Thousand Dollars (\$50,000.00). Payment shall be made in installments according to the following schedule:

Payment Number 1: \$25,000 within thirty (30) days of Board approval.

Payment Number 2: \$12,500 within one hundred eighty (180) days of Board approval.

Payment Number 3: \$12,500 within three hundred sixty (360) days of Board approval.

B. Interest and Default

1. If PRAIRIELAND fails to make any payment required by this Stipulation on or before the date upon which the payment is due, PRAIRIELAND 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 PRAIRIELAND 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 PRAIRIELAND'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 Enforcement Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. In addition to any other authorities, and subject to constitutional limitations, 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 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, subject to constitutional limitations.

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

3. PRAIRIELAND shall cease and desist from future violations of the NESHP for asbestos, the Act and the Board's regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of PRAIRIELAND's payment of the \$50,000.00 penalty, their commitment to cease and desist as contained in Section V, paragraph D above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges PRAIRIELAND, and its members from any further liability or penalties for the violations of the NESHP for asbestos, the Act and the Board's regulations that were the subject matter of the Complaint herein, and from any further liability or penalties for alleged violations of the Illinois Commercial and Public Building Asbestos Abatement Act, 225 ILCS 207/1 *et seq.*, and the Illinois Department of Public Health Asbestos Abatement Regulations, 77 Ill. Adm. Code Part 855, arising from or related to the facts stipulated herein or the matters addressed in the Complaint. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on November 9, 2010, or set forth herein. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against PRAIRIELAND 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 PRAIRIELAND'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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), or entity other than PRAIRIELAND and its members.

F. Enforcement

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,

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

LISA BONNETT, Interim Director
Illinois Environmental Protection Agency

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

BY: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY: 

JOHN J. KIM
Chief Legal Counsel

DATE: 7/09/11

DATE: 7/5/11

PRAIRIELAND INVESTMENT GROUP, LLC

BY: 

Name: Joseph F Connor
(PRINT)

Title: _____

DATE: 6/17/11