

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 TWO RIVERS FS, INC.,)
 an Illinois agricultural co-operative,)
)
 Respondent.)

PCB No.
(Enforcement)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on October 30, 2012, 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 COMPLAINT, 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: _____

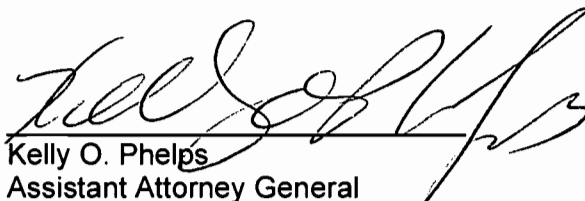


Kelly O. Phelps
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031

CERTIFICATE OF SERVICE

I hereby certify that I did on October 30, 2012, 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, COMPLAINT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.


Kelly O. Phelps
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Lauren C. Lurkins
Hodge Dwyer & Driver
3150 Roland Avenue
P.O. Box 5776
Springfield, IL 62705-5776

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO.
)	(Enforcement)
)	
TWO RIVERS FS, INC.,)	
an Illinois agricultural co-operative,)	
)	
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) (2010), 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) (2010). In support of this motion, Complainant states as follows:

1. A Complaint is being filed simultaneously herewith 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) (2010).

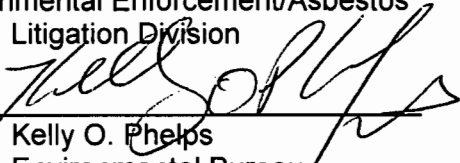
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY:


Kelly O. Phelps
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 30, 2012

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PIKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO.
)	(Enforcement)
TWO RIVERS FS, INC.,)	
an Illinois agricultural co-operative,)	
)	
Respondent.)	

COMPLAINT FOR INJUNCTIVE RELIEF

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, TWO RIVERS FS, INC., ("TRFS") as follows:

COUNT I

TWO RIVERS FS, INC., AIR POLLUTION

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).
2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2010), and charged, inter alia, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").
3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. The Respondent TRFS is a cooperative organized under the Agricultural Co-operative Act, 805 ILCS 315/1 *et seq.* (2010), properly registered and in good standing with the Illinois Department of Agriculture.

5. The Respondent TRFS is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

6. On information and belief, Respondent TRFS owns and operates a commercial "facility", as defined by Section 61.141 of the National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR 61.141. The facility is located at or near State Highway 96, Kinderhook, Illinois and includes a multi-building complex, including a fertilizer storage building, which is the subject of this Complaint.

7. T.S. Banze Construction, Inc. is a Missouri Corporation not properly registered with the Secretary of State to do business in the State of Illinois and performs general construction and demolition activities. T.S. Banze Construction, Inc. principal office is located at 619 Shamrock Estate Lane, Foristell, Missouri 63348.

8. T.S. Banze Construction, Inc. is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

9. T.S. Banze Construction, Inc. *is not* licensed by the Illinois Department of Public Health ("IDPH") to remove asbestos.

10. At a time better known to the Respondent, prior to July 29, 2011, Respondent TRFS employed T.S. Banze Construction, Inc. to remove and dispose of siding material from the aforementioned fertilizer storage building.

11. At a time better known to the Respondent, prior to July 29, 2011, T.S. Banze Construction, Inc. removed approximately 1,096 square feet of siding material from the north and west walls of the TRFS fertilizer storage unit.

12. The siding material was rendered "regulated asbestos containing material" ("RACM"), as defined by the NESHAP for asbestos, 40 CFR 61.14.

13. On a date better know to the Respondent, prior to July 29, 2011, and through September 30, 2011, dry, pulverized, brittle, or friable RACM debris, resulting from TRFS demolition and renovation activity, remained uncontained and open to the environment in and around the fertilizer storage unit.

14. On July 29, 2011, Illinois EPA Asbestos-Unit Inspector, Alan Grimmett, met with TRFS employee, Larry Keim at the TRFS Kinderhook facility. Mr. Keim informed Inspector Grimmett that siding on the fertilizer storage unit had been removed by T.S. Banze Construction, Inc. Inspector Grimmett inspected the fertilizer storage unit to determine if asbestos removal activities had been performed in compliance with the NESHAP, 40 CFR 61.14 *et seq.*

15. Inspector Grimmett observed uncontained, dry, crushed and crumbled siding debris strewn around and adjacent to the fertilizer storage unit.

16. Inspector Grimmett observed siding debris comingled with white rock along the north wall of the fertilizer storage unit.

17. Inspector Grimmett obtained samples of the siding debris from various areas adjacent to the fertilizer storage unit and sent them to a laboratory for analytical testing.

18. Analytical testing of the samples revealed the siding debris contained between 10% to 15% chrysotile and 2% to 5% amosite asbestos.

19. The dry, asbestos-containing, transite siding material, at the site was friable asbestos material and RACM as those terms are defined in Section 61.141 of Title 40 of the Code of Federal Regulations, 40 C.F.R. 61.141.

20. RACM remained at the site until on or about September 30, 2011. At that time, Respondent TRFS had hired a site remediation contractor that completed remediation at the site.

21. Respondent TRFS was the "owner" of a demolition or renovation activity as defined by Section 61.141 of the NESHAP for asbestos, 40 CFR 61.141.

22. T.S. Banze Construction, Inc. was the "operator" of a demolition or renovation activity as defined by Section 61.141 of the NESHAP for asbestos, 40 CFR 61.141.

23. Pursuant to Section 112(b)(1) of the Clean Air Act ("CAA"), 42 U.S.C. 7412(b)(1) (2010), the Administrator of the United States Environmental Protection Agency ("U.S. EPA") lists asbestos as a hazardous air pollutant.

24. Asbestos is a known human carcinogen for which there is no known safe level of exposure.

25. Section 9(a) of the Act, 415 ILCS 5/9(a) (2010), provides as follows:

No person shall:

(a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

26. Section 201.141 of the Illinois Pollution Control Board's ("Board") Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides as follows:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter. . . .

27. Section 3.115 of the Act, 415 ILCS 5/3.115 (2010), provides the following definition:

"Air Pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

28. Section 3.165 of the Act, 415 ILCS 5/3.165 (2010), provides the following definition:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

29. Asbestos is a "contaminant" as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2010).

30. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), provides the following definition:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

31. On or before July 29, 2011, through at least September 30, 2011, Respondent TRFS caused, threatened or allowed the discharge or emission of asbestos, a contaminant that is a known human carcinogen for which there is no known safe level of exposure, into the environment by improperly disturbing, handling and disposing of dry, friable RACM,

32. By causing, threatening or allowing the discharge or emission of a contaminant into the environment, Respondent TRFS caused or tended to cause air pollution in Illinois.

33. By causing or tending to cause air pollution in Illinois, Respondent, TRFS violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2010), the NESHAP for asbestos regulations, 40 CFR 61.14 *et seq.* and Section 201.141 of the Board's Air Pollution Regulations.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, TWO RIVERS FS, INC.

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), impose a civil penalty of up to fifty thousand dollars (\$50,000) for each violation and an additional penalty of ten thousand (\$10,000) for each day during which such violations continued;
Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), awarding to Complainant its costs and reasonable attorney's fees; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT II

TWO RIVERS FS, INC., FAILURE TO NOTIFY AND INSPEC

1-22 Complainant realleges and incorporates by reference herein Paragraphs 1 through 22 of Count I of the Complaint as Paragraphs 1 through 22 of this Count II.

23. Section 9.1(d) of the Act, 415 ILCS 5/ 9.1(d) (2010), provides as follows:

d) No person shall:

- 1. Violate any provisions of Sections 111, 112, 165, 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto.

24. Section 112(d)(1) of the Clean Air Act ("CAA"), 42 U.S.C. 7412(d)(1) (2010), titled, Emission Standards, provides, in pertinent part, as follows:

- 1. The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation. . . .

25. Section 112(h)(1) of the CAA, 42 U.S.C. 7412(h)(1) (2010), titled, Work Practice Standards and Other Requirements, provides in pertinent part as follows:

1. For the purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, operation standard, or combination thereof, which in the Administrator's judgment is consistent with the provisions of subsection (d) or (f) of this section. . . .

26. On June 19, 1978, the Administrator determined that work practice standards rather than emission standards are appropriate in the regulation of asbestos, 43 Fed. Reg. 26372 (1978), and therefore, pursuant to Section 112 of the CAA, 42 U.S.C. 7412 (2010), the U.S. EPA adopted National Emissions Standards for Hazardous Air Pollutants ("NESHAP"), including asbestos, at 40 C.F.R. Part 61, Subpart M ("NESAHP for asbestos").

27. Section 61.141 of the NESHAP for asbestos, 40 C.F.R. 61.141, provides in pertinent part as follows:

All terms that are used in this subpart and are not defined below are given the same meaning as in the Act and in subpart A of this part.

Adequately wet means sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

Asbestos means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

Category I nonfriable asbestos containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 C.F.R. 763, section 1, Polarized Light Microscopy.

Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in appendix A, subpart F, 40 C.F.R. part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Demolition means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

Facility means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

Friable asbestos material means any material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 C.F.R. 763 section 1, Polarized Light Microscopy, that, when dry can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

Installation means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

Owner or operator of a demolition or renovation activity means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

Regulated asbestos-containing material (RACM) means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I

nonfriable ACM that will be or has been subjected to sanding, grinding, cutting or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

Remove means to take out RACM or facility components that contain or are covered with RACM from any facility.

Renovation means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

28. The TRFS fertilizer storage unit is a building located at an "installation" as that term is defined in Section 61.141 of the NESHAP for asbestos, 40 C.F.R. 61.141.

29. Respondent's removal of asbestos from the TRFS fertilizer storage unit at the site constitutes a "renovation" prior to commencing a "demolition" as those terms are defined in Section 61.141 of the NESHAP for asbestos, 40 C.F.R. 61.141.

30. Respondent TRFS owned, operated, controlled, supervised, and participated in asbestos removal activities at the site in preparation for the demolition of the fertilizer storage unit and is therefore an "owner" of a planned demolition and renovation activity as defined in Section 61.141 of the NESHAP for asbestos, 40 C.F.R. 61.141.

31. The material disturbed by Respondent during asbestos removal and disposal activities contained more than 1% chrysotile asbestos, was capable of being crumbled, pulverized, or reduced to powder by hand pressure, and is therefore "friable asbestos material" as that term is defined in Section 61.141 of the NESHAP for asbestos, 40 C.F.R. 61.141.

32. The transite siding that was removed from the TRFS fertilizer storage unit was rendered friable and the dry, friable material at the site was "RACM" as that term is defined in Section 61.141 of the NESHAP for asbestos, 40 C.F.R. 61.141.

33. Section 61.145(a) of the NESHAP for asbestos, 40 C.F.R. 61.145(a), enforceable through Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2010), is titled Standard for demolition and renovation: and provides, in pertinent part, as follows:

(a) *Applicability.* To determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

- (i) At least 80 linear meters (260 linear feet) on pipes or a least 15 square meters (160 square feet) on other facility components, or
- (ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

34. Respondent removed approximately 1,096 square feet of asbestos-containing transite siding located on exterior walls of the TRFS fertilizer storage unit. Because the amount of ACM removed and rendered RACM was more than 160 square feet and/or 35 cubic feet, the project is subject to notification and asbestos emission control requirements specified by Sections 61.145(b) and (c) of the NESHAP for asbestos, 40 C.F.R. 61.145(b) and (c).

35. Section 61.145(b) of the NESHAP for asbestos, 40 C.F.R. 61.145(b), enforceable through Section 9.1(d) of the Act, 415 ILCS 5/9.1(d), provides, in pertinent part, as follows:

(b) *Notification requirements.* Each owner or operator of a demolition or renovation activity to which this section applies shall:

(1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

* * *

(3) Postmark or deliver the notice as follows:

(i) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (a) (1) and (4) (except (a)(4)(iii) and (a)(4)(iv)) of this section. If the operation is as described in paragraph (a)(2) of this section, notification is required 10 working days before demolition begins.

36. Respondent failed to thoroughly inspect the facility for the presence and location of asbestos-containing material ("ACM") prior to commencing asbestos removal and disposal activities at the site, as required by Section 61.145(a) of the NESHAP for asbestos, 40 C.F.R. 61.145(a).

37. By failing to thoroughly inspect the facility for the presence and location of ACM prior to commencing asbestos removal and disposal activities at the site, Respondent violated Section 61.145(a) of the NESHAP for asbestos, 40 C.F.R. 61.145(a), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d).

38. Respondent failed to notify the Illinois EPA of scheduled asbestos removal activities at the site, at least 10 working days prior to commencing such activities, as required by Section 61.145(b) of the NESHAP for asbestos, 40 C.F.R. 61.145(b).

39. By failing to notify the Illinois EPA of scheduled asbestos removal activities at the site, at least 10 working days prior to commencing such activities, Respondent violated Section

61.145(b) of the NESHAP for asbestos, 40 C.F.R. 61.145(b), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, TWO RIVERS FS, INC.

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act, the NESHAP for asbestos and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act, the NESHAP for asbestos and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), impose a civil penalty of up to fifty thousand dollars (\$50,000) for each violation and an additional penalty of ten thousand (\$10,000) for each day during which such violations continued;

Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), awarding to Complainant its costs and reasonable attorney's fees; and

E. Granting such other relief as the Board may deem appropriate.

COUNT III

**TWO RIVERS FS, INC., ASBESTOS REMOVAL
AND WASTE HANDLING VIOLATIONS**

1-27. Complainant realleges and incorporates by reference herein Paragraphs 1 through 22 of Count I and Paragraphs 23 through 27 of Count II as paragraphs 1 through 27 of this Count III.

28. 40 CFR 61.145(c) provides, in pertinent part:

(a) Procedures for asbestos emission control. Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

(1) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. RACM need not be removed before demolition if:

(i) It is Category I nonfriable ACM that is not in poor condition and not friable.

(ii) It is on a facility component that is encased in concrete or other similarly hard material and is adequately wet whenever exposed during demolition; or

(iii) It was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed. If not removed for safety reasons, the exposed RACM and any asbestos-contaminated debris must be treated as asbestos-containing waste material and adequately wet at all times until disposed of.

(iv) They are Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.

(2) When a facility component that contains, is covered with, or is coated with RACM is being taken out of the facility as a unit or in sections:

(i) Adequately wet all RACM exposed during cutting or disjoining operations; and

(ii) Carefully lower each unit or section to the floor and to ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the RACM.

*

*

*

(4) (4) After a facility component covered with, coated with, or containing RACM has been taken out of the facility as a unit or in sections pursuant to paragraph (c)(2) of this section, it shall be stripped or contained in leak-tight wrapping, except as described in paragraph (c)(5) of this section. If stripped, either:

(i) Adequately wet the RACM during stripping;

* * *

(6) For all RACM, including material that has been removed or stripped:

(i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with [section] 61.150;

* * *

(8) Effective 1 year after promulgation of this regulation, no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. . . .

29. 40 CFR 61.150 (2010), provides, in pertinent part:

Each owner or operator of any source covered under the provisions of [sections] 61.144, 61.145, and 61.147 shall comply with the following provisions:

(a) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the course, or use one of the emission control and waste treatment methods specified in paragraphs (a)(1) through (4) of this section.

(1) Adequately wet asbestos-containing waste material as follows:

(i) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and

(ii) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by [section] 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and

(iii) After wetting, seal all asbestos-containing waste material in a leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and

(iv) Label the containers or wrapped materials specified in paragraph (a)(1)(iii) of this section using warning labels specified by Occupational Safety and Health Standard of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(j)(2) or 1926.58(k)(2)(iii). The labels shall be printed in letters of sufficient size and contrast to be readily visible and legible.

(v) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

* * *

(b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

(1) A waste disposal site operated in accordance with the provisions of [section] 61.145, or

(2) An EPA-approved site that converts RACM asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of [section] 61.155.

30. Respondent failed to remove all RACM prior to commencing demolition activities, including Category I non-friable ACM, that would breakup, dislodge, or similarly disturb the material.

31. By failing to remove all RACM prior to commencing demolition activities, including Category I non-friable ACM, and then rendering transite material friable, Respondent violated Section 61.145(c)(1) of the NESHAP, 40 CFR 61.145(c)(1).

32. Respondent failed to adequately wet all RACM and prevent damage or disturbance to the RACM exposed during cutting or disjoining operations at the fertilizer storage unit.

33. By failing to adequately wet all RACM and prevent damage or disturbance to the RACM exposed during cutting or disjoining operations at the fertilizer storage unit, Respondent violated Sections 61.145(c)(2)(i) and (ii) of the NESHAP, 40 CFR 61.145(c)(2)(i) and (ii).

34. Respondent failed to adequately wet and contain all RACM during the removal of Category I asbestos-containing transite siding panels on the fertilizer storage unit.

35. By failing to adequately wet and contain all RACM during the removal of Category I asbestos-containing transite siding panels on the fertilizer storage unit, Respondent violated Section 61.145(c)(4) of the NESHAP, 40 CFR 61.145(c)(4).

36. Respondent failed to adequately wet and maintain wet all RACM and regulated asbestos-containing waste material until collected and contained in preparation for disposal at a site permitted to accept such waste.

37. By failing to adequately wet and maintain wet all RACM and regulated asbestos-containing waste material until collected and contained in preparation for disposal at a site

permitted to accept such waste, Respondent violated Section 61.145(c)(6) of the NESHAP, 40 CFR 61.145(c)(6).

38. Respondent failed to have at least one representative trained in the provisions of the NESHAP for asbestos and compliance methods prescribed therein on-site during asbestos removal activities.

39. By failing to have at least one representative trained in the provisions of the NESHAP for asbestos and compliance methods prescribed therein on-site during asbestos removal activities, Respondent violated Section 61.145(c)(8) of the NESHAP, 40 CFR 61.145(c)(8).

40. Respondent failed to adequately wet, keep wet, and containerize all regulated asbestos containing waste material, thereby causing or allowing the discharge of visible emissions to the outside air.

41. By failing to adequately wet, keep wet, and containerize all regulated asbestos containing waste material, thereby causing or allowing the discharge of visible emissions to the outside air, Respondent violated Sections 61.150(a)(1)(iii), (iv) and (v) of the NESHAP, 40 CFR 61.150(a)(1)(iii), (iv) and (v).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, TWO RIVERS FS, INC.:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act, the NESHAP for asbestos and regulations as alleged herein;

- C. Ordering Respondent to cease and desist from any further violations of the Act, the NESHAP for asbestos and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), impose a civil penalty of up to fifty thousand dollars (\$50,000) for each violation and an additional penalty of ten thousand (\$10,000) for each day during which such violations continued;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT IV

**TWO RIVERS FS, INC. IMPROPER DISPOSAL OF
REGULATED ASBESTOS-CONTAINING MATERIALS**

- 1-27. Complainant realleges and incorporates by reference herein Paragraphs 1 through 22 of Count I and Paragraphs 23 through 27 of Count II as paragraphs 1 through 27 of this Count IV.
- 28. Section 61.150(b) of the NESHAP for asbestos, 40 C.F.R. 61.150(b), provides as follows:
 - (b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:
 - (1) A waste disposal site operated in accordance with the provisions of § 61.154, or
 - (2) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of § 61.155.
- 29. Section 61.141 of the NESHAP for asbestos, 40 C.F.R. 61.141, provides the following definitions:

Asbestos-containing waste materials means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this subpart. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

30. The RACM removed from the TRFS fertilizer storage unit during the asbestos removal activities, as well as materials contaminated with asbestos through contact with RACM, constituted "asbestos-containing waste material" as that term is defined in Section 61.141 of the NESHAP for asbestos, 40 C.F.R. 61.141.

31. Respondent failed to transport all regulated asbestos-containing waste material generated during asbestos removal activities at the site to a waste disposal site for disposal as soon as practical.

32. By failing to transport all asbestos-containing waste material generated during asbestos removal activities at the site, to a waste disposal site for disposal as soon as practical Respondent, TRFS violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2010), and Section 61.150(b) of the NESHAP for asbestos, 40 C.F.R. 61.150(b).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, TWO RIVERS FS, INC.:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act, the NESHAP for asbestos and regulations as alleged herein;

- C. Ordering Respondent to cease and desist from any further violations of the Act, the NESHAP for asbestos and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), impose a civil penalty of up to fifty thousand dollars (\$50,000) for each violation and an additional penalty of ten thousand (\$10,000) for each day during which such violations continued;
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT V

TWO RIVERS FS, INC., FAILURE TO PAY ASBESTOS FEE

1-27. Complainant realleges and incorporates by reference herein Paragraphs 1 through 22 of Count I and Paragraphs 23 through 27 of Count II as paragraphs 1 through 27 of this Count V.

28. Section 9.13 of the Act, 415 ILCS 5/9.13(a) and (b)(2010), provides, in pertinent part, as follows:

(a) For any site for which the owner or operator must file an original 10-day notice of intent to renovate or demolish pursuant to 40 C.F.R. §61.145(b) (part of the federal asbestos National Emission Standard for Hazardous Air Pollutants or NESHAP), the owner or operator shall pay to the Agency with the filing of each 10-day Notice a fee of \$150.

(b) If demolition or renovation of a site has commenced without proper filing of the 10-day Notice, the fee is double the amount otherwise due. This doubling of the fee is in addition to any other penalties under this Act, the federal NESHAP, or otherwise, and does not preclude the Agency, the Attorney General, or other authorized persons from pursuing an enforcement action against the owner or operator for failure to file a 10-day Notice prior to commencing demolition or renovation activities.

29. Respondent TRFS failed to pay the required fee provided by Section 9.13(a) of the Act, 415 ILCS 5/9.13(a) (2010).

30. Respondent TRFS began asbestos removal activities before July 29, 2011, on a date better known to Respondent, without filing the requisite notice of scheduled demolition and renovation activities required by the NESHAP for asbestos. Therefore, an asbestos fee payment of \$300.00 is required, pursuant to Section 9.13(b) of the Act, 415 ILCS 5/9.13(b).

31. On August 30, 2011, Respondent TRFS submitted to the Illinois EPA an untimely notification of demolition and renovation informing the Illinois EPA of asbestos removal activities at the site with an asbestos fee payment of \$300.00.

32. By failing to timely submit a notice and pay the 10-day Notice Fee Respondent TRFS violated Section 9.13(a) and (b) of the Act 415 ILCS 5/9.13(a) (b) (2010).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, TWO RIVERS FS, INC.:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), impose a civil penalty of up to fifty thousand dollars (\$50,000) for each violation and an additional penalty of ten thousand (\$10,000) for each day during which such violations continued;

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

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: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 22, 2012

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO.
)	(Enforcement)
TWO RIVERS FS, INC.,)	
an Illinois agricultural co-operative,)	
)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and TWO RIVERS FS, INC., ("Respondent") ("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.* (2010), and the Board's Regulations, 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.

I. STATEMENT OF FACTS

A. Parties

1. On _____, 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 (2010), against the Respondent Two Rivers FS, Inc.

(2010), against the Respondent Two Rivers FS, Inc.

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 (2010).

3. At all times relevant to the Complaint, Respondent was a cooperative organized under the Agricultural Co-operative Act, 805 ILCS 315/1 *et seq.* (2010), in good standing with the Illinois Department of Agriculture, authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent owned and operated a commercial "facility", as defined by Section 61.141 of the National Emissions Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR 61.141. The facility is a multi-building complex, located at or near State Highway 96, Kinderhook, including a fertilizer storage building, which is the subject of the Complaint.

5. At a time better known to the Respondent, prior to July 29, 2011, Respondent employed T.S. Banze Construction, Inc. to remove and dispose of siding material from the afore-mentioned fertilizer storage building. T.S. Banze Construction, Inc. removed approximately 1,096 square feet of siding material from the north and west walls of the fertilizer storage building.

6. On July 29, 2011, Illinois EPA Asbestos Unit Inspector, Alan Grimmatt, met with Respondent's agent, Larry Keim at the Kinderhook facility. Inspector Grimmatt inspected the fertilizer storage unit to determine if asbestos removal activities had been performed in compliance with the NESHAP for asbestos, 40 CFR 61.141 *et seq.* Inspector Grimmatt observed uncontained, dry, crushed and crumbled siding debris strewn around/adjacent to the fertilizer storage unit, as well as, siding debris comingled with white rock along the north wall of the fertilizer storage building.

B. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations and NESHAP for asbestos:

COUNT I

1. By causing or tending to cause air pollution in Illinois, Respondent, violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2010), and Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Admin. Code 201.141.

COUNT II

2. By failing to thoroughly inspect the facility for the presence and location of ACM prior to commencing asbestos removal and disposal activities at the site, Respondent, violated Section 61.145(a) of the NESHAP for asbestos, 40 C.F.R. 61.145(a), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d).
3. By failing to notify the Illinois EPA of scheduled asbestos removal activities at the site, at least 10 working days prior to commencing such activities, Respondent violated Section 61.145(b) of the NESHAP for asbestos, 40 C.F.R. 61.145(b), thereby violating Section 9.1(d) of the Act, 415 ILCS 5/9.1(d).

COUNT III

4. By failing to remove all RACM prior to commencing demolition activities, including Category I non-friable ACM, and then rendering transite material friable, Respondent violated Section 61.145(c)(1) of the NESHAP for asbestos, 40 CFR 61.145(c)(1).

PEOPLE v. TWO RIVERS FS, INC.
PCB NO.

5. By failing to adequately wet all RACM and prevent damage or disturbance to the RACM exposed during cutting or disjoining operations at the fertilizer storage building, Respondent violated Sections 61.145(c)(2)(i) and (ii) of the NESHAP for asbestos, 40 CFR 61.145(c)(2)(i) and (ii).
6. By failing to adequately wet and contain all RACM during the removal of Category I asbestos-containing transite siding panels on the fertilizer storage building, Respondent violated Section 61.145(c)(4) of the NESHAP for asbestos, 40 CFR 61.145(c)(4).
7. By failing to adequately wet and maintain wet all RACM and regulated asbestos-containing waste material until collected and contained in preparation for disposal at a site permitted to accept such waste, Respondent violated Section 61.145(c)(6) of the NESHAP for asbestos, 40 CFR 61.145(c)(6).
8. By failing to have at least one representative trained in the provisions of the NESHAP for asbestos and compliance methods prescribed therein on-site during asbestos removal activities, Respondent violated Section 61.145(c)(8) of the NESHAP for asbestos, 40 CFR 61.145(c)(8).
9. By failing to adequately wet, keep wet, and containerize all regulated asbestos containing waste material, thereby causing or allowing the discharge of visible emissions to the outside air, Respondent violated Sections 61.150(a)(1)(iii), (iv) and (v) of the NESHAP for asbestos, 40 CFR 61.150(a)(1)(iii), (iv) and (v).

COUNT IV

10. By failing to transport all asbestos-containing waste material generated during asbestos removal activities at the site, to a waste disposal site for disposal as soon as practical Respondent, violated Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2010), and Section 61.150(b) of the NESHAP for asbestos, 40 C.F.R. 61.150(b).

COUNT V

11. By failing to timely submit a notice and pay the 10-day Notice Fee Respondent violated Section 9.13(a) and (b) of the Act 415 ILCS 5/9.13(a) and (b) (2010).

C. Non-Admission of Violations

The 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 I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

1. Immediately upon being informed by the Illinois EPA of the alleged violations, Respondent ceased its demolition and renovation activities.
2. Respondent hired licensed asbestos professionals to inspect the facility for the presence and location of asbestos prior to commencing any additional renovation or demolition activities.
3. Respondent prepared an asbestos remediation project plan, which was submitted to Illinois EPA and accepted by Illinois EPA on August 31, 2011.

PEOPLE v. TWO RIVERS FS, INC.
PCB NO.

4. Respondent submitted a notification of demolition and renovation, along with the required asbestos fee, to Illinois EPA.
5. Respondent hired licensed asbestos professionals to conduct the asbestos remediation at the facility, which was completed on September 19, 2011.
6. Respondent submitted to Illinois EPA the results of confirmation air sampling following the remediation.
7. Illinois EPA accepted the asbestos remediation as complete on September 22, 2011.
8. In addition to the asbestos remediation performed at the facility, Respondent committed to implement training sessions with employees so its staff will be aware of the need to perform asbestos inspections and submit to Illinois EPA written notification of demolition and renovation at least ten (10) working days prior to the demolition or renovation.
9. Respondent also committed to implement a policy that all buildings be inspected for the presence and location of asbestos prior to commencing renovation or demolition activities.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. 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 5/42 (2010).

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2010), 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 EPA=s ability to enforce and monitor compliance with NESHAP for asbestos notification, emission control, and waste disposal requirements was impeded by the Respondent=s violations.

2. There is social or economic benefit to the facility.

3. The facility's location is suitable for normal operations.

4. Compliance with NESHAP for asbestos regulations, The Act, and the Boards regulations at the site was both technically practicable and economically reasonable.

5. implemented measures to properly remove, handle and dispose of all regulated asbestos containing material and regulated asbestos containing waste material resulting from

improper asbestos removal activities at the facility.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2012), 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;
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; and
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. The Respondent failed to prevent asbestos emissions during

demolition/renovation activities at the site. The violations began on or around July 2011, and were individually resolved at various times in the following months.

2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified it of its alleged noncompliance.

3. Complainant has determined, based upon the specific facts of this matter, that a penalty of twenty-five thousand dollars (\$25,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

4. Respondent has no previously adjudicated violations of the Act.

5. Self-disclosure is not at issue in this matter.

6. 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 twenty-five thousand dollars (\$25,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

1. If the Respondent fails to make the 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.

PEOPLE v. TWO RIVERS FS, INC.
PCB NO.

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

PEOPLE v. TWO RIVERS FS, INC.
PCB NO.

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.

3. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$25,000.00 penalty, its commitment to cease and desist as contained in Section V.D.3. above 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 Complaint filed on _____. 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 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. Termination

Except for Sections II, V.D.3. and V.E., this Stipulation and Proposal for Settlement shall terminate upon payment of the penalty as referenced in Section V.A.

G. Enforcement and Modification of Stipulation

1. 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.

H. 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.

PEOPLE v. TWO RIVERS FS, INC.
PCB NO.

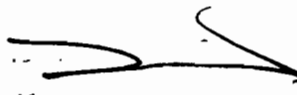
WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS, ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

JOHN J. KIM, Interim Director
Illinois Environmental Protection Agency

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

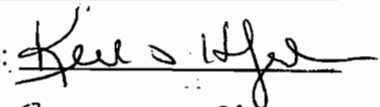
BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM
Interim Director

DATE: 10/18/12

DATE: 9/21/12

TWO RIVERS FS, INC.

BY: Two Rivers Fs
Name: 
Title: General Mgr

DATE: 10/12/12