

5/19/2023 3:10 PM
By: RP

Susann W. McGee
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY, ILLINOIS

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. **KWAME RAOUL, Attorney General**)
of the State of Illinois,)
)
Plaintiff,)
)
v.)
)
WEST LIBERTY POINT LLC,)
an Illinois limited liability company,)
)
and)
)
VALUE ADD PARTNERS, INC.)
a Texas corporation,)
)
Defendants.)

No. 23 CH 23

AGREED IMMEDIATE AND PRELIMINARY INJUNCTION ORDER

This matter coming before the Court on Plaintiff’s, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* Kwame Raoul, Attorney General of the State of Illinois, Motion for Immediate and Preliminary Injunction, due notice having been given, the Court having jurisdiction over the parties and the subject matter herein, venue being proper, and the Court otherwise being duly advised in the premises;

NOW THEREFORE, Plaintiff having alleged pursuant to Section 43(a) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/43(a) (2020), that a substantial danger to the environment, public health or welfare exists pursuant to the Act, 415 ILCS 5/1 *et seq.* (2020), and having also alleged that Defendant WEST LIBERTY POINT LLC, an Illinois limited liability

company, and Defendant VALUE ADD PARTNERS, INC. a Texas corporation (the “Defendants”), have violated the Act, the Illinois Pollution Control Board (“Board”) regulations, and the National Emission Standards for Hazardous Air Pollutants regulating asbestos, codified at 40 C.F.R. Part 61, Subpart M (“Asbestos NESHAP”), and that a preliminary injunction should issue pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e) (2020), to restrain the violations; and the parties having agreed to the entry of this Agreed Immediate and Preliminary Injunction Order (“Agreed Order”), the Court enters the following immediate and preliminary injunction pursuant to Section 43(a) of the Act, 415 ILCS 5/43(a) (2020), and Section 42(e) of the Act, 415 ILCS 5/42(e) (2020), which shall remain in effect until further order of this Court.

I. BACKGROUND

1. Plaintiff incorporates by reference herein the allegations in its Verified Complaint for Injunctive and Other Relief filed on May 18, 2023 (“Verified Complaint”).

2. Plaintiff alleges that the Defendants have created circumstances of substantial danger to the environment, public health and welfare through the improper removal, handling, and disposal of the regulated asbestos-containing material (“RACM”) in two residential 20 one-bedroom unit buildings located at 1320 McCullough Street and 1321 Dolittle Boulevard, Rantoul, Illinois 61866 (“Apartment Complex” and “Site”), beginning on or about January 1, 2022 and on dates better known to the Defendants.

II. GENERAL PROVISIONS

1. This Agreed Order is not a final resolution on the merits of Plaintiff’s Verified Complaint, but rather addresses Plaintiff’s most immediate concerns regarding the allegations set forth in the Verified Complaint.

2. By entering into this Agreed Order and complying with its terms, Defendant

WEST LIBERTY POINT LLC, and Defendant VALUE ADD PARTNERS, INC. does not admit any wrongful conduct or violation of any applicable statute, law or regulation, and this Agreed Order and compliance shall not be interpreted as any such admission.

3. This Agreed Order shall apply to and bind the Plaintiff and the Defendants hereto.

4. The Court shall retain jurisdiction of this matter and shall consider any motion by Plaintiff or Defendants for the purposes of interpreting and enforcing the terms and conditions of this Agreed Order.

III. COMPLIANCE MEASURES TO DATE

1. On April 14, 2023, Defendants hired Triple A Asbestos to conduct an inspection of the Apartment Complex.

2. By May 1, 2023, Defendants report they had notified tenants occupying the Apartment Complex during the renovation work that commenced in April 2023 and offered accommodations for those tenants until the work is completed.

3. On May 3, 2023, Defendants hired Reliable Environmental Solutions, Inc. to create a project design work plan (“work plan”) for the Apartment Complex.

4. On May 12 and 17, 2023, Defendants report installing padlocks on the Apartment Complex.

IV. IMMEDIATE INJUNCTIVE RELIEF

1. Effective immediately upon entry of this Agreed Order, Defendants, WEST LIBERTY POINT LLC and VALUE ADD PARTNERS, INC, shall:

- a. Cease and desist from any and all activities at the Apartment Complex, including but not limited to, all renovation, and removal, handling and disposal of asbestos-containing material (“ACM”) or suspect ACM;
- b. Notify the tenants of potential exposure to ACM, including any tenants that occupied the building from January 2022 through the present;

- c. Refrain from removing from the Apartment Complex, or accepting or moving into the Apartment Complex, any equipment, tools, materials, or other items without prior approval from Illinois EPA;
- d. Arrange for tenants to be relocated offsite until asbestos abatement is complete and air clearances indicate the occupied units are safe;
- e. Perform all future demolition and renovation activities in compliance with the Asbestos NESHAP and all other State and federal rules and regulations regarding ACM;
- f. Secure the Apartment Complex, including all apartment buildings in the complex and all dumpsters and other exterior areas with suspect ACM, fence the entire Apartment Complex, and prohibit entry of any person except for Illinois-licensed asbestos professionals;
- g. Hire an Illinois-licensed asbestos professional to implement measures to adequately wet, keep wet, contain, and seal all debris at the Apartment Complex, including debris in the dumpsters;
- h. Hire an Illinois-licensed asbestos professional to perform a complete asbestos inspection of the Apartment Complex, including a full-depth inspection of all debris piles present. If a complete inspection of the Apartment Complex and all associated debris is not possible, then any uninspected material from the site must be assumed to be friable asbestos-containing waste materials ("ACWM") and must be handled in compliance with Asbestos NESHAP;
- i. Within 7 days after the date of entry of this Agreed Order, obtain and submit to Illinois EPA a formal inspection report, including photos, sample details, and test results from the asbestos contractor for the Apartment Complex.
- j. Within 7 days after the date of entry of this Agreed Order, submit a project design workplan to Illinois EPA for approval that includes retaining Illinois licensed asbestos professionals and outlines work practices and procedures for properly handling, removing, and disposing of all ACWM. The workplan must also account for cleaning and decontamination of the work areas and their air space. The affected spaces must include the interior areas of each apartment building in the complex, the interiors of each apartment unit including the occupied units, the dumpster site, and all other areas determined during the asbestos inspection to be contaminated;
- k. Immediately submit a complete and accurate "State of Illinois Notification of Demolition/Renovation Asbestos Form" to Illinois EPA; and

1. Immediately submit a \$300 late fee to Illinois EPA per Section 9.13(b) of the Act.

V. NOTICES

All submittals and correspondence relating the requirements of this Agreed Order shall be directed to the following persons:

FOR PLAINTIFF

Christina Nannini
Kevin D. Barnai
Assistant Attorneys General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
Christina.Nannini@illinois.gov
Kevin.Barnai@ilag.gov

Anupama Paruchuri
Division of Legal Counsel
Illinois Environmental Protection Agency
Anupama.Paruchuri@Illinois.gov

FOR WEST LIBERTY POINT LLC

Phillip R. Van Ness
Webber & Thies, PC
202 Lincoln Square
P.O. Box 189
Urbana, IL 61803-0189
pvanness@webberthies.com

FOR VALUE ADD PARTNERS, INC.

Phillip R. Van Ness
Webber & Thies, PC
202 Lincoln Square
P.O. Box 189
Urbana, IL 61803-0189
pvanness@webberthies.com

VI. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Agreed Order in no way affects the responsibilities of the Defendants to comply with any other federal, state or local laws or regulations, including but not limited to the Act, 415 ILCS 5/1 *et seq.* (2020), the Board's Regulations, 35 Ill. Adm. Code Part 101 *et seq.*, and the Asbestos NESHAP and all other State and federal rules and regulations regarding ACM.

VII. STIPULATED PENALTIES

1. If Defendant WEST LIBERTY POINT LLC, and Defendant VALUE ADD PARTNERS, INC. fail to comply with any of the requirements of this Agreed Interim Order without an agreed modification pursuant to Section XI, Defendant WEST LIBERTY POINT LLC and Defendant VALUE ADD PARTNERS, INC. shall each provide notice to Plaintiff of each failure to comply with this Agreed Order and shall pay stipulated penalties in the amount of \$400.00 per day per violation for up to the first thirty (30) days, and \$1,000.00 per day per violation thereafter until such time that compliance is achieved. Plaintiff may make a demand for stipulated penalties upon the Defendants for their noncompliance with this Agreed Order. However, failure by Plaintiff to make this demand shall not relieve the Defendants of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date Defendants know or should have known of their noncompliance with any provisions of this Agreed Order.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by Defendants 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.

3. The stipulated penalties shall be enforceable by Plaintiff and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Agreed Order.

4. All stipulated penalties and interest payments shall be made by certified check, cashier's 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 Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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

Christina Nannini
Kevin D. Barnai
Assistant Attorneys General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
Christina.Nannini@illinois.gov
Kevin.Barnai@ilag.gov

5. Stipulated penalties shall be in addition to, and not a substitute for, any other remedy or sanction available to Plaintiff.

VIII. DISPUTE RESOLUTION

The parties shall use their best efforts to resolve any and all disputes or differences of opinion arising with regard to this Agreed Order, informally and in good faith. If, however, a dispute arises concerning this Agreed Order that the parties are unable to resolve informally, either party to this Agreed Order may, by written motion, request that the parties hold an evidentiary

hearing before the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois, to resolve the dispute between the parties.

IX. FORCE MAJEURE

1. For the purpose of this Agreed Order, force majeure is an event arising beyond the reasonable control of Defendant WEST LIBERTY POINT LLC and Defendant VALUE ADD PARTNERS, INC. which prevents the timely performance of any of the requirements of this Agreed Order. For purposes of this Agreed Order force majeure shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters and labor disputes beyond the reasonable control of Defendant WEST LIBERTY POINT LLC and Defendant VALUE ADD PARTNERS, INC, or its agents, consultants or contractors.

2. When, in the opinion of Defendant WEST LIBERTY POINT LLC and Defendant VALUE ADD PARTNERS, INC., circumstances have occurred that cause or may cause a delay in the performance of any of the requirements of this Agreed Order, Defendant WEST LIBERTY POINT LLC and Defendant VALUE ADD PARTNERS, INC. shall notify the Attorney General's Office and the Illinois EPA in writing as soon as practicable, but oral notice shall be given to the Attorney General's Office and the Illinois EPA within 48 hours of the occurrence and written notice shall be given to the Attorney General's Office and the Illinois EPA no later than ten (10) calendar days after the claimed occurrence. Failure to so notify the Attorney General's Office and the Illinois EPA shall constitute a waiver of any defense under this Section of this Agreed Order arising from said circumstances. Defendant WEST LIBERTY POINT LLC and Defendant VALUE ADD PARTNERS, INC. shall provide a detailed, written description of the precise cause or causes of the claimed occurrence which resulted or will result in the delay, the nature of the delay and its expected duration, the measures taken or to be taken to prevent or mitigate the

delay, and the timetable under which such measures will be taken. Defendant WEST LIBERTY POINT LLC and Defendant VALUE ADD PARTNERS, INC. shall adopt all reasonable measures to avoid or minimize such delay.

3. If the parties agree that the delay has been or will be caused by circumstances beyond the control of Defendant WEST LIBERTY POINT LLC and Defendant VALUE ADD PARTNERS, INC., the time for performance may be extended for a period equal to the length of the delay as the parties determine.

4. In the event that the parties cannot agree that a *force majeure* event has occurred or the extent thereof, the dispute shall be resolved in accordance with Section VIII of this Agreed Order. Provided however, that the invocation of the Dispute Resolution provisions of Section VIII of this Agreed Order is not in and of itself a *force majeure* event. Defendant WEST LIBERTY POINT LLC and Defendant VALUE ADD PARTNERS, INC. shall have the burden of proving *force majeure* by a preponderance of the evidence as a defense to compliance with this Agreed Order.

5. An increase in costs associated with implementing any requirement of this Agreed Order shall not, by itself, excuse Defendant WEST LIBERTY POINT LLC and Defendant VALUE ADD PARTNERS, INC. under the provisions of this Section of the Agreed Order from a failure to comply with such a requirement.

X. RIGHT OF ENTRY

In addition to any other authority, Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon the Site, at all reasonable times for the purpose of conducting inspections and evaluating compliance status. In conducting such inspections, Illinois EPA, its employees and representatives,

AGREED:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental/Asbestos Litigation Division

By: _____
Rachel R. Medina, Deputy Bureau Chief
Environmental Bureau
Assistant Attorney General

DATE: _____

WEST LIBERTY POINT LLC

BY: Daryl Brooks
Name: Daryl Brooks
Title: Principal

DATE: 5/18/2023

VALUE ADD PARTNERS, INC.

BY: Daryl Brooks
Name: Daryl Brooks
Title: Principal

DATE: 5/18/2023

ENTERED:


JUDGE

Date: _____

AGREED:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental/Asbestos Litigation Division

By: 
Rachel R. Medina, Deputy Bureau Chief
Environmental Bureau
Assistant Attorney General

DATE: 5/19/2023

WEST LIBERTY POINT LLC

BY: _____

Name: Daryl Brooks
Title: Principal

DATE: _____

VALUE ADD PARTNERS, INC.

BY: _____

Name: Daryl Brooks
Title: Principal

DATE: _____

ENTERED:



JUDGE

Date: 5/19/2023