



## ***Illinois Dunesland Preservation Society***

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### **N-E-W-S      R-E-L-E-A-S-E**

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## **STATE PROPOSES \$145,000 FINE FOR JOHNS MANVILLE ASBESTOS POLLUTION VIOLATIONS**

### **ENVIRONMENTAL GROUP CALLS FINE "SWEETHEART SETTLEMENT" AND "SLAP-ON-THE-WRIST"**

Illinois officials are urging that former asbestos products maker Johns Manville be let off with just a \$145,000 fine in a controversial pollution violations suit where "fine print" details of the state charges show the penalty could easily have ranged from \$4 million-to-\$7 million.

In a court filing late last week (Thursday, 9/16), lawyers for Attorney General Lisa Madigan contended that the long-awaited settlement proposal--- which is highly favorable to Manville---was fair to the state because, in return for the low fine, Manville agreed to many new details for pursuing the 15-year long cleanup of its highly contaminated, 150-acre asbestos Superfund site in Waukegan that spawned the state charges.

But a top official of the Illinois Dunesland Preservation Society, which has monitored the 27-month old litigation and examined the proposed settlement, called the State/Manville suggested agreement "a fraud on the people of Illinois, a 'Sweetheart Settlement,' and a mere slap-on-the-wrist."

Said Dunesland President Paul Kakuris, "Virtually all the cleanup steps that Manville has promised to perform here, in return for this low fine, Manville is already committed to perform under terms of the latest proposed federal Superfund cleanup requirements that Manville ratified in a revised federal court consent decree earlier this summer. (See detailed comparisons below.)

"So the state is giving up 'something'---the potential for a very substantial fine---for 'nothing,' or virtually nothing," Kakuris suggested.

"This is a rape of the already financially-hard-pressed Illinois taxpayer," Kakuris contended. "Governor Rod Blagojevich is cutting staff and cutting state

services because of Illinois' cash crunch. Meanwhile, the Illinois Attorney General is proposing a so-called 'settlement' with Johns Manville that actually gets the state almost nothing, and instead lets the richest man in America---Warren Buffett, whose Berkshire-Hathaway Company now owns Johns Manville---save millions of dollars. In essence, they are attempting to snooker the court and the taxpayers."

The proposed settlement was submitted Thursday to Lake County Circuit Judge David M. Hall, who was assigned the Manville case when the pollution enforcement suit was filed by the Attorney General in June, 2001, on behalf of the Illinois Environmental Protection Agency. The 75-year old Manville manufacturing complex was razed in 2000 and 2001.

This Spring, the 50+ year old Dunesland---which focuses its activities on and around Illinois Beach State Park, adjoining the Manville property---Dunesland's Loop attorney Donald L. F. Metzger filed a petition with Judge Hall, asking for permission to intervene in the pollution enforcement suit. Dunesland maintained that the Attorney General was not adequately representing the public's---or Dunesland's---interests.

Amazingly, the original suit contained no charges against Manville for the Superfund site's leakage of some of its contaminants into the adjacent Nature Preserve and the State Park. Attorney General Lisa Madigan and IEPA's Renee Cipriano did not hold Manville accountable in any way for this continuing, egregious violation.

Among other things, Dunesland warned Judge Hall that the Attorney General's lawyers were preparing to ask the court to ratify a "sweetheart settlement" with Manville, featuring a monetary fine far below what Manville's violations merited and Illinois statutes would permit.

Judge Hall ruled last month that the activist environmental group had not met the technical legal requirements needed to be an "intervener"---a ruling Dunesland has since asked the judge to reconsider. But Hall said that because of Dunesland's longtime expertise on Illinois Beach State Park and the Manville problems, Dunesland could participate in the case as a "Friend of the Court."

Judge Hall has invited Dunesland to submit a detailed analysis and critique of the state's proposed settlement with Manville by mid-October.

Kakuris noted that civil case settlements often result in reduced or below-maximum fines for the defendant, on the theory that the agreed-outcome of the case saves judges and prosecutors the time, expense and risk of a trial.

"But this would have been a short, easy trial," Kakuris suggested, "because the pollution violations involved were simple, straight forward, and often a matter-of-record. So the major 'concessions' to the defendant that we see here were neither necessary nor appropriate."

Kakuris noted that under the 26-page proposed state settlement, and a 30-page Attorney General's brief supporting that settlement, Manville would agree to "remediate" several of its highly contaminated ponds and basins, close and cap an illegal landfill, and take steps to curb future pollution from its heavily-contaminated Industrial Canal, which occasionally overflows into the adjoining State Park's ecologically sensitive Nature Preserve.

"They are already committed to take all those are steps under this summer's proposed amendment to the Federal Superfund consent decree," Kakuris noted. "They added more details in the proposed state consent decree, but basically there's nothing new."

Kakuris pointed out that the proposed state settlement attempts to explain its obvious duplications of the revised federal consent decree by saying the state proposal seeks to be "harmonizing" and "consistent with" the earlier federal document.

In apparent anticipation of the inevitable criticism for the low amount of the proposed \$145,000 fine, the Attorney General's memo supporting the proposed settlement self-consciously calls the agreed-upon penalty "a not insignificant" fine.

It said the size of the fine also takes into consideration the fact that Manville has now cured "several" of the numerous pollution violations cited in the original suit and its two amendments, and is "obligated" to eventually cure them all.

"That's ridiculous," said Kakuris. "That's like catching a bank robber, and then rewarding him for giving back the stolen money...instead of penalizing him properly."

The original state suit with its two amendments, totaling 31-pages, details Manville environmental violations such as:

\*\*\*Discharging asbestos wastewater into Lake Michigan at three times the levels permitted by law.

\*\*\*Failing to get state approval for its asbestos-testing methods.

\*\*\*Failing to submit required reports on its discharges into the lake, and violations of other wastewater discharge standards.

\*\*\*Failure to get state approval for a filtering system that supposedly screened out asbestos particles from the water used to wash away asbestos during demolition of Manville's old manufacturing buildings. That water, with impermissibly high asbestos levels, went into Manville's lagoon system, which periodically discharges into the lake.

\*\*\*Running an illegal, unsupervised landfill on its property, to hold its dangerous wastes.

Most of the scores of violations cited were punishable, under state law, by fines of \$50,000 for each violation, plus \$10,000-a-day for every day that each violation continued---or is still continuing---uncorrected.

State experts familiar with the pollution control laws said a strict, literal interpretation of the statutes could have brought penalties in excess of \$7 million.

Kakuris said, "One of the many puzzling aspects about this litigation is why so many of the suit's alleged violations were two, three, and even four years old when this enforcement action was finally filed.

"Dunesland has repeatedly criticized the Illinois EPA and the Attorney General for their lax, lenient treatment of Manville's pollution violations. It's almost like state officials finally decided to move against Manville in 2001 to show they were actually 'tough,' and then eventually let Manville off the hook with just a slap on the wrist," Kakuris suggested.

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If you would like a copy of the court filing, please contact Illinois Dunesland Preservation Society at the above number.