

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

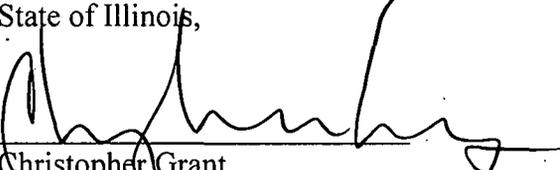
PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
-vs-)	PCB No. 2019-112
)	
MARINO DEVELOPMENT LLC,)	
an Arizona limited liability company, and)	
AW BENNETT ENTERPRISES, INC.,)	
an Oregon corporation,)	
)	
Respondents.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that today, January 21, 2020, Complainant filed the Stipulation and Proposal for Settlement with Respondent AW Bennett Enterprises, Inc., and Motion to Waive the Requirement of a Hearing, with the Office of the Illinois Pollution Control Board. A copy of the documents so filed are attached hereto and served upon you.

PEOPLE OF THE STATE OF
ILLINOIS by KWAME RAOUL
Attorney General of the
State of Illinois,

BY:


Christopher Grant
Senior Assistant Attorney General
Environmental Bureau
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cgrant@atg.state.il.us

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Complainant,)	
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-vs-)	PCB No. 2019-112
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MARINO DEVELOPMENT LLC,)	
an Arizona limited liability company, and)	
AW BENNETT ENTERPRISES, INC.,)	
an Oregon corporation,)	
)	
Respondents.)	

MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT AND ACCEPT SETTLEMENT WITH AW BENNETT ENTERPRISES INC.

Now comes Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, and requests relief from the requirement of a hearing in this matter and approval of the Stipulation and Proposal for Settlement resolving Complainant's claims against Respondent AW Bennett Enterprises, Inc. In support thereof, the Complainant states as follows:

1. Along with this Motion, Complainant is filing a proposed Stipulation and Proposal for Settlement executed between Complainant and the Respondent AW Bennett Enterprises, Inc.
2. Complainant's allegations against Respondent Marino Development LLC are not resolved by the proposed Stipulation, and remain the subject of an ongoing enforcement case before the Board.
3. Section 31 of the Act, 415 ILCS 5/31 (2018), provides, in pertinent part, as follows:

* * *

- (c)(2) Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

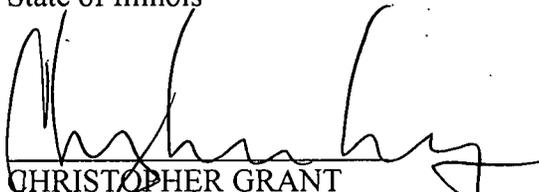
* * *

4. No hearing is now scheduled in this matter.
5. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2018).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
by KWAME RAOUL,
Attorney General of the
State of Illinois

BY:


CHRISTOPHER GRANT
Senior Assistant Attorney General
Environmental Bureau
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Chicago, Illinois 60602
(312) 814-5388
cgrant@atg.state.il.us

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant,)
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 -vs-) PCB No. 2019-112
)
 MARINO DEVELOPMENT LLC,)
 an Arizona limited liability company, and)
 AW BENNETT ENTERPRISES, INC.,)
 an Oregon corporation,)
)
 Respondents.)

**STIPULATION AND PROPOSAL FOR SETTLEMENT WITH
RESPONDENT AW BENNETT ENTERPRISES, INC.**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and the Respondent AW Bennett Enterprises, Inc., ("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.* (2018), 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. COVERED MATTER

This Stipulation and Proposal for settlement is limited to Plaintiff's allegations of violation against Respondent AW Bennett Enterprises Inc. Plaintiff's allegations of violation against Respondent Marino Development LLC are not covered by this Stipulation and Proposal for Settlement and remain the subject of an ongoing enforcement action before the Board.

II. STATEMENT OF FACTS

A. Parties

1. On June 7, 2019, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2018), against the Respondents.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2018).

3. Respondent AW Bennett Enterprises Inc. ("AW Bennett") is an Oregon corporation, in good standing.

4. At all times relevant to the Complaint, AW Bennett was the owner of property located at 2816 North Main Street, Rockford, Winnebago County, Illinois ("Site"). Beginning in April 2017, Respondent AW Bennett and Respondent Marino Development LLC commenced demolition of several large buildings at the Site, and caused and allowed the dumping and accumulation of large piles of demolition debris at the Site.

B. Allegations of Non-Compliance

Complainant contends that AW Bennett has violated the following provisions of the Act and Board regulations:

- Count I: OPEN DUMPING OF WASTE, violation of 415 ILCS 5/21(a) (2018);
- Count II: CAUSING AND ALLOWING LITTER, violation of 415 ILCS 5/21(p)(1) (2018);
- Count III: OPEN DUMPING OF CONSTRUCTION OR DEMOLITION DEBRIS, violation of 415 ILCS 5/21(p)(7) (2018);
- Count IV: CONDUCTING A WASTE DISPOSAL OPERATION WITHOUT A PERMIT, violation of 415 ILCS 5/21(d)(1), 415 ILCS 5/21(d)(2) (2018), and 35 Ill. Adm. Code 812.101;
- Count V: WASTE STORAGE AND DISPOSAL AT AN IMPROPER SITE, violation of 415 ILCS 5/21(e) (2018);
- Count VI: FAILURE TO PERFORM A SPECIAL WASTE DETERMINATION, violation of 415 ILCS 5/21(d)(2) (2018), and 35 Ill. Adm. Code 808.121;
- Count VII: FAILURE TO PERFORM A HAZARDOUS WASTE DETERMINATION, violation of 415 ILCS 5/21(d)(2) (2018), and 35 Ill. Adm. Code 722.111;
- Count VIII: CREATING A WATER POLLUTION HAZARD, violation of 415 ILCS 5/12(d) (2018).

C. Non-Admission of Violations

Respondent AW Bennett neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

D. Compliance Activities to Date

As of the date of filing this Stipulation, all waste that was the subject of the Complaint has been removed from the Site.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation.

Respondent AW Bennett 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 Respondent AW Bennett 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 (2018).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2018), 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. The accumulation of demolition debris at the Site created a nuisance and threatened water pollution. The alleged violations were therefore harmful to the general welfare of residents living in the vicinity of the Site.
2. The accumulated demolition debris did not have social or economic value.
3. The Site is not suitable for an unpermitted waste storage and/or disposal.
4. Maintenance and use of the Site in accordance with the provisions of the Act is technically feasible and economically reasonable.
5. All demolition debris that was the subject of the Complaint has been removed from the Site.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2018), 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 there from 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;
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. Demolition debris was accumulated at the Site beginning in May 2017, and not fully removed until April 2019.
2. Complainant asserts that the AW Bennett failed to ensure that demolition debris was timely removed to a permitted waste disposal facility until compelled through legal action by the City of Rockford. Accordingly, Complainant asserts that AW Bennett was not diligent in addressing the storage and accumulation of waste at the Site.
3. Complainant is unaware of a substantial economic benefit to AW Bennett related to the alleged violations and asserts that assessment of a civil penalty of \$12,500.00 will recover any potential economic benefit realized by AW Bennett.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of \$12,500.00 will serve to deter further violations and aid in future voluntary

compliance with the Act and Board regulations.

5. AW Bennett has no previously adjudicated violations.
6. AW Bennett did not self-disclose the alleged violations.
7. The settlement of this matter does not include a supplemental environmental project.
8. The parties did not enter into a Compliance Commitment Agreement.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. Respondent AW Bennett shall pay a civil penalty in the sum of twelve thousand five hundred dollars (\$12,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If Respondent AW Bennett fails to make any 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.

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2018), interest shall accrue on any penalty amount owed by Respondent AW Bennett 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 case name and case 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:

Christopher J. Grant
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington, Suite 1800
Chicago, Illinois 60602
cgrant@atg.state.il.us

D. Future Compliance

Respondent AW Bennett 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 \$12,500.00 penalty, its commitment to cease and desist as contained in Section V.D above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Respondent AW Bennett 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 June 7, 2019. The Complainant reserves and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent AW Bennett 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 (2018), or entity other than Respondent AW Bennett.

F. Enforcement of Stipulation

Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

G. Execution of Stipulation

The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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

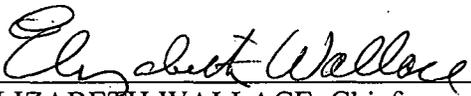
PEOPLE OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

KWAME RAOUL
Attorney General of the
State of Illinois

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

JOHN KIM, Director
Illinois Environmental Protection Agency

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
DANA VETTERHOFFER
Acting Chief Legal Counsel

DATE: 1/9/20

DATE: 12-30-19

FOR THE RESPONDENT:

AW Bennett Enterprises, Inc.

BY: *Eric Peterson*

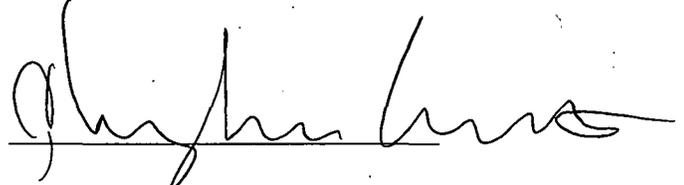
ITS: *[Signature]*

DATE: *1-16-2020*

People v. Marino Development LLC and AW Bennett Enterprises, Inc., PCB 2019-112

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 21st day of January, 2020, the Stipulation and Proposal for Settlement with Respondent AW Bennett Enterprises, Inc., the associated Motion to Waive the Requirement of a Hearing, and Notice of Filing, upon the persons listed below by first class mail and or electronic mail.



CHRISTOPHER GRANT

SERVICE LIST:

Mr. Andrew Vella
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Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
Brad.Halloran@illinois.gov
(By electronic mail only)