

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 21-39
)	(Enforcement - Land)
BUENING IMPLEMENT, INC.,)	
an Illinois Corporation,)	
)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

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 BUENING IMPLEMENT, INC., an Illinois Corporation (“Respondent”), (collectively “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. STATEMENT OF FACTS

A. Parties

1. On November 23, 2020, 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 Respondent.

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. At all times relevant to the Complaint, Respondent was and is an Illinois corporation that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent owned and operated a farm implement dealership located at 18880 N. US Highway 45, Effingham, Effingham County, Illinois ("Source Site" or "Facility").

5. At all times relevant to the Complaint, Esker & Walker Construction, Inc. operated a concrete construction business located at 16782 E. 1635th Avenue, Teutopolis, Effingham County, Illinois ("Disposal Site").

6. According to Illinois State Fire Marshal records, two 500-gallon underground storage tanks ("USTs") were installed at the Source Site in 1959 and were removed in 1988.

7. In December 2018, Respondent removed soil from the Source Site and deposited it at the Disposal Site owned by Esker & Walker.

8. On December 20, 2018, Illinois EPA conducted inspections at both the Source Site and the Disposal Site. The soil deposited at the Disposal Site by Respondent was found to be contaminated with petroleum constituents.

B. Allegations of Non-Compliance

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

Count I: Open Dumping of Petroleum-Contaminated Soil
415 ILCS 5/21(a) (2018)

- Count II: Conducting a Waste Disposal Operation Without a Permit Granted by the Agency
35 Ill. Adm. Code 812.101(a)
415 ILCS 5/21(d)(2) (2018)
- Count III: Disposal of Waste at a Site Not Meeting the Requirements of the Act and Associated Regulations
415 ILCS 5/21(e) (2018)
- Count IV: Failure to Conduct Special Waste Determination
35 Ill. Adm. Code 808.121(a)
415 ILCS 5/21(d)(2) (2018)
- Count V: Transporting Special Waste Without a Permit
35 Ill. Adm. Code 809.201
415 ILCS 5/21(j) (2018)

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. Respondent completed the removal of the petroleum-contaminated soil from the Disposal Site on March 4-5, 2019. Approximately 366.47 tons of contaminated soil were hauled from the Disposal Site by Charles Heuerman Trucking Co. and disposed of at Landfill 33 in Effingham, Illinois.

2. After the contaminated soil was removed, Environmental Audits & Consultants, Inc. collected four soil samples at the Disposal Site to verify that the contaminated soils had been removed. The soil samples were analyzed by First Environmental Laboratories, Inc. in

Naperville, Illinois.

3. Respondent entered the Source Site in the Illinois EPA Site Remediation Program (“SRP”) (35 Ill. Adm. Code Part 740) and submitted a Remedial Action Completion Report on January 23, 2020. Respondent was issued a No Further Remediation (“NFR”) Letter on February 24, 2021, which was recorded on March 10, 2021.

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 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. Complainant contends human health and the environment were threatened as petroleum-contaminated soil was present at the Source Site for a long period of time and then was improperly disposed of off-site. Complainant further contends the violations should be considered moderate. Respondent disagrees that the petroleum-contaminated soil remained at the Source Site for a long period of time.
2. There is social and economic benefit to the Respondent's Facility.
3. Operation of the Respondent's Facility is suitable for the area in which it was located.
4. Properly disposing of the petroleum-contaminated soil in compliance with the Act and Board regulations was both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board regulations.

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 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. Complainant contends Respondent allowed petroleum-contaminated soil to remain on-site for a long period of time unaddressed and then improperly disposed of it at a secondary site not meeting the requirements of the Act or Board regulations. Complainant further contends the violations should be considered moderate. Respondent disagrees that the petroleum-contaminated soil remained at the Source Site for a long period of time.
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 noncompliance.
3. Respondent had a minimal savings of costs associated with the delay in having

the waste on-site disposed of at a properly permitted facility.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Twenty-One Thousand Dollars (\$21,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.

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

7. The settlement of this matter does not include a supplemental environmental project.

8. A Compliance Commitment Agreement was proposed by Respondent, but rejected by the Illinois EPA.

V. TERMS OF SETTLEMENT

A. **Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of Twenty-One Thousand Dollars (\$21,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. **Interest and Default**

1. If the Respondent 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, 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

1. 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, Illinois 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Raymond J. Callery
Senior Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62701

D. Future Compliance

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, shall have the right of entry into and upon the Facility which is the subject of this Stipulation, at all reasonable times

for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, his 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 \$21,000.00 penalty, its commitment to cease and desist as contained in Section V.D.3 above, completion of all activities required hereunder, 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 November 23, 2020. 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. 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.

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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

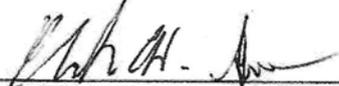
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

KWAME RAOUL
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Asbestos Litigation Division

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: 
ANDREW B. ARMSTRONG, Chief
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Environmental Bureau

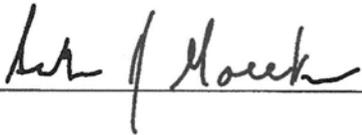
BY: 
CHARLES W. GUNNARSON,
Chief Legal Counsel

DATE: 05/12/2021

DATE: 5/10/21

RESPONDENT

BUENING IMPLEMENT, INC.,

BY: 

DATE: 4/23/2021

shall hold a hearing in accordance with the provisions of subdivision (1).

4. No hearing is scheduled in this matter.
5. Complainant hereby requests relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act, 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

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

BY: /s/ Raymond J. Callery
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Dated: May 17, 2021

CERTIFICATE OF SERVICE

I, Raymond J. Callery, an Assistant Attorney General, certify that on the 17th day of May, 2021, I caused to be served by Electronic Service the foregoing Stipulation and Proposal for Settlement, Motion for Relief from Hearing, and this Certificate of Service to the parties listed on the Service List below:

/s/ Raymond J. Callery
RAYMOND J. CALLERY
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(217) 557-5690
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SERVICE LIST

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