

SERVICE LIST

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
60 E. Van Buren Street, Suite 630
Chicago, IL 60605
Bradley.Halloran@illinois.gov

Counsel for Swenson Spreader
Charles F. Heltson
Hinshaw & Culbertson LLC
100 Park Ave., PO Box 1389
Rockford, IL 61105
chelsten@hinshawlaw.com

CERTIFICATE OF SERVICE

I, Ellen O’Laughlin, an Assistant Attorney General, caused to be served on this 21st day of April, 2023, a true and correct copy of People’s Motion for Relief from Hearing Requirement and Stipulation and Proposed Settlement, upon the persons listed on the Service List via electronic mail.

/s/ Ellen F. O’Laughlin
Ellen F. O’Laughlin
Assistant Attorney General
Office of the Illinois Attorney General
Environmental Bureau
69 W. Washington Street, 18th Floor
Chicago, IL 60602
(773) 590-7837
Ellen.Olaughlin@ilag.gov

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. – 22-067
)	(Enforcement - Air)
SWENSON SPREADER, LLC,)	
)	
Respondent.)	

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, 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) (2020), moves that the Illinois Pollution Control Board (“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) (2020). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Section 9(b) of the Act, 415 ILCS 5/9(b) (2020), Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142, Section 201.143 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.143, Conditions 8(a)(ii), 14(a)(iii), 14(a)(vi), 8(d), and 16(a) of FESOP No. 96030190, Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2020), and Sections 63.11519(a)(1), 63.11519(a)(2), and 63.11519(b)(1) of Subpart XXXXXX of the NESHAP, 40 C.F.R. §§ 63.11519(a)(1), 63.11519(a)(2), and 63.11519(b)(1).
2. Complainant is filing the Complaint with the Board simultaneous with this Motion and a Stipulation and Proposal for Settlement.

3. The parties have reached agreement on all outstanding issues in this matter.

4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.

5. 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) (2020).

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) (2020).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General
State of Illinois

BY: /s/ Ellen O'Laughlin

Ellen O'Laughlin
Supervising Attorney
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
773-590-7837

Primary e-mail: ellen.olaughlin@ilag.gov
Secondary e-mail: maria.cacaccio@ilag.gov

Dated: April 21, 2023

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by Kwame Raoul, Attorney General of)	
the State of Illinois)	
Complainant,)	
)	
v.)	PCB No. 22-067
)	(Enforcement - Air)
SWENSON SPREADER, LLC,)	
an Ohio limited liability company,)	
)	
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 SWENSON SPREADER, LLC (“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. (2020), the Board’s Regulations, Permit Conditions, and Federal 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 May 5, 2022, 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 (2020), 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 (2020).

3. At all times relevant to the Complaint, Respondent was and is an Ohio limited liability company qualified to transact business in the State of Illinois. It is registered with the Illinois Secretary of State's Office as a foreign limited liability company and is in good standing

4. At all times relevant to the Complaint, Respondent owned and operated a snow and ice control equipment manufacturing facility located at 127 Walnut Street, Lindenwood, Ogle County, Illinois ("Facility").

5. At the Facility, Respondent manufactures truck mounted salt/liquid calcium chloride spreaders for ice and snow control by cutting, punching, and welding dimensional steel and then painting the assembled product using a powder coating booth with a curing oven or in a manual spray paint booth.

6. At the Facility, Respondent operates wet coating operations, powder coating operations, surface cleaning operations, a natural gas fired air make-up heater, a 1.56 million British thermal units per hour ("Btu/hour") natural gas fired boiler, and natural gas fired heaters.

7. Respondent's operations at the Facility emit or are capable of emitting volatile organic material ("VOM"), including xylene and ethyl benzene, nitrogen oxides, particulate matter, sulfur dioxide, and carbon monoxide into the environment.

8. On December 31, 2015, Illinois EPA issued Federally Enforceable State Operating Permit ("FESOP") No. 96030190 to Respondent for operations at the Facility. FESOP No. 96030190 authorized, among other things, the operation of the wet coating operations and

powder coating operations referred to in paragraph 6.

9. On January 7, 2016 and May 30, 2019, Illinois EPA inspected the Facility (“January 2016 Inspection” and “May 2019 Inspection”).

B. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act, Board Regulations, Permit Conditions, and Federal Regulations:

- Count I: Constructing an Emission Source without the requisite permit in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2020), and Section 201.142 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.142.
- Count II: Operating an Emission Source without the requisite permit, in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2020), and Section 201.143 of the Board Air pollution Regulations, 35 Ill. Adm. Code 201.142.
- Count III: FESOP permit violations in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2020), and Permit Conditions 8(a)(ii), 14(a)(iii), 14(a)(vi), 8(d), and 16(a) of FESOP No. 96030190.
- Count IV: Failure to Submit Required Notifications and Certification in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d)(1) (2020), and Sections 63.11519(a)(1), 63.11519(a)(2), and 63.11519(b)(1) of Subpart XXXXXX of the NESHAP, 40 C.F.R. §§ 63.11519(a)(1), 63.11519(a)(2), and 63.11519(b)(1).

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.

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 (2020).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2020), 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 that human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.

2. There is social and economic benefit to the facility.
3. Operation of the facility was and is suitable for the area in which it is located.
4. Obtaining a permit prior to construction and operation at the site and compliance with its terms is 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) (2020), 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. These violations began in early 2004 or on dates better known to Swenson and were not completely resolved until June 16, 2020, a period of approximately sixteen years.
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. The civil penalty takes into account any economic benefit realized by the Respondent as a result of avoided or delayed compliance.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of sixty-five thousand Dollars (\$65,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. Respondent has previously adjudicated violations of the Act in 2013 through a consent order entered in *People of the State of Illinois v. Swenson Spreader, LLC* (13CH34) Ogle County Circuit Court for failure to timely submit a Federally Enforceable State Operating Permit application.
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

The Respondent shall pay a civil penalty in the sum of Sixty-Five Thousand Dollars (\$65,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. 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:

Ellen F. O'Laughlin
Supervising Attorney
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

C. 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 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 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.

D. Release from Liability

In consideration of the Respondent's payment of the \$65,000.00 penalty, its commitment to cease and desist as contained in Section V.C.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, Board Regulations, Permit Conditions and Federal 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 May 5, 2022. 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.

E. 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.

F. 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. This Stipulation may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument.

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

KWAME RAOUL
Attorney General
State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: 
STEPHEN J. SYLVESTER, Chief
Environmental Bureau
Assistant Attorney General

BY: 
CHARLES W. GUNNARSON
Chief Legal Counsel

DATE: 4/13/23

DATE: 4/12/23

RESPONDENT

DATE: _____

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
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
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JOHN J. KIM, Director
Illinois Environmental Protection Agency

BY: _____
STEPHEN J. SYLVESTER, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
CHARLES W. GUNNARSON
Chief Legal Counsel

DATE: _____

DATE: _____

RESPONDENT *Tim Harn - General Manager
Svenson Spreader, LLC*

[Handwritten Signature]

DATE: 4/11/2023