

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
) PCB No. 08-
) (Enforcement – Water)
v.)
)
ROCKFORD BLACKTOP CONSTRUCTION)
CO., an Illinois corporation, and)
WESTLAKE UTILITIES, INC.,)
an Illinois corporation,)
)
Respondents.)

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, 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) (2006), 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) (2006). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Sections 12(a), 12(d) and 12(f) of the Act, 415 ILCS 5/12(a), 12(d) and 12(f) (2006).
2. Complainant is filing this Motion and a Stipulation and Proposal for Settlement with Rockford Blacktop Construction Co. with the Board.
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.

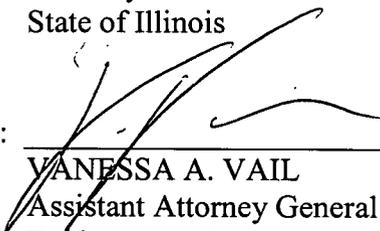
5. All parties agree that a hearing on the Stipulation and Proposal for Settlement with Rockford Blacktop Construction Co. is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2006).

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) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: 

VANESSA A. VAIL
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
(312) 814-5361

DATE: August 4, 2008.

intent of the parties to this Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On August 4, 2008, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), against the Respondent Rockford Blacktop Construction Company ("Rockford Blacktop" or "Respondent") and Westlake Utilities, Inc., an Illinois corporation.

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 (2006).

3. At all times relevant to this Stipulation, Respondent Rockford Blacktop was and is an Illinois corporation registered and qualified to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Westlake Utilities, Inc. ("Westlake") was and is an Illinois corporation registered and qualified to transact business in the State of Illinois.

5. At all times relevant to the Complaint, Westlake owned and operated a wastewater lagoon-type treatment plant ("WWTP"). The WWTP provides service to the Westlake Village residential development and is located in Winnebago County, Illinois.

6. The WWTP is situated on approximately 10 acres and consists of a blower house and three treatment cells, identified as "Cell One", "Cell Two" and "Cell Three", which utilize an aeration process to treat sanitary waste prior to discharge to Coolidge Creek.

7. At all times relevant to the Complaint, Respondent Rockford Blacktop was the contractor responsible for performing repair work on Cell Three, which included dewatering, removing rip-rap and trees from the Cell's banks, and regrading and preparing the Cell for placement of a synthetic membrane liner.

8. On or about October 20, 2006, Rockford Blacktop began construction work at the WWTP to repair Cell Three.

9. On October 20, 2006, the Illinois EPA inspected the WWTP and discovered water being pumped from Cell Three to an area adjacent to Coolidge Creek without proper erosion and silt control measures in place to prevent the migration of sediment into Coolidge Creek, and without an Illinois EPA issued National Pollutant Discharge Elimination System ("NPDES") permit allowing the discharge of stormwater associated with the construction activities at the WWTP.

10. Rockford Blacktop completed construction activities at the WWTP on or about November 9, 2006.

B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that Respondent Rockford Blacktop has violated the following provisions of the Act and Board regulations:

Count I: Causing, threatening or allowing water pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

Count II: Creating a water pollution hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

Count III: Failure to obtain an NPDES stormwater permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

C. Non-Admission of Violations

Respondent Rockford Blacktop neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced within Section III.B herein.

D. Compliance Activities to Date

On July 17, 2007, Illinois EPA issued to Westlake General NPDES Permit No. ILR10H658 for Storm Water Discharges from Construction Site Activities at the WWTP.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondent Rockford Blacktop, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of Rockford Blacktop. Rockford Blacktop 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.

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2006), 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 this Stipulation state the following:

1. The alleged violations potentially threatened human health and the environment by allowing conditions to exist that could have contaminated the waters of the State.
2. The WWTP provides service to the Westlake Village residential subdivision and has a social and economic benefit.
3. The WWTP is suitable for the area in which it is located.
4. It is both technically practicable and economically reasonable to obtain a NPDES Storm Water Permit and implement adequate erosion control measures at the WWTP in compliance with the Act and Board regulations.

5. Respondent Rockford Blacktop 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) (2006), 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; 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.

In response to these factors, the parties to this Stipulation state as follows:

1. Complainant has alleged that the violations continued from at least October 20, 2006 to at least November 9, 2006.

2. Respondent Rockford Blacktop was diligent in attempting to come back into compliance with the Act, and Board regulations, once the Illinois EPA notified it of its noncompliance.

3. The penalty obtained exceeds any economic benefit realized by Rockford Blacktop as a result of the delay in the installation of erosion prevention measures at the WTP.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Ten Thousand Five Hundred Dollars (\$10,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, in 1996, Respondent Rockford Blacktop had one previously adjudicated violation of the Act for failing to obtain necessary Illinois EPA issued operating permits for several of its quarries in the State of Illinois.

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

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

V. TERMS OF SETTLEMENT

A. Penalty Payment

The Respondent Rockford Blacktop shall pay a civil penalty in the sum of Ten Thousand Five Hundred Dollars (\$10,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

1. If Respondent Rockford Blacktop fails to make any payment required by this Stipulation on or before the date upon which the payment is due, Rockford Blacktop 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 Respondent Rockford Blacktop 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 name, case number and the Respondent Rockford Blacktop's federal tax identification 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:

Vanessa A. Vail
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, Illinois 60602

D. Future Compliance

This Stipulation in no way affects the responsibilities of Respondent Rockford Blacktop to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

E. Release from Liability

In consideration of Respondent Rockford Blacktop's payment of a \$10,500.00 penalty, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges Respondent Rockford Blacktop 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 August 4, 2008, neither does it extend to any other person other than the signatory to this Stipulation. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Respondent Rockford Blacktop 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 Rockford Blacktop'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 or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than Respondent Rockford Blacktop.

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 each party to this 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 this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS

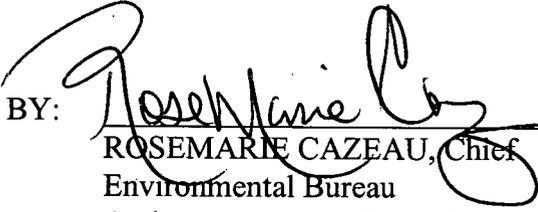
LISA MADIGAN
Attorney General
State of Illinois

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

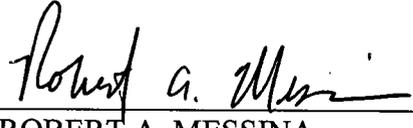
FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY:


ROBERT A. MESSINA
Chief Legal Counsel

DATE:

7/10/08

DATE:

7/9/08

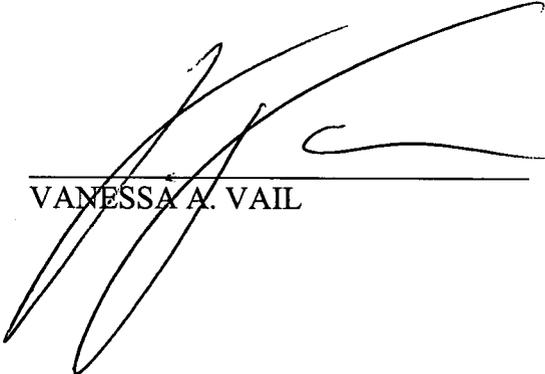
ROCKFORD BLACKTOP
CONSTRUCTION COMPANY

BY: 
Name: Timothy H. Jagielski
Title: Assistant Counsel

DATE: 

CERTIFICATE OF SERVICE

I, VANESSA A. VAIL, an Assistant Attorney General, do certify that I caused to be served this 4th day of August 2008, true and correct copies of the Stipulation and Proposal for Settlement with Rockford Blacktop Construction Co., Motion to Request Relief from Hearing Requirement and Notice of Filing by certified mail with return receipt requested to the person listed on the said Notice of Filing, and depositing same with the United States Postal Service located at 69 West Washington Street, Chicago, Illinois, 60602.



VANESSA A. VAIL