

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 PRAEDIUM DEVELOPMENT)
 CORPORATION, an Illinois corporation,)
 and PLAZA EXCAVATING, INC., an)
 Illinois corporation,)
)
 Respondents.)

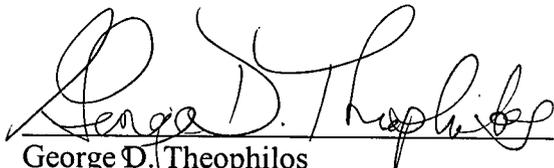
PCB No. 09-03
(Enforcement -Water)

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that on the 21st day of May, 2009, the People of the State of Illinois, filed with the Illinois Pollution Control Board, a **MOTION FOR RELIEF FROM HEARING REQUIREMENT** and a **STIPULATION AND PROPOSAL FOR SETTLEMENT**, true and correct copies of which are attached hereto and is hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois

By: 
 George D. Theophilos
 Assistant Attorney General
 Environmental Bureau
 West Washington Street, 18th Floor
 Chicago, Illinois 60602
 (312) 814-6986

DATE: May 21, 2009

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

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Chicago, Illinois 60602

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MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and hereby moves for relief from the hearing requirement in this case pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31(c)(2) (2006), and Section 103.300 of the Illinois Pollution Control Board (“Board”) Procedural Rules, 35 Ill. Adm. Code 103.300. In support of this Motion, the Complainant states as follows:

1. Section 31(c)(2) of the Act allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties submit to the Board a Stipulation and Proposal for Settlement. Section 31(c)(2) provides as follows:

Notice; complaint; hearing.

* * *

(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).

2. Board Procedural Rule 103.300 provides, in relevant part, as follows (emphasis in original):

Request for Relief from Hearing Requirement in State Enforcement Proceeding.

(a) *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 proposed stipulation and settlement accompanied by a request for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act*

3. On July 8, 2008, the Complaint in this matter was filed with the Board.

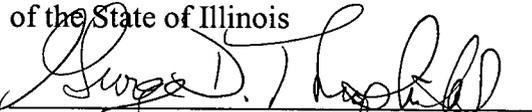
4. Subsequently, the parties to this action reached agreement on a Stipulation and Proposal For Settlement, which is being filed with the Board concurrently with this motion. No hearing is currently scheduled in this case.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully moves for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act and Board Procedural Rule 103.300.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General
of the State of Illinois

BY:



GEORGE D. THEOPHILOS

Assistant Attorney General

Environmental Bureau/North

69 West Washington Street, 18th Floor

Chicago, Illinois 60602

312-814-6986

DATE: May 21, 2009

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STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), PRAEDIUM DEVELOPMENT CORPORATION (“Praedium”), an Illinois corporation, and PLAZA EXCAVATING, INC. (“Plaza”), an Illinois corporation, (Praedium and Plaza together as the “Respondents”), 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.* (2006), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the 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 July 8, 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.

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 Complaint, Respondent Praedium owned and developed the "Town Center Promenade," an area of land approximately ten acres in size located at the northwest corner of the intersection of Long Grove Road and Route 12 ("Rand Road") in Deer Park, Lake County, Illinois (the "Site"). Praedium hired Plaza as one of its construction contractors. Plaza was responsible for earthwork and grading at the Site.

4. The Respondents engaged in construction activities at the Site. These construction activities involved excavating and grading soil at the Site. The Complainant alleges that between July 20, 2006 and September 11, 2006, on dates better known to the Respondents, disturbed soil and sediment at the Site was carried by storm water into an unnamed tributary of Buffalo Creek and into an area of wetlands that is located to the east of the Site.

5. The Complainant alleges that after September 11, 2006, and prior to October 13, 2006, on a date or dates better known to the Respondents, the Respondents caused and/or allowed the construction and/or installation of a sanitary sewer at the Site, but did not possess a permit from the Illinois EPA to install the sanitary sewer. The Respondents assert that they possessed a permit to

install a sanitary sewer at the Site from the Metropolitan Water Reclamation District of Greater Chicago.

B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondents have 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 Causing, threatening or allowing a violation of water quality standards, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203.
- Count III: Creating a water pollution hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).
- Count IV: Failure to implement and comply with the stormwater pollution prevention plan, in violation of Part IV. of the General Stormwater Permit, Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).
- Count V: Causing or allowing the construction and/or installation of a sanitary sewer, in violation of Section 12(b) of the Act, 415 ILCS 5/12(b)(2006), and Section 309.202(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.202(a).

C. Admission of Violations

The Respondents neither admit nor deny the violations alleged in the Complaint filed in this matter and referenced herein.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents 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 Respondents 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 (2006).

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 discharging contaminants into the waters of the State, and by failing to allow the Illinois EPA to review and evaluate the engineering and environmental soundness of the Sanitary Sewer prior to its construction.
2. The Respondents' construction activities had a social and economic benefit.
3. The Site was suitable for the area in which it is located.
4. It was both technically practicable and economically reasonable to implement adequate erosion control measures at the Site, and to obtain a construction permit from the Illinois EPA prior to installing the Sanitary Sewer, in compliance with the Act and Board regulations.
5. The Respondents have 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. The alleged stormwater violations occurred at the Site during a period of time beginning no later than July 20, 2006 and continuing until at least September 11, 2006. The alleged unpermitted installation of the sanitary sewer at the Site occurred between September 11, 2006 and October 13, 2006.
2. The Respondents were diligent in attempting to return to compliance with the Act, and Board regulations, once the Illinois EPA notified them of their alleged noncompliance.
3. The penalty obtained exceeds any economic benefit realized by the Respondents as a result of any noncompliance with the Act or Board regulations.
4. Complainant and the Illinois EPA have determined, based upon the specific facts of

this matter, that a combined penalty of Forty Thousand Dollars (\$40,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. There is no record of any prior enforcement action brought against the Respondents under 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.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondents Praedium and Plaza shall pay a civil penalty of Forty Thousand Dollars (\$40,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents 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 Respondents 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 Respondents' 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:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. Effective immediately, the Respondents shall at all times apply for and obtain any and all permits required for any and all construction activities they conduct in the State and comply with the terms and conditions of any such permit(s) obtained.

2. In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondents' 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, her

employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

3. This Stipulation in no way limits or affects the responsibilities of the Respondents 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 the Respondents' payment of a \$40,000.00 penalty, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents 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 July 8, 2008. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents 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 Respondents' 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 the Respondents.

F. 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.

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

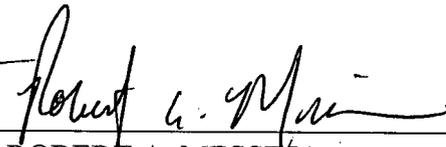
LISA MADIGAN
Attorney General
State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

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: 5/7/09

Date: 5/4/09

PRAEDIUM DEVELOPMENT
CORPORATION

BY: 

Name: GEORGE MARKOPOULOS

Title: PRESIDENT

Date: 3-28-09

PLAZA EXCAVATING, INC.

BY: _____

Name: _____

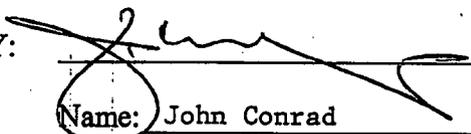
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PRAEDIUM DEVELOPMENT
CORPORATION

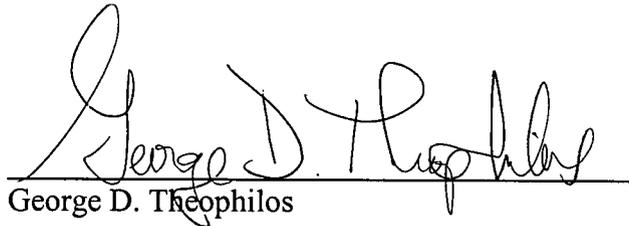
BY: _____
Name: _____
Title: _____
Date: _____

PLAZA EXCAVATING, INC.

BY:  _____
Name: John Conrad
Title: Member
Date: March 27, 2009

CERTIFICATE OF SERVICE

I, George D. Theophilos, an Assistant Attorney General, do certify that I caused to be mailed, this 21st day of May, 2009, the foregoing **MOTION FOR RELIEF FROM HEARING REQUIREMENT** and **STIPULATION AND PROPOSAL FOR SETTLEMENT** to the persons listed on the attached Service List by first class mail, with postage pre-paid.


George D. Theophilos