

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO.
)	(Water-Enforcement)
TBR ENT OF ILLINOIS, LLC,)	
an Illinois limited liability company,)	
)	
Respondent.)	

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) (2012), moves that the Illinois Pollution Control 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) (2012). In support of this motion, Complainant states as follows:

1. On today's date, March 21, 2014, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. 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) (2012).

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) (2012).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: s/Angela Gilbert
ANGELA GILBERT
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, TBR ENT OF ILLINOIS, LLC, an Illinois limited liability company, as follows:

COUNT I
DISCHARGE WITHOUT AN NPDES PERMIT

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2012).
2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2012), and charged, *inter alia*, with the duty of enforcing the Act.
3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2012), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.
4. TBR ENT of Illinois, LLC ("TBR ENT") is an Illinois limited liability company in good standing with the Illinois Secretary of State's Office.

5. At all times relevant to this Complaint, TBR ENT was the owner of a commercial development project, known as the Marketplace at Savoy, located at the Southwest corner of Dunlap Ave. and Curtis Road, Savoy, Champaign County, Illinois ("the Site").

6. On May 24, 2012, the Illinois EPA inspected the Site.

7. On May 24, 2012, the Respondent was conducting demolition activities at the Site.

8. On May 24, 2012, sediment was present in the gutter on the south side of Curtis Road, and in and around the storm sewer drain on the north side of the Site.

9. On May 24, 2012, no erosion control measures were in place to prevent sediment from entering the storm sewer system.

10. On May 24, 2012, several silt fences located throughout the Site were either improperly secured or had large gaps that allowed uncontrolled sediment to wash into the street and storm sewer drains.

11. Section 12 of the Act, 415 ILCS 5/12 (2012), provides the following prohibitions:

No person shall:

* * *

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

* * *

- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any

regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

* * *

12. Section 3.165 of the Act, 415 ILCS 5/3.165 (2012), provides the following definition:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

13. Sediment is a contaminant as defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2012).

14. Section 3.545 of the Act, 415 ILCS 5/3.545 (2012), provides the following definition:

"Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

15. Section 3.550 of the Act, 415 ILCS 5/3.550 (2012), provides the following definition:

"Waters" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

16. Storm water runoff from the Site discharges to a storm sewer system which discharges to the an unnamed tributary to the Embarras River both of which are "waters" of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2012).

17. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by

any person into the waters of the State from a point source or into a well shall be unlawful.

18. On or before May 24, 2012, or a date better known by the Respondent, Respondent initiated demolition activities at the Site.

19. Respondent's demolition and construction activities are part of a planned development project larger than one acre of land.

20. On July 6, 2012, Respondent obtained coverage under General National Pollutant Discharge Elimination System ("NPDES") Permit No. ILR10Q178 for its construction and demolition activities at the Site.

21. From at least May 24, 2012, or a date better known by the Respondents, and continuing until July 6, 2012, when the Illinois EPA approved Respondent's coverage under NPDES Permit No. ILR10Q178, the Respondent caused, threatened or allowed the discharge of sediment, a contaminant, into waters of the State, without an NPDES permit and in a manner which caused or tended to cause water pollution.

22. By so causing, threatening or allowing the discharge of a contaminant into waters of the State without an NPDES permit and in a manner which caused or tended to cause water pollution, the Respondent has thereby violated Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and Sections 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2012).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, TBR ENT OF ILLINOIS, LLC:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act and regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2012), impose a civil penalty of not more than the statutory maximum; and

E. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN,
Attorney General
of the State of Illinois

BY: Matthew J. Dunn
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

Of Counsel:
ANGELA C. GILBERT
500 South Second Street
Springfield, Illinois 62706
217/782-9035
Dated: 3/21/14

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB No.
)	(Water Enforcement)
TBR ENT OF ILLINOIS, LLC)	
an Illinois limited liability company,)	
)	
)	
Respondent.)	

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"), and TBR ENT OF ILLINOIS, LLC, an Illinois limited liability company ("Respondent"), the Parties to the Stipulation and Proposal for Settlement ("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. (2012), 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

1. On the same day as the filing of this Stipulation, 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

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her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2012), 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 (2012).

3. At all times relevant to this Stipulation, Respondent was and is an Illinois limited liability company authorized to transact business in the State of Illinois.

B. Site Description

1. TBR ENT of Illinois, LLC ("TBR") is the owner of a commercial development project, known as the Marketplace at Savoy, located at the Southwest corner of Dunlap Ave. and Curtis Road, Savoy, Champaign County, Illinois ("the Site").

C. Complainant's Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board Regulations.

Count I: DISCHARGE WITHOUT AN NPDES PERMIT, in violation of Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and Sections 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2012).

D. Admission of Violations

The Respondent admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.C herein.

E. Compliance Activities to Date

The Respondent applied for and was granted a general National Pollutant Discharge Elimination System ("NPDES") stormwater permit for the construction project. The Respondent implemented proper erosion controls at the site.

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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 (2012).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2012), 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. Human health and the environment may have been threatened by the uncontrolled, sediment released from the Site. Respondent's failure to apply for an NPDES

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permit interfered with the Illinois EPA's ability to properly administer the State's NPDES program.

2. There is social and economic benefit to the Respondent's development activities.
3. Respondent's development was suitable for the area as long as Respondent's activities were properly permitted and adequate storm water controls were implemented prior to and during construction activities.
4. Using the proper erosion controls at the site and applying for and complying with a General NPDES stormwater permit was both technically practicable and economically reasonable.
5. The 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) (2012), 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;

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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. The absence of stormwater controls and the lack of an NPDES permit were first observed by the Illinois EPA on May 24, 2012. Substantial compliance with the Act and Board Regulations has since been achieved at the site.
2. Once made aware of its violations of the Act and Board regulations, the Respondent attempted to resolve the violations. The Respondent subsequently obtained an NPDES permit for the site on July 6, 2012.
3. The Respondent received minimal economic benefit from failing to obtain the required permit in a timely fashion and to employ adequate erosion control measures at the site.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Three Thousand Dollars (\$ 3,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. The Respondent has no previously adjudicated violations.
6. There was no self-disclosure of the violations involved in this matter.
7. The settlement of this matter does not include a supplemental environmental project.
8. There was no Compliance Commitment Agreement for the violations alleged in this matter.

V. TERMS OF SETTLEMENT

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A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Three Thousand Dollars (\$3,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. 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'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:

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

C. Future Compliance

1. The Respondent will comply with all applicable permitting, recordkeeping, reporting and documentation requirements found in the Act, related regulations and Respondent's NPDES permit.

2. In addition to any other authorities, 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 Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status.

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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 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.

4. 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 \$ 3,000.00 penalty, its commitment to cease and desist as contained in Section V.C. 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. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on the same day as this Stipulations. 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.

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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

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.

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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,

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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

BY: Matthew J. Dunn
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY: [Signature]
JOHN J. KIM
Chief Legal Counsel

DATE: 3/12/14

DATE: 3/12/14

TBR ENT OF ILLINOIS, LLC.

BY: Thomas VanGelle DATE: 1/21/14

Name: Thomas VanGelle THOMAS VAN GELLE, manager

Title: manager

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CERTIFICATE OF SERVICE

I hereby certify that I did on March 21, 2013, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT, COMPLAINT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the following:

TBR ENT of Illinois, LLC
33 Velie Drive
Rock Island, IL 61201

Dr. Tom Von Gillern
c/o Drew E. Lawrence
First Midwest Bank
506 15th Street
Moline, IL 61265

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794

s/ Angela Gilbert
ANGELA GILBERT
Assistant Attorney General

This filing is submitted on recycled paper.