

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 JCC SERVICE, INC. f/k/a)
 JOHNSON PAINTING AND SANDBLASTING,)
 An Iowa corporation,)
)
 Respondent.)

PCB NO. 2019-062
(Enforcement – Land)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board by electronic filing the following Stipulation and Proposal for Settlement, and Motion for Relief from Hearing Requirement, copies of which are attached and hereby served upon you.

LISA MADIGAN, Attorney General of the
State of Illinois,

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

BY: s/Christina L. Nannini
 CHRISTINA L. NANNINI
 Assistant Attorney General
 500 South Second Street
 Springfield, Illinois 62701
 (217) 782-9031
 cnannini@atg.state.il.us

Dated: December 27, 2018

SERVICE LIST:

Bradley Halloran (via Electronic Mail)
Hearing Officer
Illinois Pollution Control Board
James R. Thomson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
Brad.Halloran@illinois.gov

JCC Service, Inc.
c/o L & W Agents Inc.
3551 7th Street
Suite 110
Moline, IL 61265

Jennifer Martin (via Electronic Mail)
4340 Acer Grove Drive
Springfield, Illinois 62711
Jennifer.Martin@HeplerBroom.com

CERTIFICATE OF SERVICE

I hereby certify that I have served on December, 27 2018 the foregoing Stipulation and Proposal for Settlement, Motion for Relief from Hearing Requirement, and Notice of Filing upon the persons listed on the Service List by electronic mail, as noted, or First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois by the time of 5:00 PM.

s/Christina L. Nannini
CHRISTINA L. NANNINI, #6327367
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62701
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Complainant,)	
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)	
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 JCC SERVICE, INC., an Iowa corporation (“Respondent”) (“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.* (2016), 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 September 26, 2018, 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 (2016), 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 (2016).

3. JCC Service, Inc. ("Respondent"), formerly known as Johnson Painting and Sandblasting, is an Iowa corporation that operates a metal fabrications business located at 2750 Morton Drive, East Moline, Illinois ("site").

4. On May 3, 2017, the Illinois EPA conducted an inspection of the site.

5. The Complaint alleges that, as of Illinois EPA's May 3, 2017 inspection, Respondent had not determined whether the solvent recovery still bottoms it generates are a hazardous or special waste, and stored the solvent recovery still bottoms as general refuse in an on-site, non-hazardous waste dumpster.

6. The Complaint alleges that Respondent offered the solvent recovery still bottoms that constitute hazardous waste for transportation for off-site disposal, without having prepared a manifest on the requisite USEPA forms.

B. Allegations of Non-Compliance

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

Count I: Waste Determination Violations
415 ILCS 5/21(i)
35 Ill. Adm. Code 722.111
35 Ill. Adm. Code 728.107(a)(1)
35 Ill. Adm. Code 808.121(a)

Count II: Hazardous Waste Manifest Violations
415 ILCS 5/21(i)
35 Ill. Adm. Code 722.120(a)
35 Ill. Adm. Code 722.123(a)
35 Ill. Adm. Code 808.122
35 Ill. Adm. Code 809.301

Count III: Hazardous Waste Disposal Violations
415 ILCS 5/21(i)
35 Ill. Adm. Code 722.112(c)

Count IV: Conducting Hazardous Waste Operations
Without a RCRA Permit
415 ILCS 5/21(f)
35 Ill. Adm. Code 703.121(a)
35 Ill. Adm. Code 703.121(b)

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 to the allegations of violation in 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

After being notified by Illinois EPA of the alleged violations at the Facility, Respondent retained a new environmental consultant and conducted a hazardous waste determination for the still bottoms generated from its solvent recycling system. Respondent has since managed and shipped the solvent recovery still bottoms, determined to be a hazardous waste, off-site for disposal as a hazardous waste, and therefore has returned to compliance with respect to the

violations alleged in the Complaint filed in this matter.

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 (2016).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2016), 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. The Complainant contends that human health and the environment were threatened by Respondent's violations.
2. There is social and economic benefit in the operation of Respondent's metal fabrications business.
3. Respondent's metal fabrications business is suitable for the area in which it is operated, so long as it is operated in compliance with the Act and Board Regulations.
4. Compliance with the Act and Board regulations is both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and Board Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2016), 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. The Complainant alleges that Respondent did not properly store, transport, or dispose of solvent recovery still bottoms as hazardous waste. The Complainant alleges that the violations began during 2006, when Respondent first started utilizing a solvent recovery system, and were resolved following Illinois EPA's May 3, 2017 inspection.
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 Twenty-Five Thousand Dollars (\$25,000.00) 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 not at issue in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Twenty-Five Thousand Dollars (\$25,000.00) within thirty (30) calendar 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

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 #2
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The name and case 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:

Christina L. Nannini
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. 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.

2. 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 \$25,000.00 penalty, its commitment to cease and desist as contained in Section V.D.2 above, 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 September 26, 2018. 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

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.

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

LISA MADIGAN
Attorney General
State of Illinois

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

ALEC MESSINA, Director
Illinois Environmental Protection Agency

BY: 
ANDREW ARMSTRONG, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 12/19/2018

DATE: 12/14/18

JCC SERVICE, INC.

BY: 
John Curtis, President

DATE: 11/30/18

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an Iowa corporation,)	
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Respondent.)	

MOTION FOR RELIEF FROM HEARING

NOW COMES Complainant, People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, and requests relief from the requirement of a hearing in this matter. In support thereof, Complainant states as follows:

1. Filed contemporaneously with this Motion is a Stipulation and Proposal for Settlement executed between Complainant and the Respondent, JCC Service, Inc.

2. Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2016), provides as follows:

(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).

3. No hearing is scheduled in this matter.

4. 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) (2016).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
ATTORNEY GENERAL

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

BY: /s/ Christina L. Nannini
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Assistant Attorney General
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(217) 782-9031
cnannini@atg.state.il.us
ebs@atg.state.il.us

Dated: December 27, 2018