

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> KWAME RAOUL, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB 19 -051
)	(Enforcement – Land)
SE TRANSPORT, INC., a dissolved Illinois)	
Corporation,)	
)	
Respondent.)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 10th day of September 2019, I filed with the Clerk of the Illinois Pollution Control Board Stipulation and Proposal for Settlement, and a Motion to Request Relief from Hearing Requirement with Respondent, SE TRANSPORT, INC., copies of which are attached hereto and are hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS
KWAME RAOUL
Attorney General of the
State of Illinois

BY: /s/ Nancy J. Tikalsky
NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
312-814-8567
ntikalsky@atg.state.il.us

September 10, 2019

SERVICE LIST

Carol Webb
Chief Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, 11th Floor
Chicago, IL 60601
via email attachment carol.webb@Illinois.gov

Larry and Christine Wilson
via email attachment larryewilson59@gmail.com>

Illinois Environmental Protection Agency
Melanie Jarvis
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
via email attachment melanie.jarvis@illinois.gov

CERTIFICATE OF ELECTRONIC SERVICE

I, NANCY J. TIKALSKY, an Assistant Attorney General, do certify that I caused to be served this 10th day of September 10, 2019, the foregoing Notice of Filing and Motion to Request Relief from Hearing, Stipulation and Proposal for Settlement and upon Respondent, SE TRANSPORT, INC., by electronic mail.

/s/ Nancy J. Tikalsky
NANCY J. TIKALSKY
Assistant Attorney General
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<i>ex rel.</i> KWAME RAOUL, Attorney General)	
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Complainant,)	
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v.)	PCB 19 - 051
)	(Enforcement – Land)
SE TRANSPORT, INC., a dissolved Illinois)	
Corporation,)	
)	
Respondent.)	

MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On August 17, 2018, a Complaint was filed with the Illinois Pollution Control Board (“Board”) in this matter. On September 10, 2019, a Stipulation and Proposal for Settlement with Respondent, SE TRANSPORT, INC., was filed with the Board.
2. Section 31(c)(2) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31(c)(2) (2018), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement.
3. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2018), provides as follows:

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).

4. No hearing is currently scheduled in the instant case.
5. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2018).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2018).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
KWAME RAOUL
Attorney General of the
State of Illinois

BY: /s/ Nancy J. Tikalsky
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL, Attorney General)
of the State of Illinois,)

Complainant,)

v.)

SE TRANSPORT, INC., a dissolved Illinois)
Corporation,)

Respondent.)

PCB 19 -051
(Enforcement – Land)

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 SE TRANSPORT (“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. (2018), 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 August 17, 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 (2018), 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 (2018).

3. At all times relevant to the Complaint, Respondent was and is an Illinois limited liability corporation that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent operated a waste transportation service located at 1950 Westgate Dr., Columbia, Monroe County, Illinois ("Facility"), which is now closed.

B. Allegations of Non-Compliance

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

Count I: Hazardous Waste Transporter Violations: 415 ILCS 5/21(e), (g)(2), and (j) (2016), and 35 Ill. Adm. Code 723.121(a);

Count II: Hazardous Waste Storage Operation without a RCRA Permit: 415 ILCS 5/21(e) and (f)(1) and (2) (2016), and 35 Ill. Adm. Code 703.121(a) and (b);

Count III: Hazardous Waste Storage Operating Violations: 415 ILCS 5/21(e) and (f)(2) (2016), and 35 Ill. Adm. Code 725.115(a), 725.131, 725.135, 725.271, 725.273(a), 725.274, and 728.150(a);

Count IV: Hazardous Waste Storage Closure Violations: 415 ILCS 5/21(e) and (f)(2) (2016), and 35 Ill. Adm. Code 725.212(a), 725.242(a), and 725.243;

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.

D. Compliance Activities to Date

On January 25, 2016, Velocity Services, LLC, owner of hazardous waste, (“Velocity”) had a permitted transporter pick up hazardous and special waste from Respondent’s unpermitted facility and disposed it at a permitted facility for special waste. In Spring 2017, the Respondent’s unpermitted facility was remediated as necessary according to the Closure Plan approved by Illinois EPA on December 13, 2016.

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 (2018).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2018), 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 were threatened and the Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations.
2. There was social and economic benefit to the Facility.
3. Operation of the Facility was suitable for the area in which it is located.
4. The transport of Hazardous and Special Waste to a permitted facility and remediation of the unpermitted storage facility and other compliance with the Act and Board Hazardous and Special Waste Regulations was 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) (2018), 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 Respondent failed to locate a permitted facility to dispose of the Hazardous and Special Waste when it received the Hazardous and Special Waste. The Respondent allowed the Hazardous Waste to be hauled on vehicles not listed on its Special Waste Hauling Permit and failed to ensure the Hazardous and Special Waste were timely delivered to a permitted waste disposal facility. The violations began on or around August 2013, and were resolved on or around Spring 2017.
2. Respondent was diligent and cooperative at coming into compliance with the Act and Board 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 that, based upon the facts of this matter and a determination of Respondent's inability to pay a civil penalty due to bankruptcy, financial insolvency, and dissolution of the corporation, and the owner's inability to pay due to personal insolvency, a penalty of Four Hundred dollars (\$400.00) 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 Four Hundred dollars (\$400.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest, and Default

1. If the Respondent fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent shall provide notice to the Complainant of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$100.00 per day per violation for up to the first fifteen (15) days of violation, \$300.00 per day per violation for the next fifteen (15) days of violation, and

\$500.00 per day per violation thereafter until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

2. 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.

3. 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.

4. The stipulated penalties shall be enforceable by the Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

C. 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:

Nancy J. Tikalsky
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
ntikalsky@atg.state.il.us

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 \$400.00 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 August 17, 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 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 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

KWAME RAOUL
Attorney General
State of Illinois

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

JOHN KIM, Director
Illinois Environmental Protection Agency

BY: *Elizabeth Wallace*
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: *Dana Vetterhoffer*
DANA VETTERHOFFER
Acting Chief Legal Counsel

DATE: 9/4/19

DATE: 9-26-19

RESPONDENT

SE TRANSPORT, INC.

By: _____

Its: _____

DATE: _____

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

JOHN KIM, Director
Illinois Environmental Protection Agency

BY: _____
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: _____
DANA VETTERHOFFER
Acting Chief Legal Counsel

DATE: _____

DATE: _____

RESPONDENT

SE TRANSPORT, INC.

By: Christina Wilson
Its: President

DATE: 8/21/19