

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 by KWAME RAOUL, Attorney General)
 of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 YOUTH FAIR CHANCE, INC.,)
 d/b/a CAPITOL REUSE CENTER,)
 an Indiana not-for-profit corporation, and)
 DALE ROWDEN, an individual,)
)
 Respondents.)

PCB No. 21-45

NOTICE OF FILING

TO: See attached service list

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Notice of Filing, Stipulation and Proposal for Settlement as to Youth Fair Chance, Inc., d/b/a Capitol Reuse Center, Motion for Relief from Filing Requirements, and Certificate of Service, copies of which are attached and hereby served upon you.

PEOPLE OF THE STATE OF ILLINOIS
 KWAME RAOUL, ATTORNEY
 GENERAL

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

BY: s/ Emma Hudspath
 Emma Hudspath
 Assistant Attorney General
 500 South Second Street
 Springfield, Illinois 62701
 (217) 557-4635
 emma.hudspath@ilag.gov

Dated: December 20, 2021

Service List

For the Respondents

Youth Fair Chance
d/b/a Capitol Reuse Center
c/o Danny Woodcock, Registered Agent
701 North Holt Road, Suite 1
Indianapolis, IN 46222-4139

Dale Rowden
1216 Patton Street
Springfield, IL 62701

Dale Rowden
1222 Patton Street
Springfield, IL 62701

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 Respondents.)

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STIPULATION AND PROPOSAL FOR SETTLEMENT
AS TO RESPONDENT YOUTH FAIR CHANCE, INC.,
d/b/a CAPITOL REUSE CENTER

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 YOUTH FAIR CHANCE, INC., d/b/a CAPITOL REUSE CENTER (“Youth Fair Chance”), 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. (2020), 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 December 22, 2020, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2020), 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 (2020).

3. At all times relevant to the Complaint, Youth Fair Chance is and was an Indiana not-for-profit corporation.

4. At all times relevant to the Complaint, Youth Fair Chance operated a facility located at 2130 East Clear Lake Avenue, Springfield, Sangamon County, Illinois ("CRC Site").

5. On February 5, 2019, Illinois EPA inspected a parking lot located in Springfield, Illinois, owned by a third-party Illinois corporation, after having being notified by the Sangamon County Department of Public Health that paint cans had been disposed of in the parking lot. Illinois EPA observed approximately 150 1-gallon paint cans containing oil-based paint in the parking lot, with the contents of many cans leaking onto the surface of the lot. Upon inspection, the writing on the lid of one of the cans matched the price labeling used by CRC. A representative of CRC advised Illinois EPA that CRC had paid Dale Rowden on February 4, 2019 to dispose of the waste paint.

6. On February 8, 2019, Illinois EPA observed the pallets of waste paint at the CRC Site, having been removed from the parking lot where they had been observed on February 5, 2019. No waste determinations or manifests were provided for the waste paint.

B. Allegations of Non-Compliance

Complainant contends that Youth Fair Chance has violated the following provisions of the Act and Board regulations:

- Count I: Open Dumping of Waste
Section 21(a) of the Act, 415 ILCS 5/21(a) (2020)
- Count II: Open Dumping Resulting in Litter
Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2020)
- Count III: Hazardous Waste Violations
Section 21(f)(2) of the Act, 415 ILCS 5/21(f)(2) (2020), Sections 722.118(a) and 722.118(c) of the Board Regulations, 35 Ill. Adm. Code 722.118(a), (c)
- Count IV: Illegal Disposal of Special Waste
Section 21(e) of the Act, 415 ILCS 5/21(e) (2020), Section 808.121(c)(1) of the Board Regulations, 35 Ill. Adm. Code 808.121(c)(1)
- Count V: Illegal Delivery of Special Waste
Section 21(e) of the Act, 415 ILCS 5/21(e) (2020), and Sections 808.121(b), 808.122, and 809.301 of the Board Regulations, 35 Ill. Adm. Code 808.121(b), 808.122, 809.301
- Count VI: Failure to Perform Hazardous or Special Waste Determinations
Section 21(e) of the Act, 415 ILCS 5/21(e) (2020), and Sections 722.111 and 808.121(a) of the Board Regulations, 35 Ill. Adm. Code 722.111, 808.121(a)

C. Non-Admission of Violations

Youth Fair Chance represent that they have 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, Youth Fair Chance does not affirmatively admit the allegations of violations 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

Prior to February 8, 2019, Youth Fair Chance retrieved the paint from the parking lot where it had been improperly disposed and stored it at the CRC Site. Youth Fair Chance hired an environmental services company to clean any remaining paint or paint residue from the disposal site. Youth Fair Chance additionally hired an environmental management company to properly dispose of the waste paint stored at the CRC Site. All waste was retrieved by the environmental management company.

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 (2020).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2020), 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 improper disposal of oil-based paint interfered with the protection of the physical property of others, being a parking lot belonging to another corporation, and had the potential to further interfere with the health and general welfare of the public.
2. There is social and economic benefit to the CRC Site.
3. Operation of the CRC Site was and is suitable for the area in which it is located.
4. It was technically practicable and economically reasonable for Youth Fair Chance to properly dispose of the oil-based paint.
5. Youth Fair Chance 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) (2020), 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. Approximately 150 1-gallon paint cans were improperly disposed of in the parking lot of a third-party Illinois corporation, causing paint to leak and enter the environment. Upon learning that the cans had been improperly disposed of at the parking lot, Youth Fair Chance took steps to remediate the violations.

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 Youth Fair Chance as a result of avoided or delayed compliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Three Thousand Three Hundred Dollars (\$3,300.00) 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 Three Thousand Three Hundred (\$3,300.00) within thirty (30) 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

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 62702

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:

Emma Hudspath
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62701

D. Future Compliance

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, his 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. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. 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.

3. 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 \$3,300.00 penalty, and its commitment to cease and desist as contained in Section V.D.3 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. 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 (2020), 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 J. KIM, Director
Illinois Environmental Protection Agency

BY:



ANDREW B. ARMSTRONG, Chief
Assistant Attorney General
Environmental Bureau

BY:



CHARLES W. GUNNARSON
Chief Legal Counsel

DATE:

12/15/2021

DATE:

12/14/21

RESPONDENT

YOUTH FAIR CHANCE, INC., d/b/a
CAPITOL REUSE CENTER



DATE:

11/17/21

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DALE ROWDEN, an individual,)
)
Respondents.)

PCB No. 21-45

MOTION FOR RELIEF FROM HEARING

NOW COMES Complainant, People of the State of Illinois, by KWAME RAOUL, 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) (2020), moves that the Illinois Pollution Control Board grant the parties to the Stipulation filed contemporaneously with this Motion, relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2020). In support thereof, Complainant states as follows:

1. On December 22, 2020, a Complaint was filed with the Illinois Pollution Control Board (“Board”) in this matter.
2. Complainant and Youth Fair Chance, Inc., d/b/a Capitol Reuse Center, 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 as to Youth Fair Chance, Inc., d/b/a Capitol Reuse Center, filed contemporaneously with this motion.

4. Complainant and Youth Fair Chance, Inc., d/b/a Capitol Reuse Center agree that a hearing on the Stipulation and Proposal for Settlement as to Youth Fair Chance, Inc., d/b/a Capitol Reuse Central 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) (2020).

Respectfully submitted,

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

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

BY: /s/ Emma L. Hudspath
EMMA L. HUDSPATH
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62701
(217)557-4635
emma.hudspath@ilag.gov

Dated: December 20, 2021

CERTIFICATE OF SERVICE

I certify that on the 20th day of December 2021, I caused to be served via certified mail, a copy of the foregoing Notice of Filing, Stipulation and Proposal for Settlement as to Youth Fair Chance, Inc. d/b/a Capitol Reuse Center, Motion for Relief from Hearing, and Certificate of Service, to the following:

For the Respondents

Youth Fair Chance
d/b/a Capitol Reuse Center
c/o Danny Woodcock, Registered Agent
701 North Holt Road, Suite 1
Indianapolis, IN 46222-4139

Dale Rowden
1216 Patton Street
Springfield, IL 62701

Dale Rowden
1222 Patton Street
Springfield, IL 62701

s/Lilia M. Brown
Lilia M. Brown
Administrative Clerk

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Affidavit of Service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

s/Lilia M. Brown
Lilia M. Brown
Administrative Clerk