

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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|----------------------------------|---|-----------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB No. 24-054 |
| |) | (Enforcement - Water) |
| ALL AMERICAN READY MIX, INC., |) | |
| an Illinois corporation, |) | |
| |) | |
| Respondent. |) | |

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 ALL AMERICAN READY MIX, INC. ("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. (2022), 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 February 7, 2024, a Complaint was filed on behalf of the People of the State of Illinois by Kwame Raoul, Attorney General of the State of Ininois, on his own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2022),

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 (2022).

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

4. At all times relevant to the Complaint, Respondent operated a ready mixed concrete facility located at 4599 Conover Road, Virginia, Cass County, Illinois (the "Facility").

5. At all times relevant to the Complaint, the Respondent discharged stonnwater associated with industrial activity from the Facility into waters of the State without having submitted the docwnents or fee necessary to obtain coverage under the General National Pollutant Discharge Elimination System ("NPDES") Pennit For Stonnwater Discharges From Industrial Activities.

6. By March 17, 2022, the Respondent had excavated the ditches at the Facility and had removed residual concrete from such ditches.

7. On April 17, 2023, Respondent submitted to Illinois EPA a Notice of Intent ("NOi") and Stormwater Pollution Prevention Plan ("SWPPP") in order for its Facility to obtain coverage under the General NPDES Pennit For Stonnwater Discharges From Industrial Activities.

8. On April 20, 2023, Illinois EPA received the NPDES application fee from the Respondent.

9. On July 21, 2023, Illinois EPA issued coverage to Defendant under the General NPDES Pennit for Stonnwater Discharges From Industrial Activities.

B. Allegations of Non-Compliance

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

- Count I: Failure to Obtain Coverage Under the General National Pollutant Discharge Elimination System (NPDES) Permit For Storm Water Discharges From Industrial Activities
Section 12(f) of the Act, 415 ILCS 5/12(f) (2022);
Section 309.102(a) of the Board's regulations, 35 Ill. Adm. Code 309.102(a)
- Count II: Water Pollution
Section 12(a) of the Act, 415 ILCS 5/12(a) (2022)
- Count III: Water Pollution Hazard
Section 12(d) of the Act, 415 ILCS 5/12(d) (2022)

C. Non-Admission of Violations

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

D. Compliance Activities to Date

1. By March 17, 2022, the Respondent had excavated the ditches at the Facility and had removed residual concrete from such ditches.
2. On April 17, 2023, Respondent submitted to Illinois EPA an NOI and SWPPP in order for its Facility to obtain coverage under the General NPDES General Stormwater Permit for Industrial Activities.
3. On April 20, 2023, Illinois EPA received the NPDES application fee from the Respondent.
4. On July 21, 2023, Illinois EPA issued Defendant coverage under the General NPDES Permit for Stormwater Discharges From Industrial Activities.

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 (2022).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2022), 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:

- I. 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:

- I. Human health and the environment were threatened and the Illinois EPA's

information gathering responsibilities hindered by the Respondent's violations.

2. There is social and economic benefit to the Facility.

3. Operation of the Facility was and is suitable for the area in which it is located, so long as it is operated in compliance with the Act and the Board's regulations.

4. Obtaining coverage under the General NPDES Permit for Storm Water Discharges From Industrial Activities prior to discharging storm water at the Facility and compliance with its terms was both technically practicable and economically reasonable.

5. Respondent has subsequently complied with the Act and the Board's regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2022), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any mailers 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 obtain coverage under the General NPDES Permit for Storm Water Discharges From Industrial Activities prior to discharging storm water from industrial activities at the Facility. The violations began on or before May 5, 2021, and were individually resolved by July 21, 2023.

2. Respondent was diligent in attempting to come back into compliance with the Act and the Board's 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 NINE THOUSAND DOLLARS (\$9,000.00) 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

The Respondent shall pay a civil penalty in the sum of NINE THOUSAND Dollars (\$9,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

U. Interest and Default

I. 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

I. 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:

Bridget Flynn
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, IL 62701

D. Future Compliance

I. 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's regulations.

3. The Respondent shall cease and desist from future violations of the Act and the Board's regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$9,000.00 penalty, its commitment to cease and desist as contained in Section V.D.3 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 [iability or penalties for the violations of the Act and the Board's 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 February 7, 2024. 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 mailers, 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 (2022), 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. Opportunity For Public Comment

Pursuant to 35 Ill. Adm. Code 103.300(b)(2), the Board shall publish notice of this Stipulation for at least 30 days prior to the Board accepting the Stipulation. If public comments

are submitted to the Board regarding this Stipulation, the Complainant reserves the right to withdraw its consent if the comments regarding the Stipulation disclose facts or considerations which indicate that the Stipulation is inappropriate, improper, or inadequate. Respondent consents to the entry of this Stipulation without further notice and agrees not to withdraw from or oppose acceptance of this Stipulation or to challenge any provision of the Stipulation, unless the Complainant has notified Respondent in writing that it withdraws or withholds its consent for the Stipulation. In the event the Complainant notifies the Respondent that it withdraws or withholds its consent for the Stipulation, then the terms of the agreement may not be used as evidence in any litigation between those entities.

11. Execution of Stipulation

The undersigned representatives for the Parties to the Stipulation certify that the parties whom they represent have fully authorized them 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

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 Armstrong*
ANDREW ARMSTRONG, Chief
Assistant Attorney General
Environmental Bureau

BY: *Charles W. Gunnarson*
CHARLES W. GUNNARSON
Chief Legal Counsel

DATE: 03/27/2024

DATE: 3/22/24

ALL AMERICAN READY MIX, INC.

Patrick A. Lynch
Its Pres

DATE: 2-21-2024