

ILLINOIS POLLUTION CONTROL BOARD  
January 4, 1996

PEOPLE OF THE STATE	)	
OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 96-120
	)	(Enforcement-Air and Mine)
DEALERS READY MIX COMPANY,	)	
d/b/a FRAMS MATERIAL	)	
CORPORATION, a dissolved	)	
Illinois corporation,	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD:

This matter comes before the Board upon a four-count complaint filed December 1, 1995, by the Attorney General of the State of Illinois, on behalf of the Illinois Environmental Protection Agency and the People of the State of Illinois, against Dealers Ready Mix Company, d/b/a Frams Material Corporation (Dealers), a dissolved Illinois corporation, located at 2018 Lily Lake Road, McHenry, McHenry County. The complaint alleges that Dealers has violated Sections 9(a), 12(a), 12(b) of the Illinois Environmental Protection Act (Act), (415 ILCS 5/9(a), 5/12(a), 5/12(b)) and 35 Ill. Adm. Code 201.144, 404.101(a)(2), and 405.110(a), and Rule 502 of the old Chapter 4 of the Board's Mine Related Pollution Regulations, 4 PCB 573, 583 (May 23, 1972) by failure to obtain a state mining operating permit, failure to obtain an air operating permit, and failure to notify of mine abandonment.

Pursuant to 415 ILCS 5/31(a)(2), the parties filed a joint motion requesting relief from the Act's hearing requirement on December 1, 1995. The Board published a notice of the waiver on December 6, 1995; no objection to the granting of the waiver was received. Waiver of hearing is hereby granted.

The parties filed a Stipulation and Settlement Agreement on December 1, 1995. The Stipulation sets forth facts relating to the nature, operations and circumstances surrounding the claimed violations. Dealers neither admits nor denies the alleged violations and agrees to pay a civil penalty of five thousand dollars (\$5,000.00).

The Board finds the settlement agreement acceptable under 35 Ill. Adm. Code 103.180. This settlement agreement in no way affects respondent's responsibility to comply with any federal, state or local regulations, including but not limited to the Act

and the Board's pollution control regulations.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

- 1) The Board hereby accepts the Stipulation and Settlement Agreement executed by the People of the State of Illinois and Dealers Ready Mix Company, d/b/a Frams Material Corporation, a dissolved Illinois corporation, located at 2018 Lily Lake Road, McHenry, McHenry County. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
- 2) Dealers shall pay the sum of five thousand dollars (\$5,000.00) within 30 days of the date of this Order. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and shall be sent by First Class mail to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
2200 Churchill Road  
P.O. Box 19276  
Springfield, IL 62794-9276

The certified check or money order shall clearly indicate on its face, Dealers Federal Employer Identification Number 362266121 and that payment is directed to the Environmental Protection Trust Fund.

Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.

- 3) Dealers shall cease and desist from the alleged violations.

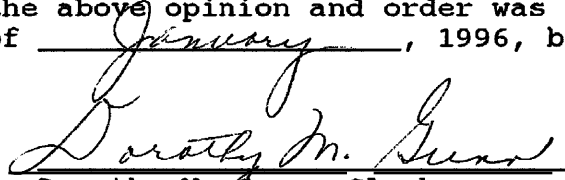
IT IS SO ORDERED.

Board Member J. Theodore Meyer dissented.

Section 41 of the Environmental Protection Act (415 ILCS

5/41) provides for the appeal of final Board orders within 35 days of the date of service of this order. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 4<sup>th</sup> day of January, 1996, by a vote of 6-1.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

RECEIVED  
CLERK'S OFFICE  
DEC - 1 1995  
STATE OF ILLINOIS  
POLLUTION CONTROL BOARD

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 DEALERS READY MIX COMPANY, )  
 d/b/a FRAMS MATERIAL CORPORATION, )  
 a dissolved Illinois corporation, )  
 )  
 Respondent. )

PCB 96-120  
(Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency ("Agency") and by GARY W. PACK, State's Attorney of McHenry County, on his own motion, and Respondent, DEALERS READY MIX COMPANY, d/b/a FRAMS MATERIAL CORPORATION, do hereby submit this Stipulation and Proposal for Settlement. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a full hearing was held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, or any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms hereof by the parties to this agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement and any Pollution Control Board ("Board") Order accepting same may be used in any future enforcement action

for purposes of Section 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(h) (1994). The agreement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 *et seq.* (1994).

II.

AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal for Settlement and to legally bind them to it.

III.

APPLICABILITY

This Stipulation and Proposal for Settlement shall apply to and be binding upon the Complainant and Respondent and any officer, agent, employee or servant of Respondent, as well as the Respondent's successors and assigns. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Settlement the failure of its officers, directors, agents, servants

or employees to take such action as shall be required to comply with the provisions of this Settlement.

IV.

STATEMENT OF FACTS

1. The Agency is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (1994), and charged, *inter alia*, with the duty of enforcing the Act.

2. Frams Material Corporation ("Frams") was an Illinois corporation. On September 1, 1976, Frams merged with Dealers Ready Mix Company, an Illinois corporation. The surviving corporation was named Dealers Ready Mix Company ("Dealers").

3. In or before 1971, Frams began its operation at 2018 Lily Lake Road, McHenry, McHenry County, Illinois ("facility").

4. Since at least 1971 and continuing until approximately October, 1988, Frams' activity at the facility involved the surface extraction and processing of natural deposits of sand and gravel from quarries by the use of a mechanical operation or process.

5. Notwithstanding the corporate merger between Frams and Dealers on September 1, 1976, Dealers continued operations at the facility under the name Frams Material Corporation.

6. Dealers dissolved on December 30, 1988.

7. Except for purposes of entering into this settlement, Respondent denies that it is amenable to suit due to the expiration of the limitations period as set forth in 805 ILCS 5/12.80 (1994).

8. Section 402.101 of the Illinois Pollution Control Board's ("Board's") Mine Related Water Pollution Regulations, 35 Ill. Adm.

Code 402.101, effective August 7, 1980, provides the following definitions:

"Abandon": to transfer ownership of or to close down mining activities, a mine or mine refuse area with no intention by that operator to reopen the affected land. A mine or mine refuse area which has been inoperative for one year shall be rebuttably presumed to be abandoned.

"Mining": the surface or underground extraction or processing of natural deposits of coal, clay, fluorspar, gravel, lead bearing ores, peat, sand, stone, zinc bearing ores or other minerals by the use of any mechanical operation or process. The term also includes the recovery or processing of the minerals from a mine refuse area. It does not include drilling for oil or natural gas.

"Mining Activities": all activities on a facility which are directly in furtherance of mining, including activities before, during and after mining. The term does not include land acquisition, exploratory drilling, surveying and similar activities. The term includes, but is not limited to, the following:

- a) Preparation of land for mining activities;
  - b) Construction of mine related facilities which could generate refuse, result in a discharge or have the potential to cause water pollution;
  - c) Ownership or control of a mine related facility;
- \*            \*            \*
- f) Mining;
  - g) Opening a mine;

\*            \*            \*

"Operating Permit": a state permit required of a person carrying out mining activities.





- 2) Carry out mining activities without an operating permit.

11. Section 407.103 of the Board's Mine Related Water Pollution Regulations, 35 Ill. Adm. Code 407.103, effective August 7, 1980, provides as follows:

Section 407.103                      Expiration of Outstanding Permits

Compliance with the provisions of this Chapter is required on the effective date except that immediate compliance with the permit requirement of Section 404.101 is not required of holders of outstanding permits for mines opened prior to the effective date of this Subtitle D, Chapter I. For such facilities, compliance with Section 404.101 is required upon expiration of the outstanding operating permit. Such permits shall expire upon the occurrence of any of the following conditions, whichever occurs first:

- a) The lapse of three years after the effective date of this Chapter; or
- b) The expiration of any NPDES permit held by the permittee for the facility; or
- c) Issuance of a permit for the facility pursuant to Section 403.102 or 404.101; or
- d) The lapse of an application period fixed pursuant to Section 407.102(c) if an application is not received by the date given in the notification.

12. On January 5, 1973, the Agency issued a mine operating permit for Respondent's facility. This mine operating permit expired on August 7, 1983, three years after the effective date of Chapter 1 of the Board's Regulations, 35 Ill. Adm. Code Chapter 1.

13. From approximately August 7, 1983 until October, 1988, Respondent carried out mining activities at the facility without an Agency operating permit.

14. Respondent failed to obtain an Agency operating permit prior to carrying out mining activities as required by Section 12(b) of the Act and 35 Ill. Adm. Code 404.101(a)(2).

15. Complainant contends that by Respondent's conduct described herein, Respondent has violated Section 12(b) of the Act, 415 ILCS 5/12(b) (1994), and Section 404.101(a)(2) of the Board's Mine Related Water Pollution Regulations, 35 Ill. Adm. Code 404.101(a)(2). Respondent contends that it neither admits nor denies violating Section 12(b) of the Act and a 35 Ill. Adm. Code 404.101(a)(2).

16. Section 405.110 of the Board's Mine Related Water Pollution Regulations, 35 Ill. Adm. Code 405.110, provides, in pertinent part, as follows:

Section 405.110                      Cessation, Suspension or  
Abandonment

a) A permittee shall notify the Agency in writing by certified mail within thirty days of any of the following:

- 1) Abandonment; or
- 2) Cessation or suspension of active mining for thirty days or more unless caused by a labor dispute.

\*                      \*                      \*

17. In October, 1988, or a date better known to Respondent, Respondent abandoned its facility or ceased operations at the facility by closing down its mine or mining activities with no



the date of close-down, obtain a permit to abandon.

\* \* \*

21. Respondent opened its mining facility in 1971. From approximately August 7, 1983 to October, 1988, Respondent failed to obtain the valid permit for its mine or mining facility as required by Subtitle D, Chapter I of the Board's Regulations, 35 Ill. Adm. Code Subtitle D, Chapter I.

22. In October, 1988, or a date better known to Respondent, Respondent abandoned its facility by closing down the mine or mining activities with no intention to reopen the affected land.

23. Since May 23, 1972, Respondent was required to have a permit to abandon its mine under Rule 502 of old Chapter 4 of the Board's Mine Related Pollution Regulations, 4 PCB 573, 583 (May 23, 1972).

24. From approximately October, 1988 up to and including January 13, 1992, Respondent abandoned its facility without a permit to abandon. On January 14, 1992, the Agency issued to Respondent a permit to abandon its facility.

25. Respondent failed to obtain an Agency permit to abandon its facility as required by Section 12(a) of the Act and Rule 502 of old Chapter 4 of the Board's Mine Related Pollution Regulations.

26. Complainant contends that by Respondent's conduct described herein, Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (1994), and Rule 502 of old Chapter 4 of the Board's Mine Related Pollution Regulations, 4 PCB 573, 583 (May 23,

1972). Respondent contends that it neither admits nor denies violating Section 12(a) of the Act and/or Rule 502.

27. Section 201.102 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.102, provides the following definitions:

"Emission Source": any equipment or facility of a type capable of emitting specified air contaminants to the atmosphere.

"Existing Emission Source": any emission source, the construction or modification of which has commenced prior to April 14, 1972.

"Specified Air Contaminant": any air contaminant as to which this Subtitle [B] contains emission standards or other specific limitations and any contaminant regulated in Illinois pursuant to Section 9.1 of the Act.

28. The equipment listed herein emits, or is capable of emitting, particulate matter, a specified air contaminant, to the atmosphere and, therefore, constitutes emission sources as that term is defined in 35 Ill. Adm. Code 201.102, set forth above. The equipment listed herein was constructed before April 14, 1972 and constitutes existing emission sources as that term is defined in 35 Ill. Adm. Code 201.102.

29. Section 9(b) of the Act, 415 ILCS 5/9(b) (1994), provides as follows:

No person shall:

\* \* \*

- b. Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in

violation of any conditions imposed  
by such permit.

30. Section 201.144 of the Board's Air Pollution Regulations,  
35 Ill. Adm. Code 201.144, provides in pertinent part, as follows:

Section 201.144            Operating Permits for  
Existing Sources

No person shall cause or allow the operation of  
any existing emission source or any existing  
air pollution control equipment without first  
obtaining an operating permit from the Agency,  
except as provided in Section 201.146.

\*                            \*                            \*

31. The equipment listed herein must have an Agency operating  
permit because it constitutes emission sources and is not exempt  
pursuant to 35 Ill. Adm. Code 201.146.

32. From at least June 1, 1973 until October, 1988,  
Respondent operated the equipment listed herein at the facility  
without the required Agency permit.

33. Complainant contends that by Respondent's conduct  
described herein, Respondent violated Section 9(b) of the Act, 415  
ILCS 5/9(b) (1994), and Section 201.144 of the Board's Air Pollution  
Regulations, 35 Ill. Adm. Code 201.144. Respondent contends that it  
neither admits nor denies violating Section 9(b) of the Act and/or  
35 Ill. Adm. Code 201.144.

V.

**EXPLANATION OF PAST FAILURES TO COMPLY WITH THE ACT**

1. On August 22, 1988, the Agency conducted an inspection of  
Respondent's facility during which the Agency inspector discovered

that Respondent's mining activities involved ~~in~~ the operation of air emission sources without air operating permits.

2. On September 1, 1988, the Agency mailed to Respondent a compliance inquiry letter ("CIL") for its facility explaining the air permit violations alleged herein.

3. On September 8, 1988, Respondent responded to the CIL by requesting the Agency to excuse the facility from filing for the air operating permit because Respondent was preparing to permanently cease production on or about October 21, 1988, and after November, 1988, it planned to only load out stockpiled materials and perform site work.

4. On July 18, 1990, the Agency mailed Respondent a letter to address the abandonment of Respondent's facility and to request for an abandonment plan.

5. On December 9, 1991, the Agency received from Respondent an application for permit to abandon the facility and an abandonment plan.

6. On January 14, 1992, the Agency issued Respondent a permit to abandon the facility.

7. On August 20, 1992, the Agency inspected the facility and found that the abandonment plan had been completed pursuant to the Board's Mine Related Water Pollution Regulations and that no further action was required.

VI.

CONSIDERATION OF SECTION 33(c) FACTORS

Section 33(c) of the Act, 415 ILCS 5/33(c) (1994), 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 Complainant states as follows:

1. The impact to the public resulting from Respondent's noncompliance was that the Agency and the public were not privy to information that is important to the control of air pollution and mine related water pollution in Illinois. The permit process is the only method available to the State to identify possible mine related water pollution and air pollution sources and their control;



2. The parties agree that Respondent's facility was of social and economic benefit;

3. The suitability of Respondent's property to the area in which it was located is not an issue in these proceedings.

4. Complying with the requirements of the Act and the Board's Regulations was both technically practicable and economically reasonable; and

5. Respondent did subsequently comply with the Board's Mine Related Water Pollution Regulations pertaining to the abandonment of the facility by obtaining the necessary permit to abandon.

## VII.

### CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (1994), 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 the due diligence on the part of the violation 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 violation because of delay in compliance with requirements;

4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors, the Complainant states as follows:

1. The duration of the abandonment permit violation was approximately four years;
2. Respondent applied for and received Agency permit #1992-MD-4496 to abandon its facility;
3. Respondent did accrue some economic benefit by avoiding cost of annual permit fees;
4. Complainant has determined that a Five Thousand Dollar (\$5,000.00) payment will serve to deter further violations and aid in future voluntary enforcement of the Act and Board Regulations; and
5. Respondent has no previously adjudicated violations of the Act.

#### VIII.

##### TERMS OF SETTLEMENT

1. Respondent reserves its rights and defenses regarding liability or responsibility in any subsequent proceeding regarding this facility, other than Dispute Resolution proceedings or

proceedings to enforce this Stipulation and Proposal for Settlement. Respondent does not, by signing this Stipulation, waive any right or defense it may have under Section 12.80 of the Business Corporation Act of 1983, 805 ILCS 5/12.80 (1994). Nothing in this Stipulation shall prohibit its use by the Parties hereto to establish the existence and terms of this Stipulation or to enforce it.

2. Respondent neither admits nor denies to past violations of the Act and the Board's Regulations, specifically Sections 12(a) and (b) of the Act, 415 ILCS 5/12(a) and (b) (1994), 35 Ill. Adm. Code 404.101(a)(2), 35 Ill. Adm. Code 405.110(a), Rule 502 of old Chapter 4 of the Board's Mine Related Pollution Regulations, 4 PCB 573, 583 (May 23, 1972), Section 9(b) of the Act, 415 ILCS 5/9(b) (1994), and 35 Ill. Adm. Code 201.144.

3. Respondent shall make a payment of Five Thousand Dollars (\$5,000.00) by certified check or money order made payable to the Treasurer of the State of Illinois and designated to the Environmental Protection Trust Fund. Payment shall be made on the day this Stipulation and Proposal for Settlement is filed and shall be sent by first class mail to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
2200 Churchill Road  
P.O. Box 19276  
Springfield, IL 62794-9276

On the check or money order Respondent shall include the case name and number, and Respondent's Federal Employer Identification Number ("FEIN") 362266121.

4. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (1994), interest shall accrue on any amount not paid within the time

prescribed herein, at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (1994).

a. Interest on unpaid amounts shall begin to accrue from the date the payment is due and continue to accrue to the date payment is received.

b. Where partial payment is made on any payment amount that is due, such partial payment shall be first applied to any interest on unpaid amount then owing.

c. All interest on amounts owed the Complainant, shall be paid by certified check payable to the Treasurer of the State of Illinois for deposit in the Environmental Protection Trust Fund and delivered to:

Illinois Environmental Protection Agency  
Fiscal Services Division  
2200 Churchill Road  
P.O. Box 19276  
Springfield, IL 62794-9276

The name and number of the case and Respondent's FEIN shall appear on the face of the check. Respondent's FEIN is 362266121.

#### IX.

##### COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects Respondent's responsibility to comply with any federal, state or local regulations, including, but not limited to, the Act, 415 ILCS 5/1 *et seq.* (1994), the Board's Mine Related Water Pollution Regulations and Air Pollution Regulations, and the McHenry County Zoning Ordinance.

X.

RELEASE FROM LIABILITY

In consideration of Respondent's payment of Five Thousand Dollar (\$5,000.00), the State shall release, waive and discharge Respondent, its former shareholders, directors, officers, successors and heirs from any further liability or penalties from violations of the Act which were the subject matter of the complaint, upon receipt by Complainant of all payments required in Section VIII.3 of this Stipulation and Proposal for Settlement.

WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

AGREED:

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN  
Attorney General  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement Division

BY: W.D. Seith

WILLIAM D. SEITH, Chief  
Environmental Bureau  
Assistant Attorney General

FOR THE RESPONDENT:

DEALERS READY MIX COMPANY,  
d/b/a FRAMS MATERIAL  
CORPORATION

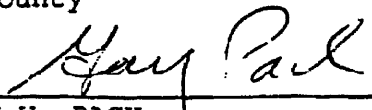
BY: Francis L. Sheahan

FRANCIS L. SHEAHEN,  
not individually  
but on behalf of  
Dealers Ready Mix,  
d/b/a Frams Material  
Corporation, a  
dissolved corporation

Dated: 11/28/95

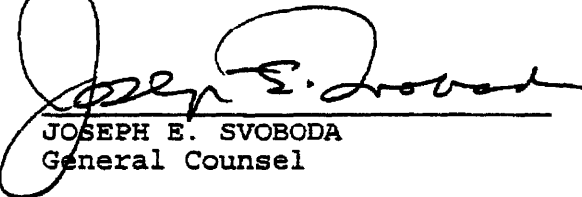
Dated: OCTOBER 30, 1995

GARY W. PACK  
State's Attorney of  
McHenry County

BY:   
GARY W. PACK  
State's Attorney of  
McHenry County

DATED: 11-8-95

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

BY:   
JOSEPH E. SVOBODA  
General Counsel

Dated: 11/16/95

c: \mrst5h