

ILLINOIS POLLUTION CONTROL BOARD  
March 20, 1997

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
BELL SPORTS, INC., a California )  
corporation, WASTE HAULING )  
LANDFILL, INC., an Illinois corporation, )  
and WASTE HAULING, INC., an Illinois )  
corporation, )  
)  
Respondents. )  
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)  
WASTE HAULING LANDFILL, INC., )  
an Illinois corporation, AND WASTE )  
HAULING, INC., an Illinois corporation, )  
)  
Cross-claimants, )  
)  
v. )  
)  
)  
BELL SPORTS, INC., a California )  
corporation, )  
)  
Cross-respondent.

PCB 95-91  
(Enforcement - Land)

THOMAS DAVIS AND MARIA MENOTTI OF THE ILLINOIS ATTORNEY GENERAL'S OFFICE, AND GREGORY RICHARDSON OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, APPEARED ON BEHALF OF COMPLAINANT;

BYRON F. TAYLOR AND IRA JACK NAHMOD OF SIDLEY AND AUSTIN APPEARED ON BEHALF OF BELL SPORTS, INC.;

PHILLIP R. VAN NESS OF WEBBER & THIES, P.C., AND STEPHEN O. WILLOUGHBY AND K. MICHAEL LATSHAW OF WILLOUGHBY, LATSHAW & HOPKINS, APPEARED ON BEHALF OF WASTE HAULING LANDFILL, INC. AND WASTE HAULING INC.

## INTERIM OPINION AND ORDER OF THE BOARD (by C.A. Manning):

This matter comes before the Board upon a seven-count complaint filed on March 14, 1995 by the Attorney General of the State of Illinois, on behalf of the Illinois Environmental Protection Agency (Agency) and the People of the State of Illinois, against Bell Sports, Inc. (Bell Sports), Waste Hauling Landfill, Inc. and Waste Hauling, Inc. (collectively WHLI/WHI). The complaint concerns Bell Sports' alleged generation and shipment of drums containing hazardous waste from its business located in Rantoul, Champaign County, Illinois, to a landfill owned by WHLI/WHI, and located west of Decatur, just north of Rockspring Road, approximately two miles west of Wyckles Road in the northwest quarter of Section 26, Township 16 North, Range 1 East (the landfill). The complaint also contains several alleged violations against WHLI/WHI for, generally, the transport, storage and disposal of hazardous waste.<sup>1</sup>

Complaint alleges that Bell Sports violated Sections 21(f)(1), 21(f)(2) and 21(i) of the Environmental Protection Act (Act) (415 ILCS 5/21(f)(1), (f)(2), (i) (1994)) and several sections of the Board's regulations including 35 Ill. Adm. Code 703.121(a) and (b), 722.111, 722.112(c), 722.120(b), 722.132(b), 723.111, 723.121(a)(1), 724.113(a), 724.115(a), (b), and (d), 724.173(a) and (b), 724.212(a)(1), 724.242(a), and 724.243 (1994). These sections generally pertain to the performance of routine inspections of a facility, documentation of inspections, maintenance of appropriate operating records, records of hazardous waste, closure plan for hazardous waste management units, written closure cost estimate, hazardous waste determination, marking of hazardous waste, inspection logs, permitted container storage area, shipping of hazardous waste, permitted treatment storage, financial assurance, chemical and physical analysis on generated waste, and providing records to Agency personnel.

Pursuant to Section 31(a)(2) of the Act (415 ILCS 5/31(a)(2) (1994)), complainant filed a motion requesting relief from the Act's hearing requirement on August 26, 1996. Concurrently, complainant and Bell Sports filed a stipulation and proposal for settlement (stipulation). The stipulation sets forth facts relating to the nature, operation, and circumstances surrounding the claimed violations against Bell Sports. Bell Sports denies the violations alleged by complainant, as well as any violations alleged by complainant against WHLI/WHI, to the extent that any such violations might provide a basis for a finding that Bell Sports was in violation of the Act or the Board's rules. However, Bell Sports agrees to pay a civil penalty \$69,427 to the Environmental Protection Trust Fund.

On September 4, 1996 WHLI/WHI filed a motion requesting that this matter be set for hearing. Pursuant to Section 31(a)(2) of the Act, the Board denied the stipulating parties' request for relief and set this matter for hearing. The hearing was held on the stipulation

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<sup>1</sup> On September 11, 1995 WHLI/WHI filed a cross-claim against Bell Sports requesting that Bell Sports be found liable for civil penalties due to the release or threatened release of hazardous substances on the premises of WHLI/WHI. Both complainant's enforcement action against WHLI/WHI and the cross-claim between WHLI/WHI and Bell Sports are still pending.

before the Board's Chief Hearing Officer Michael Wallace on December 4, 1996, at the Board's office located at 600 South Second Street, Springfield, Illinois. At hearing, each of the attorneys for the respective parties gave preliminary remarks with regard to the stipulation proposed between complainant and Bell Sports. Mr. Robert Krimmel, a consulting engineer and "engineer of record" for Waste Hauling Landfill, testified on behalf of WHLI/WHI with regard to his opinions and beliefs as to the content of the proposed stipulation. Aside from the parties present at the hearing in this matter, no members of the public were present.

The issues before the Board today are whether the Board may accept a stipulation between a complainant and one of several party respondents, and whether the acceptance of such a stipulation affects a cross-claim between two of the respondents. For reasons more fully explained below, the Board accepts the stipulation and proposal for settlement between complainant and Bell Sports. However, this matter shall proceed to hearing with regard to the remaining issues in the original enforcement case filed by complainant against WHLI/WHI, and the cross-claim filed by WHLI/WHI against Bell Sports.

### ARGUMENTS OF THE PARTIES

WHLI/WHI argues that the Board should reject the stipulation since it does not comply with the settlement procedure set forth in Section 103.180 of the Board's procedural rules. (35 Ill. Adm. Code 103.180(a).) WHLI/WHI further objects to the stipulation because it believes that any such settlement will impair WHLI/WHI's likelihood of succeeding in its cross-claim against Bell Sports. Complainant argues that it has properly met the requisite obligations for a settlement procedure under the Board's rules and, therefore, complainant believes that the stipulation is valid. Likewise, Bell Sports argues that the stipulation satisfies both the procedural and substantive requirements of 35 Ill. Adm. Code 103.180(a). Neither complainant nor Bell Sports believe that the stipulation will affect the cross-claim between WHLI/WHI and Bell Sports, and both complainant and Bell Sports argue that the burden of the cross-claim rests with WHLI/WHI. The following sections specifically discuss the arguments of all the parties in this matter.

#### Arguments Opposing the Stipulation

WHLI/WHI. WHLI/WHI objects to the stipulation arguing that it fails to comply with the procedural elements required for a settlement procedure as set forth in 35 Ill. Adm. Code 103.180(a).<sup>2</sup> (WHLI/WHI Pre-hrg. Br. at 4; WHLI/WHI Post-hrg. Br. at 6.) First, WHLI/WHI contends that 35 Ill. Adm. Code 103.180(a) requires that all parties to any case must sign the settlement agreement. (*Id.*) Because WHLI/WHI has not signed the stipulation, WHLI/WHI argues that the Board should not accept the stipulation filed by complainant and Bell Sports. Second, WHLI/WHI maintains that the stipulation fails to contain a "full

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<sup>2</sup> WHLI/WHI's case statement filed with the Board on November 15, 1996 will hereinafter be referred to as (WHLI/WHI Pre-hrg. Br. at \_\_); the transcript of the hearing held on December 4, 1996 will hereinafter be referred to as (Tr. at \_\_); WHLI/WHI's post hearing comments filed with the Board on December 23, 1996 shall hereinafter be referred to as (WHLI/WHI Post-hrg. Br. at \_\_).

stipulation of all material facts pertaining to the nature, extent and causes of the alleged violations” as required by Section 103.180(a)(1) of the Board’s procedural rules. (WHLI/WHI Post-hrg. Br. at 6.) Third, WHLI/WHI asserts that the stipulation fails to contain “any explanation for past failure to comply.” (WHLI/WHI Pre-hrg. Br. at 9-10; WHLI/WHI Post-hrg. Br. at 7-8.) WHLI/WHI asserts that neither complainant nor Bell Sports indicate why Bell Sports failed to comply with Board regulations. Fourth, WHLI/WHI argues that the stipulation fails to set forth any details as to future compliance plans. (WHLI/WHI Pre-hrg. Br. at 10; WHLI/WHI Post-hrg. Br. at 8-10.) Therefore, WHLI/WHI argues that, because complainant and Bell Sports fail to meet the conditions required by settlement procedures set forth in 35 Ill. Adm. 103.180(a), the Board should not accept the filed stipulation.

Additionally, WHLI/WHI further objects to the stipulation asserting that it would likely impair its chance of succeeding in the cross-claim against Bell Sports. Specifically, WHLI/WHI contends that the acceptance of the settlement between complainant and Bell Sports “invites the Board to leap to the conclusion, without factual information of any kind, that the charges against Bell Sports are wholly distinguishable from those levied against WHI and WHL.” (WHLI/WHI Pre-hrg. Br. at 5.) Moreover, WHLI/WHI argues that the Board’s acceptance of the stipulation will shift the burden of proof to WHLI/WHI in the cross-claim against Bell Sports. Consequently, WHLI/WHI argues that it, rather than complainant, will then have to prove Bell Sports’ liability for the alleged hazardous waste violations in the cross-claim. (WHLI/WHI Pre-hrg. Br. at 12, 13.) WHLI/WHI contends that all of the hazardous waste violations alleged against them are solely due to the wrongful acts of Bell Sports. (WHLI/WHI Pre-hrg. Br. at 12.) For all of the aforementioned reasons, WHLI/WHI urges the Board to reject the stipulation.

### Arguments In Favor of the Stipulation

Complainant. Complainant argues that it does not need the consent of WHLI/WHI in order to settle with Bell Sports in the original enforcement case. Complainant argues that the Board’s rules do not allow a nonconsenting party to veto an agreement between the People of the State of Illinois and a consenting party. Complainant also contends that it has met its obligation under 35 Ill. Adm. Code 103.180(a) and, therefore, the stipulation is valid.<sup>3</sup> (Comp. Pre-hrg. Br. at 1; Comp. Post-hrg. Br. at 2.) Complainant further asserts that the burden is on WHLI/WHI to prove that the stipulation does not meet the requirements of 35 Ill. Adm. Code 103.180(a). (Comp. Pre-hrg. Br. at 1-2; Comp. Post-hrg. Br. at 3.)

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<sup>3</sup> Complainant’s position regarding the public hearing on the stipulation filed with the Board on November 6, 1996 shall hereinafter be referred to as (Comp. Pre-hrg. Br. at \_\_\_); Complainant’s reply to WHLI/WHI’s post-hearing comments filed with the Board on January 6, 1997 shall hereinafter be referred to as (Comp. Post-hrg. Br. at \_\_\_.)

Moreover, complainant argues that the stipulation does not attempt to resolve the cross-claim filed by WHLI/WHI against Bell Sports. (Comp. Post-hrg. Br. at 4.) Complainant asserts that it is not responsible for proving the cross-claim which was filed by WHLI/WHI against Bell Sports. (*Id.*) Complainant argues that WHLI/WHI simply wants complainant, rather than WHLI/WHI, to utilize its resources to prove up the case against Bell Sports. However, complainant argues that the cross-claim filed by WHLI/WHI against Bell Sports must be proved by the cross-claimant, rather than the complainant, since such a cross-claim goes beyond the bounds of the prosecutorial function in the originally filed enforcement matter. (*Id.*)

Finally, complainant contends that, according to the Board's procedural rules set forth at 35 Ill. Adm. Code 103.180(c), the Board has the discretion to "accept, suggest revisions in, reject the proposed settlement and stipulation, or direct further hearing as it appears appropriate." Complainant asserts that in the past, the Board has accepted stipulations in a multiple respondent situation where the complainant settles a claim with one respondent and not another. (Comp. Post-hrg. Br. at 5.) Complainant further argues that the Board has, in the past, accepted and approved settlements involving complainant and less than all respondents. (*Id.*) Complainant also believes that its settlement with Bell Sports does not affect complainant's remaining duty to carry the burden of proof in complainant's case against WHLI/WHI. (Comp. Post-hrg. Br. at 4-5.) For the above reasons, complainant requests that the Board accept and approve the stipulation.

Bell Sports. Bell Sports maintains that the stipulation is a fair and equitable resolution of the enforcement action brought by complainant against Bell Sports.<sup>4</sup> (Bell Sp. Reply at 3; Bell Sp. Pre-hrg. Br. at 4.) Contrary to what WHLI/WHI argues, Bell Sports maintains that it has taken significant steps to remedy the alleged instances of noncompliance. (*Id.*) Bell Sports further argues that the stipulation satisfies the procedural and substantive requirements of 35 Ill. Adm. Code 103.180(a). Moreover, in accordance with 35 Ill. Adm. Code 103.180(a), Bell Sports believes that the stipulation describes the impact on the public resulting from noncompliance. (Bell Sp. Reply at 4; Bell Sp. Pre-hrg. Br. at 5.) In providing this information in the stipulation, Bell Sports alleges that it has effectively followed the settlement procedures set forth in the Board's procedural rules.

Bell Sports further argues that WHLI/WHI is not entitled as a matter of right by the Act, Illinois Administrative Code, or Board precedent to be included in the stipulation between complainant and Bell Sports. (Bell Sp. Rebut at 4.) Bell Sports states that the Board has, in fact, approved settlements involving the complainant and less than all respondents. (Bell Sp. Reply at 4-5; Bell Sp. Rebut at 5.) (*See discussion infra, People and Illinois Environmental Protection Agency v. Consolidated Freightways Corp. et al.* (October 4, 1978) PCB 76-107;

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<sup>4</sup> Bell Sports' September 19, 1995 reply and request for approval of settlement will hereinafter be referred to as (Bell Sp. Reply at \_\_\_); Bell Sports' case statement filed with the Board on November 7, 1996 will hereinafter be referred to as (Bell Sp. Pre-hrg. Br. at \_\_\_); Bell Sports' November 27, 1997 rebuttal of WHLI/WHI's case statement will hereinafter be referred to as (Bell Sp. Rebut at \_\_\_); Bell Sports' post hearing comments filed with the Board on January 3, 1997 shall hereinafter be referred to as (Bell Sp. Post-hrg. Br. at \_\_\_)

see People v. City of Gillespie et al. (December 1, 1994; January 11, 1995; February 16, 1995) PCB 94-220.) Bell Sports further argues that it is the burden of WHLI/WHI to prove its cross-claim against Bell Sports. (Bell Sp. Rebut 6-7.) Additionally, Bell Sports asserts that, at hearing, WHLI/WHI failed to present any convincing evidence which shows that the stipulation should be rejected by the Board. (Bell Sp. Post-hrg. Br. at 6-8; *See generally*, Tr. at 25-55.) Bell Sports further argues that WHLI/WHI presented nothing at hearing that would support its assertion that the stipulation does not satisfy the necessary procedural and substantive requirements of the Board's procedural rules. (Bell Sp. Post-hrg. Br. at 8-9.) Therefore, Bell Sports requests that the Board accept and approve the stipulation.

### DISCUSSION

For the reasons stated below the Board finds that the stipulation may be entered between complainant and one multiple party respondent, and that the stipulation at issue complies with Section 103.180(a) of the Board's procedural rules. Accordingly, we accept the stipulation between complainant and Bell Sports and order that complainant's enforcement action against WHLI/WHI shall continue as scheduled. We further order that the cross-claim between WHLI/WHI and Bell Sports shall proceed as discussed below.

#### Stipulation

WHLI/WHI objects to the stipulation between complainant and Bell Sports because WHLI/WHI does not agree to, nor has it signed, the stipulation. Section 103.180(a) of the Board's rules states that, "[a]ll parties to any case in which a settlement or compromise is proposed shall file . . . a written statement, signed by the parties . . . outlining the nature of, the reasons for, and the purpose to be accomplished by the settlement . . ." (35 Ill. Adm. Code 103.180(a).) This settlement procedure language applies to those parties in a case who have decided to settle. The Board has consistently held that the Board's procedural rules require that a written statement be signed by those parties proposing the settlement, not all parties who are respondents in a case.

In the past the Board has accepted stipulations by less than all respondents. In People v. City of Gillespie et al. (December 1, 1994; January 11, 1995; February 16, 1995) PCB 94-220, complainant filed an enforcement action against three named respondents. In three differently dated orders, the Board accepted separate stipulations and settlement agreements between complainant and the named respondents. In People and Illinois Environmental Protection Agency v. Consolidated Freightways Corp. et al. (October 4, 1978) PCB 76-107, the Board accepted two separate stipulations between complainant and two of the multiple party respondents. The remaining respondent, Consolidated Freightways, objected to the stipulations. In an order dated October 4, 1978, the Board found that Consolidated's objections were without merit. (*Id.* at 6.) The Board reasoned that the "stipulated facts by the very text of the Settlement Proposal are limited to the parties in question." The Board could not "find how Settlement Agreements to which Respondent Consolidated was not a party would affect its rights at hearing . . ." (*Id.* at 4.) The Board stated that stipulations are not binding on other parties (to a case.) (*Id.*)

In the instant matter, the proposed stipulation was filed and signed by complainant and Bell Sports, which constitutes all the parties to the settlement. The stipulation before the Board concerns the allegations which complainant filed against Bell Sports alone. Although complainant filed this matter against multiple respondents, the Board believes that the Attorney General of the State of Illinois has the prosecutorial discretion to settle with none, one, any, or all respondent(s) in a multiple party respondent case. Complainant has assured the Board that it has “adequately addressed all of the relevant facts and circumstances to show the impact of the violations, to assure future compliance, and to justify the amount of penalty.” (Tr. at 7.) Section 103.180(c) of the Board’s procedural rules gives the Board the discretion to accept, suggest revisions in, reject the proposed stipulation, or direct further hearings as it appears appropriate. The Board has reviewed the proposed stipulation and finds that it is acceptable and in accordance with the requirements of Section 103.180(a)(1-4). The acceptance of this stipulation does not affect or alter the cross-claim between the two party respondents, WHLI/WHI and Bell Sports.

### Cross-claim

WHLI/WHI believes that if the stipulation is accepted by the Board, then WHLI/WHI has little chance of succeeding in the cross-claim against Bell Sports. WHLI/WHI further asserts that the burden of proof for the cross-claim should rest with complainant. WHLI/WHI argues that “because of the way the proposed settlement is crafted, the burden of proof ultimately is shifted impermissibly from the State to WHLI/WHI, both for purposes of the cross-claim and for purposes of the enforcement action currently pending against non-settling respondents.” (Tr. at 19.)

The Board disagrees with WHLI/WHI’s arguments and characterizations. Once the Board has accepted the stipulation between complainant and Bell Sports, complainant still has the burden of proving its enforcement action against WHLI/WHI, and WHLI/WHI has the burden to prove the allegations in its cross-claim against Bell Sports. The Board views these matters as separate allegations which took place during the same string of transactions. Although complainant filed its enforcement action against the named respondents, it has the option to resolve the issues with the named respondents. Complainant stated at hearing that it entered into this stipulation with Bell Sports in order to “resolve the State’s claims against Bell Sports” but not to “affect the State’s claims against Waste Hauling, Inc. and Waste Hauling Landfill, Inc., nor [to] affect the cross-claims by the Waste Hauling companies against Bell Sports.” (Tr. at 7-8.) The Board finds that in accepting the stipulation between complainant and Bell Sports, neither complainant’s case against WHLI/WHI nor the cross-claim are affected.

The burden of proof for the cross-claim rests with WHLI/WHI. As the party who filed the cross-claim, WHLI/WHI must bear the burden of proving its case. In its cross-claim, WHLI/WHI requests the Board to assess civil penalties against Bell Sports. In order for the Board to order such civil penalties, the allegations must be proven. WHLI/WHI, being the only cross-claimant, must bear the burden of proving its cross-claim before the Board.

### CONCLUSION

The Board finds the stipulation and proposal for settlement between complainant and Bell Sports acceptable under Section 103.180 of the Board's rules (35 Ill. Adm. Code 103.180). This stipulation in no way affects respondent's responsibility to comply with any federal, State, or local regulation, including, but not limited to, the Act and the Board's regulations. The original enforcement matter filed by complainant against WHLI/WHI shall proceed as scheduled; likewise, the cross-claim between WHLI/WHI and Bell Sports shall proceed accordingly. Additionally, the Board notes that Bell Sports shall no longer appear as a named respondent in any future pleadings or orders in the original enforcement case filed by complainant. This interim opinion constitutes the Board's interim 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 Bell Sports, located in Rantoul, Champaign County, Illinois. The stipulation and agreement are incorporated by reference as though fully set forth herein.
2. Bell Sports shall pay the sum of \$69,427 within 45 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, Illinois 62794-9276

A copy of the check shall be sent to:

Office of the Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706

The certified check or money order shall clearly indicate on its face, Bell Sports' federal employer identification number and that payment is directed to the Environmental Protection Trust Fund.

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



4. Bell Sports shall cease and desist from the alleged violations.
5. The acceptance of this stipulation and settlement agreement does not affect complainant's action against the remaining respondents and does not affect the cross-claim, both of which shall proceed as scheduled.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above interim opinion and order was adopted on the \_\_\_\_ day of \_\_\_\_\_, 1997, by a vote of \_\_\_\_\_.

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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board