

ORIGINAL

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MAY 29 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
WESTFIELD HOMES OF ILLINOIS,)
an Illinois corporation,)
)
Respondent.)

No. PCB 03-147
(Enforcement - Water)

TO: Mr. Michael Ficaró
Attorney for Respondent
Ungaretti & Harris
3500 Three First National Pl.
Chicago, IL. 60602-4283

Bradley Halloran
Hearing Officer
100 West Randolph Street
11th Floor
Chicago, IL. 60601

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, May 29, 2003, filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of a Stipulation and Proposal for Settlement and a Motion to Request Relief from Hearing Requirement, copies of which are attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General of the
State of Illinois

BY: Paula Becker Wheeler
PAULA BECKER WHEELER
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-1511

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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Pollution Control Board

No. PCB 03-147
(Enforcement - Water)

**MOTION TO REQUEST RELIEF
FROM HEARING REQUIREMENT**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, 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 March 13, 2003, a Complaint was filed with the Pollution Control Board ("Board") in this matter. On May 29, 2003, a Stipulation and Proposal for Settlement was filed with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2), effective June 26, 2002, 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. Section 31(c)(2) provides:

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).

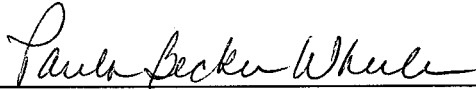
3. No hearing is currently scheduled in the instant case.

4. The Complainant requests the relief conferred by Section 31(c)(2) of the Act.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2), effective June 26, 2002.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General of the
State of Illinois

By: 
PAULA BECKER WHEELER
Assistant Attorney General

Environmental Bureau
188 W. Randolph St., 20th Fl.
Chicago, Illinois 60601
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an Illinois corporation,)

Respondent.)

STATE OF ILLINOIS
Pollution Control Board

No. PCB 03-147
(Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, at the request of the Illinois Environmental Protection Agency, and Respondent, WESTFIELD HOMES OF ILLINOIS, an Illinois corporation, do hereby agree to this Stipulation and Proposal for Settlement ("Stipulation"). 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 were 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, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms of this agreement. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement and any Illinois Pollution Control Board ("Board") order accepting same may be used in any future

enforcement action as evidence of a past adjudication of violation of the Illinois Environmental Protection Act ("Act") for purposes of Sections 39(i) and 42(h) of the Act, 415 ILCS 5/39(i) and 5/42(h) (2002).

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.* (2002).

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 each of them, and on any officer, director, agent, employee or servant of Respondent, as well as Respondent's successors and assigns. 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

A. Parties

1. The Attorney General of the State of Illinois brought this action on her own motion, as well as at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the statutory authority vested in her under Section 31 of the Act, 415 ILCS 5/31 (2002).

2. Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent, WESTFIELD HOMES OF ILLINOIS, ("WESTFIELD"), is an Illinois corporation, duly authorized to transact business in Illinois.

B. Site Description

At all times relevant to the Complaint, WESTFIELD owned property commonly known as Tiffany Farms Phase II Unit 3 and Unit 4, in Antioch, Lake County, Illinois ("Site"). At the Site, Respondent was developing a residential community as part of its business as a home sales and building company. It no longer owns the Site.

C. Noncompliance

Complainant has alleged the following violations of the Act and Illinois Pollution Control Board ("Board") regulations

against the Respondent:

COUNT I: WATER POLLUTION, violation of 415 ILCS 5/12(a) (2002);

COUNT II: CREATION OF WATER POLLUTION HAZARD, violation of 415 ILCS 5/12(d) (2002);

COUNT III: PERMIT VIOLATIONS, violations of 415 ILCS 5/12(f) (2002).

D. Response to allegations

Respondent neither admits nor denies the alleged violations.

V.

IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), 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.

ANALYSIS:

The parties mutually state as follows:

1. *Character and Degree of Injury:*

The impact to the public from the alleged violations of the Act was the actual discharge and the threat of discharge of silt-laden storm waters into Illinois waters.

2. *Social and Economic Benefit:*

The parties agree that operation of Respondent's business is of social and economic benefit, provided it operates in conformance with the requirements of the Act and pertinent Board waste disposal regulations.

3. *Suitability to the Area:*

Operation of Respondent's business at the Site was suitable to the area, as long as it acted in conformance with the Act and Illinois Pollution Control Board regulations.

4. *Technical Practicability:*

Compliance with its NPDES permit and in the handling of soils and construction waste at the Site was both technically practicable and economically reasonable.

5. *Subsequent Compliance:*

Respondent is no longer operates or owns the Site.

VI.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), 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 violator 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 violator 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.

ANALYSIS:

1. *Duration and Gravity of the Violation:*

The violations that are the subject of the Complaint are of relatively short duration and resulted in no known injury to the public. The violations date back to May of 2001 and continued through October 31st of 2001.

2. *Diligence of Respondent:*

The Respondent has removed soils and dirt piles, the outlet to the Lake is open, the stand pipe is functional, and it is no longer operating at the Site.

3. *Economic Benefit of Noncompliance:*

The Respondent received an economic benefit from the alleged noncompliance, however the exact value of the economic benefit is difficult to quantify.

4. *Deterrence:*

A penalty of Fifteen Thousand Dollars (\$15,000.00) against the Respondent will deter future noncompliance by the Respondent and others.

5. *Compliance History:*

The Respondent has no previously adjudicated violations of the Act and Board Regulations.

VII.

TERMS OF SETTLEMENT

1. The Respondent neither admits nor denies the violations as alleged in the Complaint.

2. The Respondents shall pay a penalty of Fifteen Thousand Dollars (\$15,000.00) within 30 days of the date the Board issues an Order accepting this Stipulation.

3. All Payments shall be made by certified check or money order, payable to the Illinois EPA, designated for deposit into the Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Copies of the certified checks or money orders, and all related

correspondence, shall be sent by first class mail to:

Paula Becker Wheeler
Assistant Attorney General
Environmental Bureau
188 West Randolph, Suite 2001
Chicago, Illinois 60601

4. Respondent's FEIN number must be on the certified check or money order. For issues relating to the payment of the penalty, the Respondent may be reached at the following address:

Westfield Homes of Illinois
c/o Michael Ficaró
Attorney for Respondent
Ungaretti and Harris
3500 Three First National Plaza
Chicago, Illinois 60602-4283

For purposes of payment and collection, the Respondent's attorney may be reached at the following address:

Mr. Michael Ficaró
Ungaretti and Harris
3500 Three First National Plaza
Chicago, Illinois 60602-4283

5. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2002), interest shall accrue on any penalty amount owed by the Respondent 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) (2002).

6. Interest on unpaid penalties shall begin to accrue from the date the penalty is due and continue to accrue to the date payment is received by the Illinois EPA.

7. 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.

8. All interest on penalties owed the Complainant shall be paid by certified check or money order payable to the Illinois EPA for deposit in the Environmental Protection Trust Fund at the above-indicated address. The name, case number, and the Respondent's Social Security number shall appear on the face of the certified check or money order. A copy of the certified check or money order and the transmittal letter shall be sent to:

Paula Becker Wheeler
Assistant Attorney General (or other designee)
Environmental Bureau
188 W. Randolph St., Suite 2001
Chicago, Illinois 60601

9. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

VIII.
CEASE AND DESIST

Respondent shall cease and desist from future violations of the Act and Board regulations, including but not limited to, those sections of the Act and Board regulations that were the subject matter of the complaint as outlined in Section IV.C. of this Stipulation and Proposal for Settlement.

IX.
COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way

affects the Respondent's responsibility to comply with any federal, state or local regulations, including but not limited to the Act and Board regulations.

X.

RELEASE FROM LIABILITY

In consideration of Respondent's payment of Fifteen Thousand Dollars (\$15,000.00), and Respondent's commitment to refrain from future violations of the Act and Board regulations, Complainant releases, waives and discharges the Respondent from any further liability or penalties for violations of the Act and regulations which were the subject matter of the Complaint herein, upon the payment of all monies owed. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future violations at other sites or heretofore undiscovered violations, or obtain penalties with respect thereto. Respondent no longer owns or operates the Site.

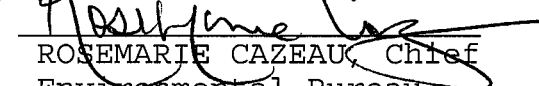
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

AGREED:

FOR THE COMPLAINANT:

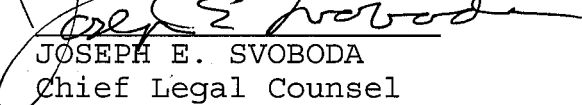
LISA MADIGAN
Attorney General of
the State of Illinois

Matthew J. Dunn, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated: 5/27/03

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

By: 
JOSEPH E. SVOBODA
Chief Legal Counsel

Dated: 5/21/03

FOR RESPONDENT:

WESTFIELD HOMES OF ILLINOIS

BY: Brad Harris

Title: President

FEIN: 36-3916649

Dated: 4/17/03

CERTIFICATE OF SERVICE

I, PAULA BECKER WHEELER, an Assistant Attorney General in this case, do certify that I caused to be served this 29th day of May, 2003, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief From Hearing Requirement and Notice of Filing upon the persons listed on said Notice by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 188 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.



PAULA BECKER WHEELER