

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD CLERK'S OFFICE

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SEP 02 2003

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 -vs- )  
 )  
 ROBERT HAMM, doing business as )  
 THREE R'S PIER BUILDERS, )  
 )  
 Respondent. )

No. PCB 03 - 128  
(Enforcement)

TO: Mr. Michael S. Grant  
Attorney for Respondent  
28 East Grand Avenue  
Fox Lake, IL. 60020-0526

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, September 2, 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., 20<sup>th</sup> Flr.  
Chicago, IL 60601  
(312) 814-1511

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**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 February 26, 2003, a Complaint was filed with the Pollution Control Board ("Board") in this matter. On September 2, 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  
PAULA BECKER WHEELER  
Assistant Attorney General

Environmental Bureau  
188 W. Randolph St., 20th Fl.  
Chicago, Illinois 60601  
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Complainant, )  
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v. ) PCB 03- 128  
 ) (Enforcement)  
ROBERT HAMM, doing business as )  
THREE R'S PIER BUILDERS, )  
 )  
Respondent. )

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, ROBERT HAMM, an individual doing business as Three R's Pier Builders, 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 agent, employee or servant of Respondent, as well as 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 his 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 ROBERT HAMM, is an Illinois resident, doing business as Three R's Pier Builders.

**B. Facility Description**

Respondent owns and operates a business involved in the design and construction of shoreline structures. On at least April 27-29, 2001, Respondent was installing a breakwall along the shore of Fox Lake in the town of Fox Lake, Lake County, Illinois ("Site"). In the process of installing sheet pile, Respondent severed an eight inch sanitary sewer line owned by the Town of Fox Lake resulting in the discharge of sewage into Fox Lake.

**C. Noncompliance**

Complainant has alleged the following violations of the Act against the Respondent:

COUNT I: WATER POLLUTION, violation of Sections 12(a) of the Act, 415 ILCS 5/12(a) (2002), and 35 Ill. Adm. Code 302.203;

COUNT II: INCREASING DISCHARGE OF CONTAMINANTS WITHOUT PERMIT, violation of 415 ILCS 5/12(c) (2002), and 35 Ill. Adm. Code 306.304;

COUNT III: CREATING A WATER POLLUTION HAZARD, violation of 415 ILCS 5/12(d) (2002).

**D. Response to allegations**

Respondent neither admits nor denies the allegations in the complaint.

**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 and threatened water pollution in an Illinois waterway, Fox Lake.

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 water pollution regulations.

3. *Suitability to the Area:*

Operation of Respondent's business at the Site is suitable to the area, provided that Joint Utility Locating Information for Excavators ("J.U.L.I.E.") and the local municipality are called to locate sanitary sewer lines prior to excavation.

4. *Technical Practicability:*

Calling J.U.L.I.E. and the local authorities prior to construction at the shoreline is both technically practicable and economically reasonable.

5. *Subsequent Compliance:*

Respondent is currently in compliance, after the Village of Fox Lake repaired the sewer line.



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:*

Complainant has alleged that the conditions which caused the alleged violations existed from at least April 27 to April 29, 2001, and resulted in approximately 10,000 gallons of untreated sewage flowing into Fox Lake.

2. *Diligence of Respondent:*

The Respondent was not diligent because he did not call the Village or J.U.L.I.E. before excavation. The Village performed the repair work to the sewer line. The Respondent was responsive to the Agency and the Attorney General's Office.

3. *Economic Benefit of Noncompliance:*

The Respondent did not receive any substantial economic benefit from the alleged noncompliance.

4. *Deterrence:*

A penalty of Two Thousand Five Hundred Dollars (\$2,500.00) 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 against him.

2. The Respondent shall pay the following penalty:

a. Respondent shall pay the sum of Two Thousand Five Hundred Dollars (\$2,500.00);

The penalty shall be paid within thirty (30) days after the date on which the Board adopts a final order approving this Stipulation and Proposal for Settlement. The payment 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

3. Respondent's Social Security 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:

Mr. Robert Hamm  
34678 Michael Court  
Ingleside, Illinois 60041

A copy of the certified check or money order, and all related correspondence, shall be sent by first class mail to:

Paula Becker Wheeler  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph, 20<sup>th</sup> Flr.  
Chicago, Illinois 60601

#### 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 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 the Respondent's payment as described in paragraph VII.2. above, and the 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. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on February 26, 2003. 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 or the Illinois EPA may have against any person, as defined by Section 3.26 of the Act, 415 ILCS 5/3.26, or entity other than the Respondent.

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

ROBERT HAMM

x Robert Hamm

Dated: 8/4/03

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

By: Rosemarie Cazeau  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

Dated: 8/27/03

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: Joseph E. Svobeda  
JOSEPH E. SVOBODA  
Chief Legal Counsel

Dated: 8/25/03

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