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SEP 29 2003

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant)
)
 v.)
)
 NORTHERN BUILDING CONCEPTS, INC.,)
 an Illinois corporation, and)
 LANDSCAPE CONCEPTS CONSTRUCTION,)
 INC., an Illinois corporation,)
)
 Respondents.)

PCB No. 03-53
(Enforcement - Water)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that today we have filed with the Pollution Control Board the following Stipulation and Proposal for Settlement and Request for Relief from the Hearing Requirement on behalf of the People of the State of Illinois, a copy of which is attached and hereby served upon you.

Respectfully submitted,

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

BY: *Joel J Sternstein*

JOEL J. STERNSTEIN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-6986

PEOPLE OF THE STATE OF ILLINOIS
ex rel. MICHAEL J. WALLER
State's Attorney,
Lake County, Illinois

BY: *Lisle Stalter by JJS*

LISLE STALTER
Assistant State's Attorney
Lake County State's Attorney
18 N. County Street
Waukegan, Illinois 60085
(847) 377-3050

DATE: September 29, 2003

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Brad Halloran, Esq.
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601
(312) 814-3620

Ms. Lisle Stalter
Office of the Lake County State's Attorney
18 N. County Street
Waukegan, IL 60085
(847) 377-3109

Mr. Charles Gunnarson, Esq.
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62702
(217) 782-5544

Mr. Robert T. O'Donnell
Eiden & O'Donnell, Ltd.
230 Center Drive, Suite 102
Vernon Hills, IL 60061
(847) 367-2750

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant)
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 NORTHERN BUILDING CONCEPTS, INC.,)
 an Illinois corporation, and)
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PCB No. 03-53 STATE OF ILLINOIS
 (Enforcement of Water Pollution Control Board)

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2002), moves that the Illinois Pollution Control Board ("Board") grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2002). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of the Board's water pollution regulations in addition to Sections 12(a), 12(d), and 12(f) of the Environmental Protection Act ("Act").

2. Complainant is filing this Motion and a Stipulation and Proposal for Settlement with the Board.

3. The parties have reached agreement on all outstanding issues in this matter.

THIS FILING IS SUBMITTED ON RECYCLED PAPER

4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement which is filed contemporaneously with this Motion.

5. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2002).

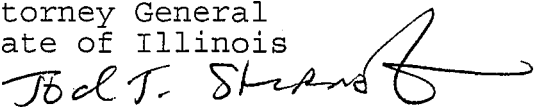
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

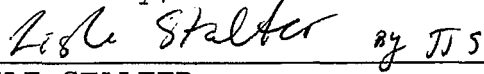
BY:



JOEL J. STERNSTEIN
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-6986

PEOPLE OF THE STATE OF ILLINOIS
ex rel. MICHAEL J. WALLER
State's Attorney,
Lake County, Illinois

BY:



LISLE STALTER
Assistant State's Attorney
Lake County State's Attorney
18 N. County Street
Waukegan, Illinois 60085
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DATE: September 29, 2003

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SEP 29 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)
and ex rel. MICHAEL WALLER, State's)
Attorney for Lake County, Illinois)
)
Complainant,)
)
v.)
)
NORTHERN BUILDING CONCEPTS, INC.,)
an Illinois corporation, and)
LANDSCAPE CONCEPTS CONSTRUCTION,)
INC., an Illinois corporation,)
)
Respondents.)

PCB No. 03-53
(Enforcement - Water)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and MICHAEL WALLER, State's Attorney of Lake County, and Respondents, NORTHERN BUILDING CONCEPTS, INC. ("Northern"), an Illinois corporation, and LANDSCAPE CONCEPTS CONSTRUCTION, INC. ("Landscape"), an Illinois corporation, do hereby submit this Stipulation and Proposal for Settlement ("Stipulation") to the Illinois Pollution Control Board ("Board") for approval. The parties agree that Complainant's statement of facts contained herein is agreed to only for the purposes of settlement. This Stipulation 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. (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 to legally bind them to it.

III.

STATEMENT OF FACTS

A. PARTIES

1. The subject Complaint was brought by the Attorney General and the State's Attorney of Lake County pursuant to the terms and provisions of Section 31 of the Act, 415 ILCS 5/31 (2002).

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 (2002).

3. At all times relevant to the Complaint, Respondent Northern was an Illinois corporation in good standing.

4. At all times relevant to the Complaint, Respondent

Landscape was an Illinois corporation in good standing.

B. SOURCE DESCRIPTIONS

1. On or about September 11, 1998, Northern purchased a parcel of property on Depot Street, in Antioch, Lake County, Illinois, commonly known as Depot Landings ("Site"), and is currently the owner of this Site as of the date of the filing of this Stipulation.

2. From at least March 1, 2001, or on dates better known to Respondents, until about October 5, 2001, Northern developed the Site for residential use. Site preparation and grading work was performed at the site by Landscape.

3. Storm water runoff from the Site drained into wetlands that are located in the Sequoit sub-basin of the Fox River watershed by way of the Chain O' Lakes.

4. From at least March 2, 2001 and continuing until about October 5, 2001, Northern and Landscape caused or allowed the discharge of storm water containing silt and/or sediment from the Site.

C. VIOLATIONS

This Stipulation is intended to resolve the allegations in the Complaint filed in this matter. The Complaint alleges violations of the Act and of the Board's Water Pollution Regulations outlined as follows:

COUNT I Water pollution and creating offensive conditions in violation of Section 12(a) of the Act, 415 ILCS

5/12(a) (2002), and Section 302.203 of the Board's Regulations, 35 Ill. Adm Code 302.203.

COUNT II Creating a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2002); and

COUNT III Unlawful discharges in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), and Section 309.102(a) of the Board's Regulations, 35 Ill. Adm. Code 309.102(a).

IV.

APPLICABILITY

This Stipulation shall apply to and be binding upon Complainant and Respondents, and any agent, director, officer, employee or servant of Respondents, as well as Respondents' successors and assigns. Respondents shall not raise as a defense to any enforcement action taken pursuant to this settlement the failure of his agents, directors, officers, servants or employees to take such action as shall be required to comply with the provisions of this settlement.

V.

ADMISSION/DENIAL OF VIOLATIONS

Respondents neither admit nor deny the violations alleged in the Complaint filed in this matter and referenced herein.

VI.

FUTURE PLANS OF COMPLIANCE

Respondents will not discharge storm water containing silt and/or sediment from the Site. Respondents will also abide by

the Act and the Board's regulations.

VII.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

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.

In response to these factors, the parties state as follows:

1. Complainant contends that the impact to the public as a result of the allegations against Respondents in the Complaint was that Respondents caused substantial turbidity, unnatural color, and water pollution in a tributary to wetlands located in the Sequoit sub-basin of the Fox River watershed by way of the

Chain O' Lakes.

2. The parties agree that Respondents' operation is of social and economic value

3. The parties agree that Respondents' development is suitable to the area where it is located.

4. The parties agree that compliance with the requirements of the Act and Board regulations is both technically practicable and economically reasonable.

5. The parties agree that Respondents subsequently complied with the Act and the Board's regulations.

VIII.

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 subdivisions (a), (b) (1), (b) (2), (b) (3), or (b) (5) of this Section, the Board is authorized to consider any matters or 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.

In response to these factors the parties state as follows:

1. The parties agree that the gravity of the alleged violations is significant in that the applicable Board Regulations were not complied with which resulted in water pollution. The parties agree that the duration is equally significant, as the violations continued for a period of several months.
2. Complainant alleges that Respondents did not initially exercise due diligence in complying with the Act and the Board's regulations.
3. Complainant alleges that Respondents derived economic benefit by not implementing improvements to its runoff water system before the violations began in 2001.
4. The parties agree that a twelve thousand five hundred dollar (\$12,500.00) civil penalty is adequate to deter Respondents from future violations.
5. Complainant is unaware of any previously adjudicated violations by Respondent.

IX.

TERMS OF SETTLEMENT

1. Respondents shall pay a civil penalty of twelve thousand five hundred dollars (\$12,500.00) within thirty (30) days of the date of entry of this Stipulation and Proposal for Settlement. Payment of ten-thousand dollars (\$10,000.00) of that penalty shall be made by certified check or money order payable to the "Illinois Environmental Protection Agency" and designated to the Environmental Protection Trust Fund. The certified check or money order shall include Respondents' federal employer identification numbers and be sent by first class mail to:

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

A copy of the check shall be sent to:

Joel Sternstein
Assistant Attorney General
Environmental Bureau
188 West Randolph Street 20th Floor
Chicago, Illinois 60601

Payment of the remaining two thousand five hundred dollars (\$2,500.00) shall be made by certified check or money order payable to the "Lake County State's Attorneys Office/Lake County Treasurer". The certified check or money order shall include Respondents' federal employer identification numbers and be sent by first class mail to:

Ms. Lisle Stalter
Lake County State's Attorneys Office
18 N. County Street
Waukegan, Illinois 60085

On the checks and/or money orders, Respondents shall include the case name and case number.

2. For the purposes of collection, inquires can be addressed to Respondents' attorney at:

Robert O'Donnell
Eiden & O'Donnell
230 Center Drive
Vernon Hills, Illinois, 60061

3. Pursuant to Section 42 (g) of the Act, 415 ILCS 5/42 (g) (2002), 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) (2002).

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

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

c. All interest on amounts owed Complainant shall be paid by certified checks payable to the "Illinois Environmental Protection Agency" for deposit in the Environmental Protection Trust Fund and to the "Lake County State's Attorneys Office/Lake

County Treasurer" on a pro rata basis and delivered in the same manner as described in Section IX.1 herein.

d. In the event that Respondents fail to make all or part of the payment set forth in Section IX.1, Respondents shall be in default and the unpaid balance owed, plus any accrued interest, shall become due and owing Complainant immediately.

4. Respondents shall in the future operate in compliance with the Act and Board Regulations promulgated thereunder.

5. Respondents shall cease and desists from further 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 III.C of this Stipulation.

X.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects Respondents' responsibility to comply with any federal, state or local laws and regulations, including but not limited to the Act, 415 ILCS 5/1 *et seq.* (2002), and the Board Regulations, 35 Ill. Adm. Code Subtitle A through H.

XI.

FUTURE USE

Notwithstanding any other language in this Stipulation and Proposal for Settlement to the contrary, this Stipulation and

Proposal for Settlement may be used against Respondents in any subsequent enforcement action or permit proceeding as evidence of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder, for purposes of Section 39(i) and/or 42(h) of the Act, 415 ILCS 5/39(i) and/or 5/42(h) (2002).

XII.

RIGHT OF ENTRY

In addition to any other authority, the Illinois EPA, its employees and representatives; the Attorney General, her agents and representatives; and the Lake County State's Attorney, his agents and representatives, shall have the right of entry into an upon Respondents' Site, which is the subject of this Stipulation and Proposal for Settlement, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

XIII.

RELEASE FROM LIABILITY

In consideration of Respondents' full payment of the civil penalty, commitment to comply with the terms of this Stipulation and Proposal for Settlement entered herein, the requirements of the Act, and the regulations promulgated thereunder, Complainant

releases waives and discharges Respondents and its employees, agents, directors, officers, successors and assigns from any further liability or penalties from the violations of the Act and Board Regulation which were the subject matter of the Complaint, upon receipt by Complainant of all payments required by Section IX of this Stipulation. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future or heretofore undiscovered violations or obtain penalties with respect thereto.

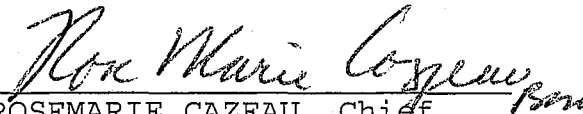
WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

AGREED:

FOR COMPLAINANT:


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

MATTHEW J. DUNN, Chief
Environmental Enforcement\Asbestos
Litigation Division

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General


Date: 8/27/03

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
JOSEPH E. SVOBODA
Chief Legal Counsel

Date: 8-6-03

LAKE COUNTY
STATE'S ATTORNEY OFFICE

By: 
MARGARET A. MARCOUILLER,
Chief Deputy Attorney, Civil Division

Date: 9-8-03

FOR RESPONDENT:

By: Michael Kerton
Michael Kerton
President
Northern Building Concepts, Inc.

Date: September 18, 2003

By: Peter Devore
Peter Devore
President
Landscape Concepts Construction, Inc.

Date: September 19, 2003

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CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 29th day of September, 2003, I caused to be served by First Class Mail the foregoing Stipulation and Proposal for Settlement, Request for Relief from the Hearing Requirement, and Notice of Filing to the parties named on the attached Service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



JOEL J. STERNSTEIN