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MAY 26 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
ONYX ENVIRONMENTAL SERVICES, LLC, a)
Delaware limited liability company,)
)
Respondent.)

No. PCB 04-98
(Enforcement-Air, Land,
Water)

AGREED MOTION TO REQUEST RELIEF FROM THE HEARING REQUIREMENT

In support of this Motion, the parties state as follows:

1. Today, the People of the State of Illinois, filed a Stipulation and Proposal for Settlement, with the Illinois Pollution Control Board.
2. Section 31(c)(2) of the Illinois Environmental Protection Act, ("Act"), 415 ILCS 5/31(c)(2)(2002) 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). . . .
3. Complainant and Respondent agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2002).

WHEREFORE, Complainant and Respondent request relief from the hearing requirement pursuant to Section 31(c)(2) of the Act.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau

BY:



ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, Illinois 60601
(312) 814-3816

DATE: MAY 26, 2004

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
)
v.) No. PCB 04-98
) (Enforcement - Air,
ONYX ENVIRONMENTAL SERVICES, LLC,) Land, Water)
a Delaware limited liability company,)
and AURA II, INC., a Wisconsin)
corporation,)
)
Respondent.)

STIPULATION AND PROPOSAL FOR SETTLEMENT
WITH RESPONDENT ONYX ENVIRONMENTAL SERVICES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, ONYX ENVIRONMENTAL SERVICES, LLC, a Delaware limited liability company ("Onyx" and collectively "Parties"), do hereby agree to this Stipulation and Proposal for Settlement ("Stipulation"). The Parties agree that the Statement of Facts contained herein represent 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 Stipulation. Notwithstanding the previous sentence, this Stipulation 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 Section 39(i) and 42(h) of the Act, 415 ILCS 39(i) and 5/42(h) (2002). 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 representative for each party certifies that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this Stipulation and to legally bind the party to it.

III.

APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and Respondent, and any officer, director, or agent, 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 Stipulation 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 Stipulation.

IV.

STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois brings this action on her own motion, as well as at the request of the Illinois EPA, 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 established in the executive branch of the state government by Section 4 of the Act, 415 ILCS 5/4 (2002), and is charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent Onyx is a Delaware limited liability company, authorized to do business in the State of Illinois.

ONYX's corporate office is located at 700 East Butterfield Road Lombard, DuPage County, Illinois.

4. ONYX is a provider of integrated environmental management services, including the identification and separation of hazardous waste, hazardous waste packaging, removal, disposal, transportation, and recycling.

5. Respondent AURA (not a party to this Stipulation) is a Wisconsin corporation, not authorized to transact business in the State of Illinois.

6. AURA owns a gold and silver reclamation business at 8035 W. Calumet Road, Milwaukee, Wisconsin. In the operation of this business, AURA generates a hazardous waste that contains nitric acid, hydrochloric acid and sulfuric acid, as well as some residual metals with RCRA hazardous waste numbers: D002, D006, D007, D008 and D011 ("AURA waste").

7. At sometime prior to July 2, 2001, AURA entered into a contract with ONYX for ONYX to transport the AURA waste from AURA's Wisconsin facility to an off-site waste management facility located in Ohio.

8. On July 2, 2001, at or around 7:00 a.m. at the Wisconsin facility, AURA transferred 2000 gallons of the AURA waste to an unlined ONYX tanker for transportation through the State of Illinois to a waste management facility in Vickery, Ohio.

B. SITE DESCRIPTION

On July 2, 2001, at or around 9:34 a.m., while the ONYX tanker was passing through the State of Illinois on its way to Ohio, it was discovered that the ONYX tanker was leaking. At around 9:49 a.m., the driver of the ONYX tanker pulled into the Lake Forest Plaza Oasis on Interstate 94, near the Village of Libertyville, in Lake County, Illinois.

2. Approximately ten minutes later, the ONYX tanker began venting a vapor cloud out of its pressure relief valve to the atmosphere. Local emergency response officials evacuated 30-40 workers and customers from the Plaza Oasis and residents from homes within a half mile radius to the west of the tanker. Officials also closed one southbound lane of I-94, St. Mary's Road, Bradley Road and Old School Road in Lake County, Illinois, for several hours.

3. Some of the AURA waste also leaked onto soil, asphalt and stone surfaces near the ONYX truck, and then some of that AURA waste migrated to storm sewers and a drainage way.

C. Alleged Violations

1. The Complaint filed in this matter on December 18, 2003, before the Illinois Pollution Control Board alleges the following violations of the Act, 415 ILCS 5/1 et seq. (2002), and Illinois Pollution Control Board ("Board") Air Pollution

Regulations, 35 Ill. Adm. Code, 35 Ill. Adm. Code, are outlined as follows:

- COUNT I AIR POLLUTION: Violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2002), and 35 Ill. Adm. Code 201.141;
- COUNT II WATER POLLUTION: Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002);
- COUNT III CREATING A WATER POLLUTION HAZARD: Violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2002);
- COUNT IV CAUSING OR ALLOWING OPEN DUMPING AND ABANDONING OF WASTE: Violation of Section 21(a) and (b) of the Act, 415 ILCS 5/21(a) (b) (2002).

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.

In response to these factors, Complainant states as follows:

1. Complainant maintains that the release of almost 2,000 gallons of hazardous waste containing hydrochloric, sulfuric, and nitric acids from Onyx's truck into the environment and onto the surface of Lake Forest Plaza Oasis on Interstate 94, near the Village of Libertyville in Lake County, Illinois, interfered with the health, general welfare and physical property of nearby residents, businesses and people who worked at the Oasis. The vapor cloud that was formed as a result of the release lasted for up to 1 to 2 hours before it was dissipated by the Libertyville Fire Department. The release also impacted or threatened to impact surface water.

2. The transportation of wastes has social and economic value so long as done in a safe manner.

3. The transportation of wastes is suitable on Interstate 94 so long as done in a safe manner.

4. Complainant states that it was both technically practicable and economically reasonable for Onyx to provide a lined tanker to transport the hazardous waste.

5. On July 2, 2001, the day the incident occurred, Onyx began to respond to clean up the area contaminated with the release of the AURA waste.

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 respondent 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 respondent because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. Whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a

respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

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

1. The cloud of acid vapor release from the Onyx tanker caused major off-site impacts and significantly threatened the citizens of Libertyville, Lake Forest, and Mettawa, affecting their right to the quiet enjoyment of their homes, as well as necessitating the evacuation of the Lake Forest Oasis and the closing of nearby roads. The acid spill also impacted waters of the State. Onyx demonstrated to the Illinois EPA, approximately three months after the incident, that all residual source areas of contamination had been cleaned up to appropriate cleanup objectives.

2. Onyx demonstrated diligence in responding to the July 2001, acid waste release. Onyx's diligence has been considered in the agreed civil penalty amount.

3. Complainant states that Onyx may have realized only nominal economic benefit in using an unlined tanker to ship the AURA waste. This assumes that unlined tankers are less expensive than lined ones, but that the differential in overall cost of the waste transport would be nominal.

4. Complainant has determined in this instance, that a penalty of Eighty-Five Thousand Dollars (\$85,000.00) against Onyx

will serve to deter further violations of the Act and Board regulations and aid in future voluntary compliance with the Act and Board regulations.

5. Complainant's records do not reflect any previously adjudicated violations of the Act by Onyx.

6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

VII.

TERMS OF SETTLEMENT

A. Civil Penalty

1. Respondent Onyx shall pay a civil penalty of Eighty-Five Thousand Dollars (\$85,000.00) into the Illinois Environmental Protection Trust Fund within Thirty (30) days after the date on which the Board adopts a final order approving this Stipulation and Proposal for Settlement. 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

Further, a copy of the certified check or money order shall be sent by first-class mail to:

Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, IL 60601

2. Onyx's Federal Employer Identification Number ("FEIN") is 36-4287998. The FEIN number shall appear on the face of the certified check or money order.

3. For purposes of payment and collection Respondent may be reached at the following address:

Greig R. Siedor,
Chief Legal Officer
Onyx Environmental Services, L.L.C.
700 East Butterfield Road, Suite 201
Lombard, Illinois 60148

4. 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 any 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 the Complainant, shall be paid by certified check payable to the Illinois Environmental Protection Agency for deposit in the Environmental Protection Trust Fund and delivered in the same manner as described in this Section VII.

VIII.

CEASE AND DESIST

Onyx shall cease and desist from future violations of the Act and Board regulations that were the subject matter of the complaint as outlined in Section IV.C. of this Stipulation.

IX.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects Onyx'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 Onyx's payment of Eighty-Five Thousand Dollars (\$85,000.00) civil penalty, its commitment to refrain from future violations of the Act and Board regulations, Complainant releases, waives and discharges Respondent from any further liability or penalties for violations of the Act and regulations which were the subject matter of the complaint

herein, and 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 or obtain penalties with respect thereto.

(The remainder of this page is intentionally left blank.)

WHEREFORE, Complainant and Respondent Onyx 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
LISA MADIGAN
Attorney General
State of Illinois

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau


BY: 
JOSEPH E. SVOBODA
Chief Legal Counsel

DATED: 5/10/04

DATED: May 6, 2004

FOR THE RESPONDENT:

ONYX ENVIRONMENTAL SERVICES, LLC,
a Delaware limited liability company,

BY: 
Greig R. Siedor
Chief Legal Officer

FEIN #: 36-4287998

DATED: 11 MAY 2004

CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 26th day of May 2004, the foregoing Notice of Filing, a Stipulation and Proposal for Settlement, and an Agreed Motion for Relief from the Hearing Requirement, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



ZEMEHERET BEREKET-AB