

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD CLERK'S OFFICE

ORIGINAL

RECEIVED

MAY 13 2003

PEOPLE OF THE STATE OF ILLINOIS

Complainant,

vs.

C & F PACKING CO., INC.,  
an Illinois corporation,

Respondent.

STATE OF ILLINOIS  
Pollution Control Board

No. PCB 03-153  
(Enforcement - Water)

TO: Mr. Scott Richmond  
Attorney for Respondent  
474 Summit Street  
Elgin, IL. 60120

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

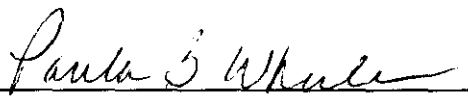
**NOTICE OF FILING**

PLEASE TAKE NOTICE that we have today, May 13, 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  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Flr.  
Chicago, IL 60601  
(312) 814-1511

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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STATE OF ILLINOIS  
*Pollution Control Board*

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

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an Illinois corporation,

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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 March 18, 2003, a Complaint was filed with the Pollution Control Board ("Board") in this matter. On May 13, 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  
(312) 814-1511

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAY 13 2003

PEOPLE OF THE STATE OF ILLINOIS, )  
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Complainant, )  
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-vs- )  
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C & F PACKING CO., INC., )  
an Illinois corporation, )  
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Respondent. )

STATE OF ILLINOIS  
Pollution Control Board

No. PCB 03-153  
(Enforcement-Water)

**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, C & F PACKING CO., INC., 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, C & F PACKING CO., INC. ("C & F PACKING"), is an Illinois corporation, duly authorized to transact business in Illinois.

**B. Facility Description**

At all times relevant to the Complaint, C & F PACKING leased a parcel of property within the business park commonly known as Park Place Business Center on Route 83 in Lake Villa, Lake County, Illinois ("Site"). At the Site, Respondent was constructing a production facility/warehouse to be used in the manufacture of fresh and pre-cooked meat products. The Site is over five acres in size.

**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, violations of 415 ILCS 5/12(a) (2002) and 35 Ill. Adm. Code 302.203;

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

COUNT III: FAILING TO OBTAIN A NPDES PERMIT, violations of 415 ILCS 5/12(f) (2002) and 35 Ill. Adm. Code 309.102(a);

COUNT IV: FAILING TO OBTAIN A CONSTRUCTION PERMIT, violations of 415 ILCS 5/12(b) (2002) and 35 Ill. Adm. Code 309.202(a).

**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 threat of and actual water pollution in to Illinois wetland areas and waterways. Permits are the only way the State can monitor and control the discharge of contaminants to waters of the State and treatment works.

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 all necessary permits are obtained in a timely fashion and adequate storm water runoff measures are in place and maintained while construction activities are ongoing.

4. *Technical Practicability:*

Obtaining all necessary permits prior to initiating construction and employing and maintaining adequate storm water



runoff controls at its worksite are both technically practicable and economically reasonable.

5. *Subsequent Compliance:*

Respondent is currently operating within the boundaries and the conditions specified in its permits.

**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 lasted approximately three months, and resulted in noticeable turbidity in the runoff from the Site.

2. *Diligence of Respondent:*

The Respondent has completed construction, removed all dirt stockpiles from the Site, and obtained all relevant permits, as described in the Complaint, and is now operating in compliance with its permits.

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 Eleven Thousand Dollars (\$11,000.00) 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 Respondent shall pay a penalty of Eleven Thousand Dollars (\$11,000.00) 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 ("EPTF"), 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, 20<sup>th</sup> Flr.  
Chicago, Illinois 60601

4. Respondent's Federal Employers Identification Number ("FEIN") 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:

515 Park Avenue  
Lake Villa, Illinois 60046

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

Mr. Scott Richmond  
Attorney at Law  
474 Summit Street  
Elgin, Illinois 60120

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 EPTF at the above-indicated address. The name, case number, and the Respondent's FEIN 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., 20<sup>th</sup> Floor  
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.

RIGHT OF ENTRY

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Consent Order, 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.

**XI.**  
**RELEASE FROM LIABILITY**

In consideration of Respondent's payment of Eleven Thousand Dollars (\$11,000.00), 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 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 THE COMPLAINANT:

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

Dated: \_\_\_\_\_

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

By: \_\_\_\_\_  
JOSEPH E. SVOBODA  
Chief Legal Counsel

Dated: \_\_\_\_\_

FOR RESPONDENT:

C & F PACKING CO., INC.

BY: Dennis J. Olson  
*Dennis J. Olson*

Title: Secretary/Treasurer

FEIN: 36-2496475

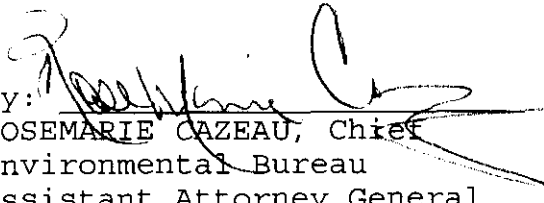
Dated: 5-1-03

AGREED:

**FOR THE COMPLAINANT:**

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

Dated: 5/5/03

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

By:   
JOSEPH E. SVOBODA  
Chief Legal Counsel

Dated: 5/2/03

**FOR RESPONDENT:**

C & F PACKING CO., INC.

BY: \_\_\_\_\_

Title: \_\_\_\_\_

FEIN: \_\_\_\_\_

Dated: \_\_\_\_\_



CERTIFICATE OF SERVICE

I, PAULA BECKER WHEELER, an attorney, do certify that I caused to be served this 13th day of May, 2003, the foregoing Stipulation and Proposal for Settlement and Motion to Request Relief from Hearing Requirement and Notice of Filing upon the persons listed on said Notice, by Certified Mail.

A handwritten signature in cursive script, reading "Paula Becker Wheeler", is written over a horizontal line.

PAULA BECKER WHEELER