



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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CLERK'S OFFICE
OCT 06 2008
STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

October 2, 2008

John T. Therriault, Assistant Clerk
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Larry Bielfeldt***
PCB No. 06-192

Dear Clerk:

Enclosed for filing please find the original and one copy of a Notice of Filing, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Andrew J. Nicholas".

Andrew J. Nicholas
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

AJN/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
LARRY BIELFELDT,)
)
Respondents.)

PCB No. 06-192
(Enforcement)

NOTICE OF FILING

To: Frank Miles
Attorney at Law
202 North Center Street
P.O. Box 3067
Bloomington, IL 61702

RECEIVED
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OCT 06 2008
STATE OF ILLINOIS
Pollution Control Board

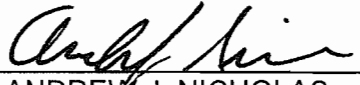
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY: 
ANDREW J. NICHOLAS
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 2, 2008

CERTIFICATE OF SERVICE

I hereby certify that I did on October 2, 2008, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

To: Frank Miles
Attorney at Law
202 North Center Street
P.O. Box 3067
Bloomington, IL 61702

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: John T. Therrault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794


ANDREW J. NICHOLAS
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
LARRY BIELFELDT,)
)
Respondents.)

PCB No. 06-192
(Enforcement)
RECEIVED
CLERK'S OFFICE

OCT 06 2008

STATE OF ILLINOIS
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) (2006), moves that the Illinois Pollution Control 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) (2006). In support of this motion, Complainant states as follows:

1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. 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) (2006).

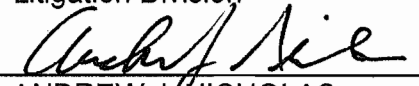
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY:



ANDREW J. NICHOLAS
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 2, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 LARRY BIELFELDT,)
)
 Respondent.)

PCB NO. 06-192
RECEIVED
(Enforcement - Water)
CLERK'S OFFICE
OCT 06 2008

STIPULATION AND PROPOSAL FOR SETTLEMENT STATE OF ILLINOIS
Pollution Control Board

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and LARRY BIELFELDT, ("Respondent" or "Bielfeldt"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2006), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On June 29, 2006, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31(2006), against the Respondent.

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 (2006).

3. At all times relevant to the complaint, Respondent was the developer and one of the beneficiaries of the title holding trust that owns Sherwood Lake Subdivision ("site"), a 60 acre residential home development located in Section 29, Township 23 North, Range 3 East of the Third Principal Meridian in McLean County, Illinois. Prior to development, an intermittent tributary of Kickapoo Creek, a water of the State, ran from west to east across the property.

4. Bielfeldt was issued coverage under the NPDES general stormwater permit by the Illinois EPA on May 29, 2003.

5. The NPDES general stormwater permit requires Bielfeldt to implement the provisions of a storm water pollution prevention plan at the site, including erosion control measures.

6. A hundred year storm event occurred in the area at issue on July 9 and 10, 2003.

7. On July 18, 2003, the Illinois EPA inspected the site to evaluate Bielfeldt's compliance with the NPDES Permit. Erosion controls were in place, but were inadequate to prevent silt-laden discharge from flowing into the creek both upstream and downstream of the site.

8. On July 18, 2003, offensive conditions were present in the tributary downstream of the site due to the inflow of silt-laden discharge in that the water was unnaturally turbid.

9. Eleven months later on June 18, 2004, the Illinois EPA conducted a reconnaissance inspection at the site. As part of the development, the intermittent waterway had been dammed and a lake constructed on the site. The lake was constructed with three sediment siltation basins designed to prevent silt laden sediment that entered the lake from discharging downstream. Like the intermittent waterway, the lake became a water of the state.

10. On June 18, 2004, minimal erosion control was present upstream of the lake and the road contained silt laden discharges which would likely run off into the lake and settle out into the sediment siltation basins contained in the lake.

B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act and Board regulations:

Count I: By causing or allowing or threatening the discharge of contaminants into waters of the State in violation of the terms or conditions of its NPDES Permit, Bielfeldt has thereby violated Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a). By failing to maintain adequate erosion controls at its site to prevent silt-laden storm water discharges as required by its NPDES Permit, Bielfeldt has caused, threatened or allowed the discharge of any contaminant into the waters of the State in violation of its NPDES permit, and has thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

Count II: Commencing on some date prior to July 18, 2003, and continuing until the subsequent implementation of adequate erosion control measures, the Respondent caused or allowed the discharge of silt from the site into waters of the State so as to cause or tend to cause water pollution by creating a nuisance. By so causing and threatening to cause water pollution, and by violating the water quality standard of Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

C. Non-Admission of Violations

The Respondent represents that he has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

Bielfeldt dredged the lake post-construction and redistributed sediment back onto the site. Bielfeldt then installed a shoreline seawall at a cost of over \$100,000.00, and filled in behind the wall to reduce the slope.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication, by the execution of a settlement agreement with a no admission of liability provision, of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

The Respondent shall notify each contractor to be retained to preform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, the Respondent shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), 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 to this Stipulation state the following:

1. Complainant and the Illinois EPA contend that the injury to, or interference with, the protection of the health, general welfare, and physical property of the People would be characterized as failure to comply with requirements meant to protect water quality in the State.
2. The parties agree that Respondent's site is of social and economic benefit to the area.
3. Respondent's site is suitably located in McLean County, Illinois.
4. The parties agree that complying with the Act and regulations is technically practicable and economically reasonable.
5. Respondent has agreed to comply with the Act and the Board regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), 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, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
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 parties to this Stipulation state as follows:

1. A 100 year storm occurred on July 9 and 10, 2003, and resulted in an exacerbated silt laden discharge into the creek. On July 10, 11 and 12, 2003, Bielfeldt's contractors could not conduct work due to the aftermath of the heavy rains. The violation was observed by Illinois EPA on July 18, 2003.

2. Since learning of the Illinois EPA's concerns, the Respondent has been diligent in attempting to comply with the requirements of the Act and regulations.

3. Respondent realized no economic benefit through its non-compliance.

4. Complainant and the Illinois EPA have determined, based on the specific facts of this matter, that a penalty of Twelve Thousand Five Hundred Dollars (\$12,500.00) will serve to deter further violations and aid in voluntary compliance with the Act and Board regulations.

5. To Complainant's and Illinois EPA's knowledge, Respondent has no previously adjudicated violations of the Act.

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

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

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. The Respondent stipulates that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within ten (10) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below.

B. Stipulated Penalties, Interest and Default

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. 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.

C. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

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

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62702

Chad M. Kruse
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

D. Future Compliance

1. The Respondent agrees to maintain a minimum continuous flow of 10 gallons per minute downstream through the dam pursuant to plans incorporated by reference in the conditions of his Illinois Department of Natural Resources Sherwood Lake Dam Permit No. DS2002122. The minimum continuous flow of 10 gallons per minute downstream may contain wastewater effluent from the on site treatment facility pursuant to the plans referenced in Permit No. DS2002122 and congruent with applicable NPDES Permit effluent limitations. Respondent shall not be responsible for violations resulting from Acts of God or acts or omissions of persons outside his direction and control.

2. The Respondent agrees to provide uniform perennial vegetative cover with a density of at least 70% of the cover for unpaved areas and areas not covered by permanent structures by October 1, 2008.

3. The Respondent shall correct all existing rills and gullies by October 1, 2008, and Respondent shall stabilize all rills and gullies leading toward the streets by October 1, 2008. All deep gullies leading into the lake shall be corrected by October 1, 2008. The stabilized areas must be maintained to ensure continued future compliance.

4. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject to this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. 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.

5. This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

6. Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

7. Respondent is also a defendant in civil litigation initiated by a downstream property owner who alleges the Respondent's construction of the dam in Sherwood Lake cut off water flows from the intermittent stream (Case No. 2006-MR-1 now pending in the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois). Although the People request the above future compliance measures solely due to a concern for water quality in the stream, it is also to the Respondent's

benefit to enter into these compliance measures in order to address the concerns of the downstream property owner in Case No. 2006–MR-1).

E. Release from Liability

In consideration of the Respondent's payment of the \$12,500.00 penalty, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on June 29, 2006. 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 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

F. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Andrew J. Nicholas
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62702

Chad M. Kruse
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondent

Larry Bielfeldt
3004 General Electric Road
Bloomington, IL 61704

Frank Miles
Attorney at Law
202 North Center Street
P.O. Box 3067
Bloomington, IL 61702

G. Enforcement and Modification of Stipulation

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

2. The Complainant in consultation with the Illinois EPA and the Respondent may, by mutual written consent, agree to extend any compliance dates or modify the terms of this Stipulation. A request for any modification shall be made in writing and submitted to the contact persons identified in Section V.F. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party to this Stipulation.

H. Execution of Stipulation

The undersigned representatives for each party to this Stipulation 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.

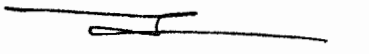
WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY:

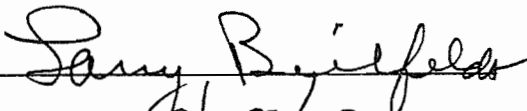

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE:

9/15/08

LARRY BIELFELDT

BY:



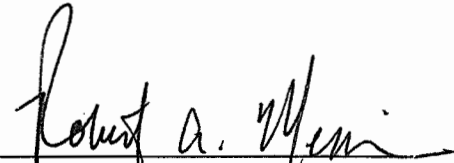
DATE:

7/28/08

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY:


ROBERT A. MESSINA
Chief Legal Counsel

DATE:

9/11/08

RECEIVED
ATTORNEY GENERAL

JUL 31 2008

SPRINGFIELD
ASSIGNED TO _____

