

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 09-129
) (Enforcement - Land)
RELIABLE SAND & GRAVEL CO., INC.,)
an Illinois corporation)
)
Respondent.)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 12th day of January, 2010 I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief from Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

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

BY: 
STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau North
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-2087
ssylvester@atg.state.il.us

DATE: January 12, 2010

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Reliable Sand & Gravel Co., Inc.
Donald R. Roberts, Registered Agent
2121 S. River Rd.
McHenry, IL 60050

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601

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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 as to Respondent, RELIABLE SAND & GRAVEL CO., INC., an Illinois corporation. In support thereof, the Complainant states as follows:

1. On June 17, 2009, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter. On January 12, 2010, a Stipulation and Proposal for Settlement was filed with the Board in this matter.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2008), effective August 1, 1996, 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.

3. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2008), provides as follows:

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).


4. No hearing is currently scheduled in the instant case.
5. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415

ILCS 5/31(c)(2) (2008).

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) (2008).

Respectfully submitted,

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

BY: 
STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau North
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-2087
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STIPULATION AND PROPOSAL FOR SETTLEMENT

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 Reliable Sand & Gravel Co., Inc. ("Respondent") ("Parties to the Stipulation"), 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.* (2008), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On June 17, 2009, 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 (2008), 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 (2008).

3. At all times relevant to the Complaint, Respondent was and is a corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned and operated a facility to operate a clean construction or demolition debris ("CCDD") fill operation located at 2121 South River Road, McHenry, McHenry County, Illinois ("Site").

4. On August 8, 2005, Respondent applied to the Illinois EPA for interim authorization to operate a CCDD fill operation at the Site.

5. From some time after August 8, 2005, until at least November 1, 2007, Respondent operated its CCDD fill operation at the Site, pursuant to the Illinois EPA-issued Interim Authorization No. CCDD0002.

6. On February 15, 2008, Respondent applied to the Illinois EPA for a permit to operate a CCDD fill operation at the Site.

7. On August 13, 2008, the Illinois EPA issued to Respondent Permit Number CCDD2008-011-DE/OP to operate a CCDD fill operation at the Site.

B. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board CCDD Regulations:

Count I: VIOLETION OF CLEAN CONSTRUCTION OR DEMOLITION
DEBRIS LOAD CHECKING AND RECORD KEEPING

REQUIREMENTS: Violation of Section 22.51(a) of the Act, 415 ILCS 5/22.51(a), and Sections 1100.201(a), 1100.205(a)(1), (b)(1), (c), (g), and (h), and 1100.210 of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a), 1100.205(a)(1), (b)(1), (c), (g), and (h), and 1100.210.

Count II: CONDUCTING A CLEAN CONSTRUCTION OR DEMOLITION DEBRIS FILL OPERATION WITHOUT INTERIM AUTHORIZATION OR A PERMIT: Violation of Section 22.51(a) and (b)(3) of the Act, 415 ILCS 5/22.51(a) and (b)(3).

Count III: OPEN DUMPING: Violation of Section 21(a) of the Act, 415 ILCS 5/21(a).

Count IV: CONDUCTING A WASTE DISPOSAL OPERATION WITHOUT A PERMIT: Violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1).

Count V: DISPOSAL OF NON-CLEAN CONSTRUCTION OR DEMOLITION DEBRIS WASTE AT THE SITE: Violation of Sections 21(d)(2) and (e), and 22.51(a) of the Act, 415 ILCS 5/21(d)(2) and (e), and 22.51(a), and Sections 1100.201(a) and (b) and 1100.205(f) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and (b) and 1100.205(f).

Count VI: VIOLATION OF CLEAN CONSTRUCTION OR DEMOLITION DEBRIS BOUNDARY CONTROL REQUIREMENTS: Violation of Section 22.51(a) of the Act, 415 ILCS 5/22.51(a), and Sections 1100.201(a) and 1100.207(a) and (b) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.207(a) and (b).

C. Non-Admission of Violations

The Respondent represents that it 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.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. 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 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 (2008).

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2008), 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 the Stipulation state the following:

1. The environment was threatened by Respondents' failure to properly screen incoming loads at the Site and reject non-CCDD waste, to perform load checks of all incoming loads for volatile organic compounds ("VOCs) with a photo ionization detector ("PID") or other equivalent device, and to conduct daily discharge inspections at the Site.
2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Properly screening incoming loads at the Site and rejecting non-CCDD waste, performing load checks of all incoming loads for VOCs with a PID or other equivalent device, and conducting daily discharge inspections at the Site were both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board CCDD Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2008), 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

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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 the Stipulation state as follows:

1. From August 8, 2005 through at least September 27, 2007, Respondent accepted loads without properly screening for VOCs, without conducting and maintaining records of routine inspections and discharge inspections of each incoming load. From July 1, 2008 through August 12, 2008, Respondent operated a CCDD fill operation without a permit issued by the Illinois EPA. On at least September 27, 2007, Respondent disposed of approximately 100 cubic yards of landscape waste without a permit issued by the Illinois EPA. On at least September 27, 2007, the Respondent failed to restrict unauthorized vehicular access to the working face of the fill area at the Site and all other areas within the boundaries of the Site and failed to post permanent signage indicating that only CCDD was accepted for fill at the Site.
2. Respondent took all necessary steps to remedy the violations and the Respondent's CCDD fill operation at the Site is currently in compliance.
3. The civil penalty obtained includes any economic benefit that Respondent may have accrued as a result of the delay in compliance.

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4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Fifteen Thousand Dollars (\$15,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has had no previously adjudicated violations of the Act and the Board CCDD Regulations.

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

The Respondent shall pay a civil penalty in the sum of Fifteen Thousand Dollars (\$15,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. 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, IL 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:

Stephen J. Sylvester
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. 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 of 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.

2. 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.

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

E. Release from Liability

In consideration of the Respondent's payment of the Fifteen Thousand Dollar (\$15,000.00) penalty, its commitment to cease and desist as contained in Section V.D.3 above, 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 17, 2009. 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 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. Enforcement and Modification of Stipulation

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.

G. Execution of Stipulation

The undersigned representatives for the Parties to the 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.

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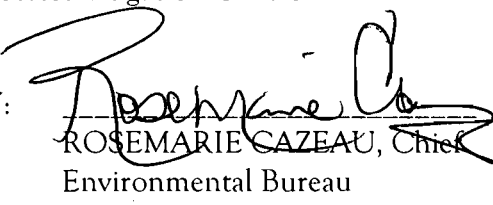
WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General of the State of Illinois

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

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN. KIM
Chief Legal Counsel

DATE: 1/7/10

DATE: 1/5/10

RELIABLE SAND & GRAVEL CO., INC.

BY: _____

Name: _____

Title: _____

DATE: _____

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

PEOPLE OF THE STATE OF ILLINOIS,

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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Asbestos Litigation Division

BY: _____
JOHN J. KIM
Chief Legal Counsel

BY: _____

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: _____

DATE: _____

RELIABLE SAND & GRAVEL CO.,
INC.

BY: *Donald R. Roberts*

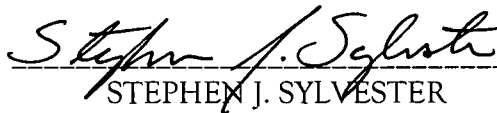
Name: *DONALD R. ROBERTS*

Title: *PRES.*

DATE: *12/22/09*

CERTIFICATE OF SERVICE

I, STEPHEN J. SYLVESTER, an Assistant Attorney General in this case, do certify that I caused to be served this 12th day of January, 2010, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief from Hearing Requirement and Notice of Filing upon the persons listed on the Service List by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.


STEPHEN J. SYLVESTER