

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB No. 10-022</b>
	)	<b>(Enforcement)</b>
	)	
<b>WESTERN SAND &amp; GRAVEL</b>	)	
<b>COMPANY, LLC.,</b>	)	
<b>an Illinois Corporation,</b>	)	
	)	
<b>Respondent.</b>	)	

**NOTICE OF FILING**

To: John L. Cantlin  
John L. Cantlin & Associates  
760 Etna Road  
Ottawa, Illinois 61350

To: Bradley P. Halloran  
James R. Thompson Center  
100 W. Randolph St., Suite 11-500  
Chicago, Illinois 60601

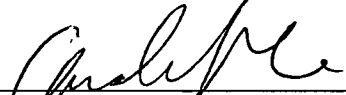
PLEASE TAKE NOTICE that on this date I filed with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

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  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
312/814-2069  
Dated: January 19, 2010

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
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<b>v.</b>	)	<b>PCB No. 10-022</b>
	)	<b>(Enforcement)</b>
	)	
<b>WESTERN SAND &amp; GRAVEL</b>	)	
<b>COMPANY, LLC.,</b>	)	
<b>an Illinois Corporation,</b>	)	
	)	
<b>Respondent.</b>	)	

**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) (2008), 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) (2008). 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) (2008).

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) (2008).

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  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
312/814-2069  
Dated: January 15, 2010

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB NO. 10-022</b>
	)	<b>(Enforcement)</b>
<b>WESTERN SAND &amp; GRAVEL</b>	)	
<b>COMPANY, LLC.,</b>	)	
<b>an Illinois corporation,</b>	)	
	)	
<b>Respondent.</b>	)	

**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 Western Sand & Gravel Company, LLC, an Illinois corporation ("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 September 30, 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 an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned and operated a clean construction or demolition debris ("CCDD") facility located at the intersection of 178 and I-80, LaSalle County, Illinois ("site").

4. On September 26, 2007, the Illinois EPA conducted a CCDD disposal site inspection at the site. The inspectors observed a fill area that contained broken concrete, rocks and soil.

5. During the September 26, 2007 inspection, the Illinois EPA learned that the Respondent was not performing visual inspections of each load of fill brought to the site, was not conducting random discharge inspections, and was not using a photo ionization detection ("PID") instrument for its inspections.

6. The Illinois EPA also learned that the Respondent did not properly train its employees to screen incoming CCDD, did not keep written procedures for its load checking/load rejection and training policies, and did not maintain an operating record at the site. In addition,

the Respondent did not adequately restrict unauthorized access to the site and did not have a posted sign, stating that only CCDD is accepted as fill.

**B. Allegations of Non-Compliance**

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

**Count I: Clean Construction or Demolition Debris Load Checking Violations**

By failing to conduct visual inspections and inspections with a PID instrument for each load coming into the site, the Respondent violated Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2008), and Sections 1100.201(a) and 1100.205(a)(1) of the Board's CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(a)(1).

By failing to conduct a discharge inspection of at least one randomly selected load delivered to the site each day, the Respondent violated Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2008), and Sections 1100.201(a) and 1100.205(b)(1) of the Board's CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(b)(1).

By failing to retain records evidencing that a load checking program is being used at the site, the Respondent violated Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2008), and Sections 1100.201(a) and 1100.205(c) of the Board's CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(c).

By failing to properly train its personnel at the site to identify material that is not CCDD, the Respondent violated Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2008), and Sections 1100.201(a) and 1100.205(g) of the Board's CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(g).

By failing to keep and maintain a calibrated PID at the site for checking loads of CCDD, the Respondent violated Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2008), and Sections 1100.201(a) and 1100.205(h) of the Board's

CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(h).

**Count II: Clean Construction or Demolition Debris Boundary Control Violations**

By failing to restrict unauthorized vehicular access to the working face of the Site, the Respondent violated Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2008), and Sections 1100.201(a) and 1100.207(a) of the Board's CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.207(a).

By failing to post a permanent sign at the entrance to the site stating that only CCDD is accepted for use as fill, the Respondent violated Section 22.51(a) of the Act 415 ILCS 5/22.51(a) (2008), and Sections 1100.201(a) and 1100.207(b) of the Board's CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.207(b).

**Count III: Clean Construction or Demolition Debris Record Keeping Violations**

By failing to maintain an operating record at the site, the Respondent violated 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) (2008), and Sections 1100.201(a) and 1100.210 of the Board's CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.210.

**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.

**D. Compliance Activities to Date**

The Respondent has performed the following compliance measures:



1. Obtained a Mini-Rae PID unit and trained its employees for its use;
2. All incoming loads are visually inspected;
3. Random discharge inspections are conducted;
4. The PID unit is being used for inspecting the fill brought to the site;
5. All employees using the PID unit receive certified training from RAE System, Inc.;
6. PID calibration is conducted regularly according to the manufacturer's specifications;
7. All CCDD loads are subject to visual, smell, and scan testing;
8. All CCDD loads are subject to verification and confirmation with the driver of the load;
9. Records of all CCDD loads are maintained for at least three (3) years;
10. All personnel at the site are required to wear appropriate protective clothing/equipment;
11. A "CCDD fill only" sign has been posted at the site; and
12. Unauthorized access has been restricted.

## **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. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations.
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. Performing compliance measures at the site and maintaining compliance is both technically practicable and economically reasonable.
5. Respondent has subsequently complied 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)(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 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. The violations were first noted during an inspection performed on September 26, 2007. Inspection by the Illinois EPA using a PID did not produce any readings above the background levels. Most of the violations were addressed by the Respondent's February 7, 2008 compliance commitment agreement ("CCA") and subsequent actions.
2. Respondent was diligent in attempting to achieve compliance with the Act and applicable Board regulations once the Illinois EPA notified it of its noncompliance.

3. Other than the cost of the PID unit, the economic benefit of noncompliance is minimal.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Three Thousand One Hundred and Twenty Dollars (\$3,120.00) 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 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 Three Thousand One Hundred Twenty Dollars (\$3,120.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

### **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, 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:

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 \$3,120.00 penalty, its commitment to cease and desist as contained in Section V.D. 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 September 30, 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 (2008), or entity other than the Respondent.

**F. 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.

**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.

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

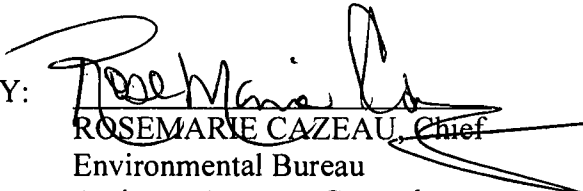
PEOPLE OF THE STATE OF ILLINOIS


FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

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

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
JOHN J. KIM  
Chief Legal Counsel

DATE: 1/14/10

DATE: 1/11/10

WESTERN SAND & GRAVEL  
COMPANY, LLC

BY: \_\_\_\_\_  
(PRINT)

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(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

LISA MADIGAN  
Attorney General  
State of Illinois

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

FOR THE ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

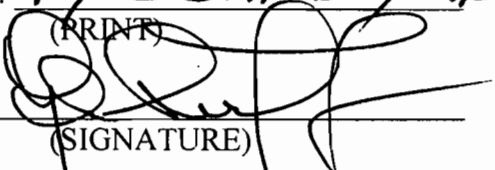
BY: \_\_\_\_\_  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY: \_\_\_\_\_  
JOHN J. KIM  
Chief Legal Counsel

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_


WESTERN SAND & GRAVEL  
COMPANY, LLC

BY: LYCE SITTERLY JR  
(PRINT)  
  
(SIGNATURE)  
MANAGER  
(TITLE)

DATE: 12/22/09

**CERTIFICATE OF SERVICE**

I, ANDREW J. NICHOLAS, an Assistant Attorney General, do certify that I caused to be served on this 19<sup>th</sup> day of January 2010, the foregoing Motion for Relief From Hearing Requirement, Stipulation and Proposal for Settlement, and Notice of Filing, 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.



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ANDREW J. NICHOLAS