

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
) Complainant,)
)
) v.) PCB No. 10-43
) (Enforcement - Water)
ROBERT MILLER, doing business as)
MIL-R-MOR FARM,)
)
) Respondent.)

NOTICE OF FILING


To: See Attached Service List.
 (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement, copies of which are attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: 
Jennifer A. Van Wie
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0609

DATE: April 16, 2010

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

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

CERTIFICATE OF SERVICE

I, JENNIFER A. VAN WIE, an Assistant Attorney General, certify that on the 16th day of April, 2010, I caused to be served by U.S. Certified Mail, Return Receipt Requested, the foregoing Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



JENNIFER A. VAN WIE

Settlement filed this same date.

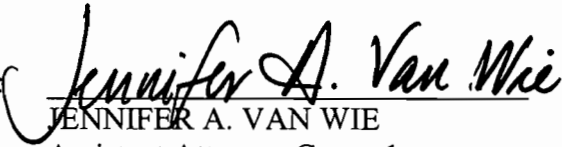
5. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2008).

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
State of Illinois

BY: 
JENNIFER A. VAN WIE
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
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DATE: April 16, 2010

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 10-43
)	(Enforcement - Water)
ROBERT MILLER, doing business as)	
MIL-R-MOR FARM,)	
)	
Respondent.)	

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 Robert Miller (“Respondent”), (collectively “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 December 15, 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 Robert Miller has owned and operated Mil-R-Mor Farm.

4. Mil-R-Mor Farm ("the Farm") is a 1,300 acre dairy farm. The Farm consists of two separate parcels: 765 East Rock Grove Road, Orangeville, Stephenson County, Illinois; and, 1984 Hickory Grove Road, Dakota, Stephenson County, Illinois.

B. Allegations of Non-Compliance

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

- Count I: Water Pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(d) (2008);
- Count II: Water Pollution Hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2008);
- Count III: Offensive Conditions, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a), and 35 Ill. Adm. Code 302.203;
- Count IV: Livestock Facility Operational Rules, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a), and 35 Ill. Adm. Code 501.403(a);
- Count V: Livestock Facility Operational Rules, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a), and 35 Ill. Adm. Code 501.404(b)(1); and
- Count VI: Livestock Facility Operational Rules, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a), and 35 Ill. Adm. Code 501.405(a).

C. Non-Admission of Counts II and IV, Denial of Counts I, III, IV and VI

The Respondent neither admits nor denies the violations alleged in Counts II and V in the Complaint filed in this matter and referenced in Section I.B herein. The Respondent denies the violations alleged in Counts I, III, IV and VI in the Complaint filed in this matter and referenced in Section I.B herein.

D. Compliance Activities to Date

1. On September 3, 2008, Respondent Robert Miller submitted soil analytical data and grid maps for the Farm to the Illinois EPA's Rockford Office.
2. On July 31, 2009, Respondent submitted a Nutrient Management Plan to the Illinois EPA.
3. On November 2, 2009, Respondent submitted a Comprehensive Nutrient Management Plan to the Illinois EPA.
4. On November 19, 2009, Respondent installed gutters and downspouts at the bedded pack barn, lower barn and upper barn at the Farm.

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 by the Respondent's failure to properly store manure and control manure-contaminated runoff at the Farm.
2. There is social and economic benefit to the Farm.
3. The Farm is suitable for the area in which it is located.
4. The proper storage of manure and control of manure-contaminated runoff 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. a. Complainant alleges that the Respondent failed to properly store manure and control manure-contaminated runoff at the Farm. Complainant alleges that the storage of

livestock manure in the low area near a natural drainage path and the land-application of manure on fields lacking an acceptable amount of vegetation to reduce erosion caused manure-contaminated runoff to enter a small tributary and threatened more substantial runoff if a rain event occurred. The manure pile on the Farm located south of Rock Grove Road near Afolkey Road ("Site") that was observed on February 29, 2008 was removed by the re-inspection conducted on March 4, 2008. On July 31, 2009, a nutrient management plan for the Farm was submitted by the Respondent to the Illinois EPA. On November 2, 2009, Respondent submitted a Comprehensive Nutrient Management Plan to the Illinois EPA.

b. Respondent disputes Complainant's allegation that the storage of livestock manure in the low area and the land-application of manure on fields lacking an acceptable amount of vegetation to reduce erosion caused manure-contaminated runoff to enter a small tributary.

2. a. Complainant alleges that sometime after the February 29, 2008 inspection by the Illinois EPA but before the March 4, 2008 re-inspection, the Respondent removed the manure pile at the Site. The Respondent has investigated the issue of excessive nutrient levels in the soil at the Farm in response to the Illinois EPA's request in the violation notice letter dated May 22, 2008. On July 31, 2009, a nutrient management plan for the Farm was submitted by the Respondent to the Illinois EPA. On November 2, 2009, Respondent submitted a Comprehensive Nutrient Management Plan to the Illinois EPA..

b. Respondent alleges that within 24 hours after Respondent was notified of the improper manure storage, the Respondent removed the manure pile at the Site.

3. The Respondent realized an economic benefit by failing to develop an adequate

nutrient management plan for the Farm. The Respondent realized an economic benefit of \$155.00 as a result of his noncompliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Two Thousand Dollars (\$2,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations. This penalty includes the \$155.00 economic benefit realized by Respondent.

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 Two Thousand Dollars (\$2,000.00) 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 complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent shall provide notice to the Complainant of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$25.00 per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand

shall not relieve the Respondent of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

2. 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.

3. 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 case name and case 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:

Jennifer A. Van Wie
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. Respondent shall undertake the following actions at the Farm:
 - a. Within fourteen (14) calendar days of entry of this Stipulation, Respondent shall:
 - i. implement the Comprehensive Nutrient Management Plan submitted to the Illinois EPA on November 2, 2009 and further clarified by this Stipulation;
 - ii. store manure generated at the Farm in accordance with the recommendations detailed in the CNMP;
 - iii. contain and properly land apply or otherwise dispose of all leachate wastewater from manure piles and/or storage areas;
 - iv. establish vegetation, prior to October 1st of each year, on manure application fields that had plant residue removed during the harvest operation;
 - v. winter applications of manure are to be made only to fields containing less than 5% slope, as advised in the CNMP;
 - vi. maintain yearly records of where, when and the amount of nutrients that are applied to fields;
 - vii. educate all farm workers on how to handle manure to prevent discharges;
 - viii. document where manure is being spread and stored on a daily basis and record the weather conditions. These records should be available on-site for Illinois EPA review during an inspection or upon request;
 - b. By June 1, 2010, Respondent shall erect a roll curb in the feedlot area

between the silos and the upper barn approximately 80 feet in length, lying easterly and westerly to channelize surface flow to a designated area away from the concrete feed lot; and

- c. Beginning June 1, 2010, Respondent shall submit to the Illinois EPA a report detailing the efforts and actions taken to implement the CNMP at the Farm during the reporting period. If an action detailed in the CNMP is not taken during the reporting period, an explanation as to why that action was not taken shall be included. This report shall be sent on a quarterly basis until a final report is submitted on June 1, 2011.

2. 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 Farm 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.

3. 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.

4. 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 \$2,000.00 penalty, any specified costs and accrued interest, his commitment to cease and desist as contained in Section V.D.4 above, 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 December 15, 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. 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

Jennifer A. Van Wie
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office

69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

Charles W. Gunnarson
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Lee Heeren
Bureau of Water, Field Operations Section
Illinois Environmental Protection Agency
4302 North Main Street
Rockford, Illinois 61103

As to the Respondent

Robert Miller
Mil-R-Mor Farm
765 East Rock Grove Road
Orangeville, Illinois 61060-9614

Lyle A. Krug
Plager, Krug & Bauer, Ltd.
10 North Galena Avenue
P.O. Box 839
Freeport, Illinois 61032-1244

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 Parties to the Stipulation 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 the Parties to the Stipulation.

I. 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

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
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 J. KIM
Chief Legal Counsel

DATE: 3/25/10

DATE: 3/19/10

ROBERT MILLER

BY: Robert Miller

DATE: 4-6-10