

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB No. 09-091
) (Enforcement – Water)
KEN RAWSON, individually)
)
Respondent.)

NOTICE OF FILING

TO: Mr. Kenneth A. Rawson
308 West Erie, Suite 700
Chicago, Illinois 60654

(VIA ELECTRONIC FILING)

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

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

BY: _____

VANESSA A. VAIL
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
(312) 814-5361

DATE: June 30, 2010

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB No. 09-091
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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 KEN RAWSON (“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 April 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 an Illinois resident.

4. On September 17, 2004, Illinois EPA issued to Kenneth Rawson ("Rawson") a General National Pollutant Discharge Elimination System ("NPDES") Permit No. ILR10B425 for storm water discharges from construction site activity related to the installation of 2.59 miles of sanitary sewer and potable water lines for City Municipal Utilities in municipal easements located in the City of Crystal Lake, unincorporated McHenry County, Illinois ("NPDES Permit No. ILR10B425"). The sanitary sewer and potable water lines were to be installed pursuant to a municipal bond and commenced at Briarwood Road and Butternut Road on the south, to continue north to Route 176, and west from Briarwood Road and Route 176 contiguous along Route 176 toward Route 47, for a total distance of 13,700 lineal feet (2.59 miles) ("Site").

5. Rawson obtained NPDES Permit No. ILR10B425 on behalf of Bryn Mawr Corporation and the City of Crystal Lake.

6. Improvements installed in the easements are the property of the City of Crystal Lake, an Illinois Municipal Corporation.

7. At all time relevant to the Complaint, Rawson was the designated permittee under NPDES Permit No. ILR10B425.

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
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).
- Count II:** Creating a Water Pollution Hazard
Violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2008).
- Count III:** Failure to Comply With NPDES Permit
Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2008); Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102; and terms of NPDES Permit No. ILR10B425.

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

In October 2007, the Site received proper erosion control blanketing and became permanently stabilized.

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 his 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). This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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 allowing conditions to exist that could have contaminated the waters of the State.

2. The improvements at the Site described in Section I.D. above are the property of the City of Crystal Lake, and provided social and economic benefit to an area encompassing more than 1,500 acres of land.

3. The Site was suitable for the area in which it is located, so long as it was operated in accordance with all applicable statutory, regulatory, and permit requirements.

4. Complainant contends that compliance with all applicable statutory, regulatory, and permit requirements for the Site was both technically practicable and economically reasonable.

5. Construction activities at the Site were completed as of October 1, 2007. The Respondent has committed to comply with the Act, Board Regulations, and all applicable permits issued by the Illinois EPA, with respect to the violations alleged in the Complaint filed in this matter.

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. From at least May 31, 2007 to October 1, 2007, the precise dates best known by the Respondent, the Respondent, during certain periods, failed to comply with the terms and conditions of NPDES Permit No. ILR10B425, thereby causing, threatening, or allowing soil and/or debris from construction activities at the Site to discharge into the waters of the State of Illinois; creating a water pollution hazard; and violating the terms of NPDES Permit No. ILR10B425. At the time of the Site inspection on May 31, 2007, Respondent did not provide a copy of the Notice of Intent (“NOI”) nor a copy of the Stormwater Pollution Prevention Plan (“SWPPP”) for the construction Site to the Illinois EPA inspector who had requested it, in violation of NPDES Permit No. ILR10B425.

2. Complainant contends that Respondent was not diligent in attempting to come back into compliance with the Act, and Board regulations after the Illinois EPA notified him of his noncompliance. Illinois EPA and McHenry County Soil and Water Conservation District identified violations during inspections of the Site conducted while construction activities were ongoing.

3. The Illinois EPA has calculated that the civil penalty agreed to in Section V.A, below, exceeds the economic benefit to the Respondent due to his noncompliance with applicable statutory, regulatory, and permit requirements.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Twelve Thousand Dollars (\$12,000.00) 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 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 Dollars (\$12,000.00) 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.

3. The stipulated penalties shall be enforceable by the Plaintiff and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

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:

Vanessa A. Vail
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, 18th Floor
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 \$12,0000.00 penalty, his commitment to cease and desist as contained in Section V.D. 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 April 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.

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

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: _____

DATE: _____

KEN RAWSON

BY: 
Ken Rawson
President, Bryn Mawr Corporation

DATE: 6/30/10

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

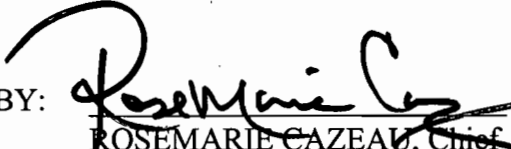
PEOPLE OF THE STATE OF ILLINOIS

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 6/23/10

DATE: 6/22/10

KEN RAWSON

BY: _____

DATE: _____

Ken Rawson
President, Bryn Mawr Corporation

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant,)
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 v.) PCB No. 09-091
) (Enforcement – Water)
 KEN RAWSON, individually)
)
 Respondent.)

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 (“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 Complaint in this matter alleges violations of Sections 12(a), 12(d) and 12(f) of the Act, 415 ILCS 5/12(a), 12(d) and 12(f) (2008), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102.
2. Complainant is filing this Motion and a Stipulation and Proposal for Settlement with the Board.
3. The parties have reached agreement on all outstanding issues in this matter.
4. This agreement is presented to the Board in a Stipulation and Proposal for 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).

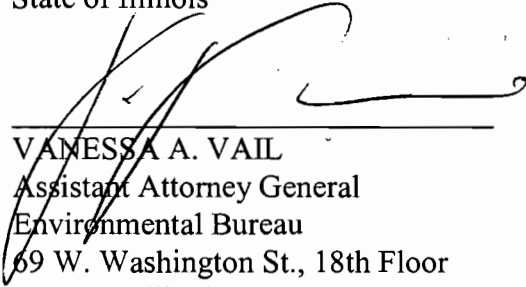
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:

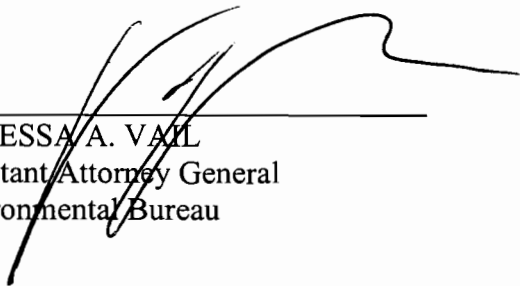


VANESSA A. VAIL
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
(312) 814-5361

DATE: June 30, 2010.

CERTIFICATE OF SERVICE

I, VANESSA A. VAIL, an Assistant Attorney General, do certify that I caused to be mailed this 30th day of June 2010, true and correct copies of the Stipulation and Proposal for Settlement, Motion to Request Relief from Hearing Requirement and Notice of Filing by certified mail with return receipt requested to the person listed on the said Notice of Filing, and depositing same with the United States Postal Service located at 69 West Washington Street, Chicago, Illinois, 60602.



VANESSA A. VAIL
Assistant Attorney General
Environmental Bureau