

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
by LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Complainant,)
)
v.) PCB No. 10-77
) (Enforcement)
AVANTE, LLC,)
an Illinois limited liability company,)
)
Respondent.)

NOTICE OF FILING

To: D. Forest Laidley
339 North Milwaukee Avenue, Suite 203
Libertyville, Illinois 60048-2249

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

PLEASE TAKE NOTICE that today, August 3, 2010, I filed a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT with the Clerk of the Illinois Pollution Control Board, copies of which are attached to this Notice and are served upon you.

Respectfully submitted,
PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
Attorney General of the State of Illinois

BY: 

Evan J. McGinley
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602
312.814.3153

Electronic Filing - Received, Clerk's Office, August 3, 2010

69 West Washington Street, 18th Floor
Chicago, Illinois 60602
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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).

* * *

3. No hearing is now scheduled in this matter.

4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby 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
LISA MADIGAN
Attorney General of the State of Illinois

BY:



Evan J. McGinley
Assistant Attorney General
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PCB No. 10-77
(Enforcement)

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 Avante, LLC ("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), the Board's Regulations, and the Illinois EPA 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 6, 2010, 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 an Illinois limited liability corporation which was authorized to transact business in the State of Illinois. Respondent was involuntarily dissolved by the Illinois Secretary of State on or about May 28, 2009.

4. At all times relevant to the Complaint, Respondent owned and operated two printing facilities, the first of which was located at 865 North Ellsworth Avenue, Villa Park, DuPage County, Illinois ("Villa Park Facility") and the second of which was located at 1228 West Capital Drive, Addison, DuPage County, Illinois ("Addison Facility"). Respondent operated at the Villa Park location from approximately 1992 up through November 2006. Respondent subsequently moved its business and operated at the Addison Facility from November 2006 through April 10, 2009.

5. On June 6, 2007, an Illinois EPA inspector conducted an inspection of the Addison Facility ("Inspection") and observed that Respondent was operating three (3) sheet-fed coldset offset printing presses, for which Respondent had obtained neither construction nor operating permits. Respondent had also failed to obtain any construction or operating permits for the Villa Park Facility.

B. Allegations of Non-Compliance

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

- Count I: Failure to Obtain Construction Permit, in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2008), and Section 201.142 of the Board Regulations, 35 Ill. Adm. Code 201.142.
- Count II: Failure to Obtain an Operating Permit, in violation of Section 9(b) of the Act, 415 ILCS 5/9(b) (2008), and Section 201.143 of the Board Regulations, 35 Ill. Adm. Code 201.143.
- Count III: Failure to Demonstrate Compliance or Exemption to the Pollution Control Board's Requirements for Lithographic Printing, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2008), and Section 218.411(a)(1) of the Board Regulations, 35 Ill. Adm. Code 218.411(a)(1).
- Count IV: Failure to Comply with Reporting and Recordkeeping Requirements, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2008), and Section 218.411(a)(2) of the Board Regulations, 35 Ill. Adm. Code 218.411(a)(2).
- Count V: Failure to Submit Timely and Complete Annual Emissions Reports, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2008), Section 201.302(a) of the Board Regulations, 35 Ill. Adm. Code 201.302(a), and Section 254.132(a) of the Illinois EPA Regulations, 35 Ill. Adm. Code 254.132(a).
- Count VI: Failure to Implement Plan to Control Fugitive Dust Emissions, in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2008), and Section 212.309 of the Board Regulations, 35 Ill. Adm. Code 212.309.
- Count VII: Failure to Pay Air Pollution Construction Fees, in violation of Section 9.12(a) and (j) of the Act, 415 ILCS 5/9.12(a) and (j) (2008).

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

Respondent ceased all printing operations as of April 10, 2009.

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. Respondent's failure to obtain the requisite construction and operating permits, failure to demonstrate compliance with the Board's regulations, and failure to keep records and make reports impeded the People's ability to properly enforce this State's environmental laws and regulations and, further, impeded the Illinois EPA's ability to gather information to determine compliance with those laws.
2. Respondent's Villa Park and Addison Facilities provided a social and economic benefit to their respective communities.
3. Respondent's operation of the Villa Park and Addison Facilities were suitable for the area in which those operations occurred.
4. Obtaining the requisite permits prior to construction at the site and compliance with their terms, compliance with the Board's regulations, keeping records, and making reports are technically practicable and economically reasonable.
5. Respondent subsequently ceased all printing operations, thereby abating any further violations of the Act, the Board Regulations, or the Illinois EPA Regulations that Respondent is alleged to have violated.

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 Respondent's violations of the Act, the Board Regulations and Illinois EPA's Regulations continued for approximately seventeen (17) years, from the time that it commenced

operations at its Villa Park Facility and continued until Respondent ceased operations at the Addison Facility.

2. Respondent was not diligent in rectifying any of its alleged violations of the Act, Board Regulations and Illinois EPA's Regulations and these violations were only resolved as the result of Respondent's cessation of business operations in April 2009.

3. Respondent received an economic benefit through its failure to obtain the requisite construction and operating permits, its failure to pay the fees for such permits, and from its failure to comply with various reporting and recordkeeping requirements that would have applied to its operations. The penalty to be paid pursuant to this Stipulation captures any economic benefit that Respondent may have realized through its non-compliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Ten Thousand Dollars (\$10,000.00) 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. The violations alleged in Complainant's Complaint are based on Illinois EPA's Inspection and are not the result of any self-disclosure by the Respondent.

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 Ten Thousand Dollars (\$10,000.00), Eight Hundred Dollars (\$800.00) of which represents avoided construction and operating permit fees, within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA. One payment of Eight Hundred Dollars (\$800.00) shall be directed for deposit into the Permit and Inspection Fund; a second payment of Nine Thousand, Two Hundred Dollars (\$9,200.00) shall be directed 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, FEIN 36-4370617, 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:

AAG Evan J. McGinley
Environmental Bureau
Illinois Attorney General's Office
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

C. Future Compliance

1. Within 30 days from the date the Board enters and adopts this Stipulation, Respondent shall submit Annual Emissions Reports ("AERs") for calendar years 2008 and 2009 to the Illinois EPA.

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.

D. 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 Two Hundred and Fifty Dollars (\$250.00) 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.

4. 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.

E. Correspondence, Reports, and Other Documents

Any and all correspondence, reports, and any other document, except for penalty payments, shall be submitted as follows:

As to Complainant

Maureen Wozniak
Assistant Counsel
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Manager
Compliance Unit
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
AAG Evan J. McGinley

Environmental Bureau
Illinois Attorney General's Office
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

As to Respondent

D. Forest Laidley
339 N. Milwaukee Ave., Suite 203
Libertyville, IL 60048-2249

F. Release from Liability

In consideration of the Respondent's payment of the Ten Thousand Dollars (\$10,000.00 penalty, its commitment to cease and desist as contained in Section V.C.3, 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 6, 2010. 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.

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.E. 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.

H. 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.

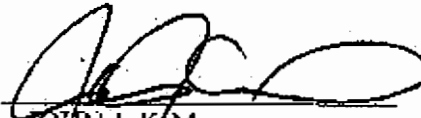
PEOPLE OF THE STATE OF ILLINOIS, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

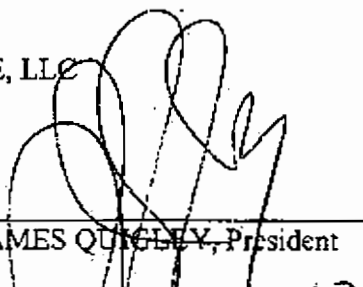
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 7/14/10

DATE: 7/8/10

AVANTE, LLC
BY: 
JAMES QUIGLEY, President
DATE: 7-30-10

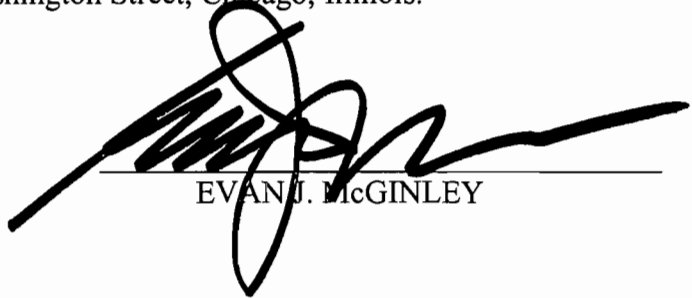
CERTIFICATE OF SERVICE

I, EVAN J. MCGINLEY, an Assistant Attorney General, do certify that I caused to be served on this 2nd day of August 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 69 West Washington Street, Chicago, Illinois.

EVAN J. MCGINLEY

CERTIFICATE OF SERVICE

I, EVAN J. MCGINLEY, an Assistant Attorney General, do certify that I caused to be served on this 3rd day of August 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 69 West Washington Street, Chicago, Illinois.



EVAN J. MCGINLEY