

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 FREEPORT AREA ECONOMIC )  
 DEVELOPMENT FOUNDATION, )  
 d/b/a Northwest Illinois Development )  
 Alliance, an Illinois not-for-profit corporation, )  
 and WEITZ INDUSTRIAL, LLC, )  
 )  
 Respondents. )

**PCB No. 10-89**  
**(Enforcement - Water)**

**NOTICE OF FILING**

To: Dan Fishburn  
 FISHBURN WHITON THRUMAN  
 8 East Stephenson Drive  
 Freeport, Illinois 61032

Jeryl L. Olson  
 SAYFARTH SHAW  
 131 S. Dearborn Street  
 Suite 2400  
 Chicago, Illinois 60603

Elizabeth Leifel Ash  
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Bradley P. Halloran  
 Illinois Pollution Control Board  
 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: December 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. 10-89</b>
	)	<b>(Enforcement - Water)</b>
<b>FREEPORT AREA ECONOMIC</b>	)	
<b>DEVELOPMENT FOUNDATION,</b>	)	
<b>d/b/a Northwest Illinois Development</b>	)	
<b>Alliance, an Illinois not-for-profit corporation,</b>	)	
<b>and WEITZ INDUSTRIAL, LLC,</b>	)	
	)	
	)	
<b>Respondents.</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) (2010), 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) (2010). In support of this motion, Complainant states as follows:

1. The Complainant and Respondent Weitz Industrial, LLC ("WEITZ"), 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. The Complainant and Respondent WEITZ 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) (2010).

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) (2010).

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  
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<b>Complainant,</b>	)	
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<b>v.</b>	)	<b>PCB NO. 10-89</b>
	)	<b>(Enforcement)</b>
<b>FREEPORT AREA ECONOMIC</b>	)	
<b>DEVELOPMENT FOUNDATION,</b>	)	
<b>d/b/a Northwest Illinois Development</b>	)	
<b>Alliance, an Illinois not-for-profit corporation,</b>	)	
<b>and WEITZ INDUSTRIAL, LLC,</b>	)	
	)	
	)	
<b>Respondents.</b>	)	

**STIPULATION AND PROPOSAL FOR SETTLEMENT BETWEEN COMPLAINANT AND RESPONDENT WEITZ**

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 Weitz Industrial, LLC (“Weitz”) (“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 27, 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 Weitz was a foreign corporation registered and in good standing with the Illinois Secretary of State's Office. Weitz's offices are located at 1065 Sierra Court NE, Suite A, Cedar Rapids, Iowa.

4. On August 31, 2006, the Illinois EPA issued NPDES Permit No. ILR10G259 to Freeport Area Economic Development Foundation, d/b/a Northwest Illinois Development Alliance ("FAEDF") for construction at Mill Race Industrial Park located east of Springfield Road, north of Hiveley Road, and south of Business 20, Freeport, Stephenson County, Illinois ("Site").

5. In its December 19, 2006 Notice of Intent ("NOI") submitted to the Illinois EPA, FAEDF named Weitz as its contractor at the Site.

6. On January 31, 2007, the Illinois EPA inspected the Site. The inspector observed earthmoving activities and noted silt fencing along Silver Creek on the southeast portion of the Site.

7. On August 16, 2007, the Illinois EPA inspected the Site and observed a row of silt fencing bordering Silver Creek that was knocked down and covered with mud. The inspector also observed that settleable solids had discharged from the Site into Silver Creek.

8. On August 17, 2007, Weitz submitted a Notice of Noncompliance to the Illinois EPA.

9. On September 10, 2007, Weitz submitted a storm water inspection form to the Illinois EPA.

10. On October 5, 2007, Weitz completed its work at the Site.

11. Respondent FAEDF has entered into a separate Stipulation with the State and is not a party to this Stipulation.

12. Reference to "Respondent" in this Stipulation refers to Respondent Weitz only.

**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**

By failing to maintain storm water controls at the Site, Weitz caused or allowed contaminants to discharge into a water of the State causing water pollution, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

**Count II: Offensive Conditions**

By allowing discharges containing color and turbidity of other than natural origin and causing bottom deposits in Silver Creek, Weitz violated Sections 302.203 and 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.106, thereby violating Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

**Count III: Water Pollution Hazard**

By depositing sediment onto the land in such a place and manner so as to create a water pollution hazard, Weitz violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2008).

**C. Non-Admission of Violations**

Respondent Weitz denies the allegations of the Complaint, however, it 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**

During the period when the violations were allegedly occurring, the Respondent contracted with a third party to perform the following compliance measures:

1. Erected and maintained silt fencing at the Site; and
2. Installed box culverts at the Site to alleviate stormwater runoff.

**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 and the Illinois EPA's information gathering responsibilities were hindered by the Respondent's violations.
2. There is social and economic benefit to the Site.
3. Activities at the Site are 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 Weitz is no longer associated with the Site and is, therefore, not responsible for ongoing compliance measures.

#### 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 on August 16, 2007. While Respondent Weitz addressed many of the violations over the subsequent days, Complainant alleges that compliance was not consistently achieved at the Site. Remaining erosion control measures are being addressed by Respondent FAEDF.

2. There was a lack of diligence to correct the soil stabilization measures at the Site.
3. Complainant alleges that Respondent delayed the costs of implementing erosion control measures.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Thirteen Thousand Nine Hundred Dollars (\$13,900.00) to Weitz 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. Respondent Weitz shall pay a civil penalty in the sum of Thirteen Thousand Nine Hundred Dollars (\$13,900.00) 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 numbers shall appear on the face of their 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. 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.

2. 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 \$13,900.00 penalty, its commitment to cease and desist as contained in Section V.D.2. 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 in conjunction with this Stipulation. 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.

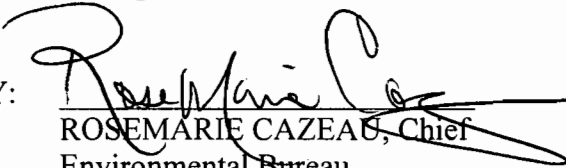
PEOPLE OF THE STATE OF ILLINOIS

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: 12/15/10

DATE: 12/17/10

WEITZ INDUSTRIAL, LLC

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

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

\_\_\_\_\_  
(TITLE)

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

**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

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: \_\_\_\_\_

WEITZ INDUSTRIAL, LLC

BY: HUGH B. EKBERG

(PRINT)



(SIGNATURE)

PRESIDENT  
(TITLE)

DATE: NOVEMBER 22, 2010

**People v. Freeport Area Economic Development Foundation, d/b/a Northern Illinois  
Development Alliance & Weitz Industrial, LLC**

**PCB No. 10-89**

**CERTIFICATE OF SERVICE**

I, ANDREW J. NICHOLAS, an Assistant Attorney General, do certify that I caused to be served on this 15<sup>th</sup> day of December, 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.

  
\_\_\_\_\_  
ANDREW J. NICHOLAS