

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
-vs-)	PCB No. 10-109
)	
ROCK RIVER BLENDING COMPANY,)	
an Illinois corporation,)	
)	
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 ROCK RIVER BLENDING COMPANY ("Respondent or RRB") ("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.* (2010), 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 June 29, 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 (2010), 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 (2010).

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 an industrial cleaning products manufacturing facility located at 1515 Cunningham Street, Rockford, Winnebago County, Illinois ("Site").

B. Allegations of Non-Compliance

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

- Count I: OPEN DUMPING OF WASTE, violation of 415 ILCS 5/21(a) (2010);
- Count II: CONDUCTING A WASTE DISPOSAL OPERATION WITHOUT A PERMIT, violation of 415 ILCS 5/21(d)(1) (2010);
- Count III: CONDUCTING A WASTE DISPOSAL OPERATION WITHOUT A RCRA PERMIT, violation of 415 ILCS 5/21(f)(1) (2010), and 35 Ill. Adm. Code 703.121;
- Count IV: FAILURE TO OBTAIN A USEPA IDENTIFICATION NUMBER, violation of 415 ILCS 5/21(f)(2) (2010), and 35 Ill. Adm. Code 722.112;
- Count V: FAILURE TO PERFORM A SPECIAL WASTE DETERMINATION, violation of 415 ILCS 5/21(d)(2) (2010), and 35 Ill. Adm. Code 808.121;
- Count VI: FAILURE TO PERFORM A HAZARDOUS WASTE DETERMINATION, violation of 415 ILCS 5/21(f)(2) (2010), and 35 Ill. Adm. Code 722.111.
- Count VII: IMPROPER DISPOSAL OF CORROSIVE LIQUID HAZARDOUS WASTE, violation of 415 ILCS 5/21(f)(2) (2010), and 35 Ill. Adm. Code Sections 724.401,

724.414, and 728.137;

Count VIII: FAILURE TO COMPLY WITH WASTE DISPOSAL REQUIREMENTS AND PROCEDURES, violation of 415 ILCS 5/21(f)(2) (2010), and 35 Ill. Adm. Code Sections 724.113(a), 724.113(b), 724.114(a), 724.114(b), 724.114(c), 724.115(a), 724.115(b), 724.116(a), 724.131, 724.132, 724.137, 724.151, 724.155, 724.173, 724.175, 724.212(a), 724.218(a), 724.242(a), and 724.244.

C. Non-Admission of Violations

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

D. Compliance Activities to Date

Respondent has completed an Illinois EPA-approved closure plan for the affected areas of the Site. On January 13, 2011, Illinois EPA accepted Respondent's certification that the subject hazardous waste management unit was closed in accordance with the plan approved by Illinois EPA on November 9, 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 5/42 (2010).

III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2010), 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 alleged dumping of potentially hazardous waste threatens human health and the environment.
2. There is social and economic benefit to the manufacturing business at the Site, provided it operates in compliance with state and federal waste disposal regulations.
3. Operation of the manufacturing business is suitable for the area in which it is located.
4. As shown by Respondent's subsequent compliance, handling and disposal of waste from the manufacturing business is technically practical and economically reasonable.
5. After the alleged violations were first investigated by Illinois EPA, Respondent

began handling and disposing of waste in accordance the Act and the Board Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2010), 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. Complainant has alleged that the Respondent mishandled and illegally disposed of waste, in the form of aqueous liquid waste from its manufacturing operations, from

approximately May 1, 2000 to at least July 23, 2008. Complainant alleges that up to 100 gallons per month of aqueous waste solutions were dumped during this period.

2. Respondent was not diligent in attempting to comply with the Act and waste disposal regulations prior to July 23, 2008. However, since the date of Illinois EPA's first inspection, the Respondent has cooperated fully with Illinois EPA, performed a thorough site investigation, and completed closure of the affected areas of the Site in a timely manner.

Respondent is now properly disposing of the waste generated at the Site.

3. Complainant estimates that Respondent realized an economic benefit from the alleged noncompliance in the range of \$6,000.00 to \$10,000.00.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of \$30,000.00 will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations. In reaching this determination, Complainant has taken into consideration the comparatively small size of the Respondent, and the Respondent's probable inability to pay a penalty larger than the penalty assessed.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.

6. Respondent did not self-disclose the alleged violations.

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 Thirty Thousand Dollars

(\$30,000.00) 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, 415 ILCS 5/42(g) (2010), 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:

Christopher J. Grant
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington, 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 \$30,000.00 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 June 29, 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 (2010), 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.

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 following persons:

As to the Complainant

Christopher Grant
Assistant Attorney General
Illinois Attorney General's Office
Environmental Bureau
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

Mr. Paul Jagiello
Assistant Counsel
Illinois EPA
9511 W. Harrison Street
Des Plaines, Illinois 60016

As to the Respondent

Mr. Daniel McLoraine
Rock River Blending Company Inc.
1515 Cunningham Street
Rockford, Illinois 61102

Mr. James E. Meason
Attorney at Law
113 W Main St
Rockton, IL 61072-241

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.

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

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

LISA BONNETT, Interim Director
Illinois Environmental Protection Agency

BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY:


JOHN J. KIM
Chief Legal Counsel

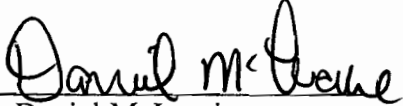
DATE:

3/24/11


DATE:

3/17/11

ROCK RIVER BLENDING COMPANY,
INC.

BY: 
Mr. Daniel McLoraine
President

DATE: APRIL 20 2011

BY: 
Mr. James E. Meason
Attorney for Respondent

DATE: 20 APR 11

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MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT

Now comes Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the requirement of a hearing in this matter. In support thereof, the Complainant states as follows:

1. Along with this Motion, Complainant is filing a Stipulation and Proposal for Settlement executed between Complainant and Respondent Rock River Blending Company.
2. Section 31 of the Act, 415 ILCS 5/31 (2010), provides, in pertinent part, as follows:

* * *

(c)(2) Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for 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) (2010).

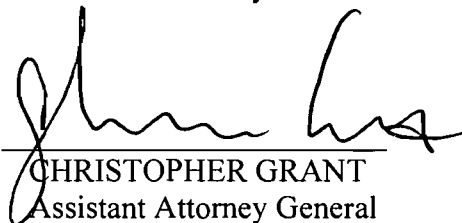
Respectfully submitted,

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

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY:



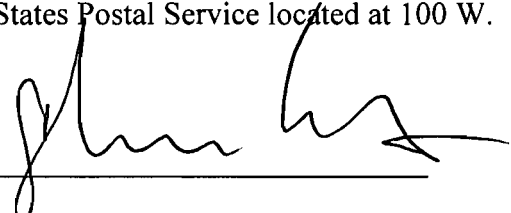
CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
69 W. Washington St., #1800
Chicago, Illinois 60602
(312) 814-5388

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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 6th day of May, 2011, the foregoing Stipulation and Proposal for Settlement and Motion for Relief from Requirement of Hearing upon the persons listed below by first class mail, by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.



CHRISTOPHER GRANT

- Service List:
- Mr. John Therriault, Assistant Clerk
Illinois Pollution Control Board
100 W. Randolph, Chicago, Illinois 60601 (by electronic filing)
 - Mr. Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
100 W. Randolph, Chicago, Illinois 60601 (by hand delivery)
 - Mr. James E. Meason, Attorney at Law
113 W. Main Street
Rockton, IL 61072-2419