

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

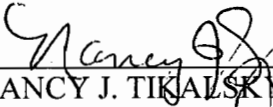
PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB No. 10 - 107
) (Enforcement - Water)
ROCKFORD SAND AND GRAVEL, INC., a)
division of Rockford Blacktop Construction Co.,)
an Illinois corporation,)
)
Respondent.)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 8th day of June 2011, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief From Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

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

BY: 
NANCY J. TIKALSKY
Assistant Attorney General
Environmental Bureau North
69 West Washington St., Suite 1800
Chicago, Illinois 60602
312-814-8567

DATE: June 8, 2011

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Bradley Halloran
Chief Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, 11th Floor
Chicago, IL 60601

Mr. Charles F. Helston
Hinshaw & Culbertson LLP
100 Park Ave.
Rockford, IL 61105

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v.)	PCB No. 10 - 107
)	(Enforcement - Water)
ROCKFORD SAND AND GRAVEL, INC., a)	
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an Illinois corporation,)	
)	
Respondent.)	

MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On June 21, 2010, Complaint number PCB 10-107 was filed with the Illinois Pollution Control Board ("Board") in this matter.
2. On June 8, 2011, a Stipulation and Proposal for Settlement was filed with the Board.
5. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2010), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement.
6. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2010), provides as follows:

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).

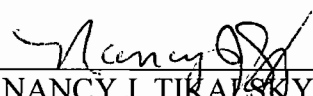
7. No hearing is currently scheduled in the instant case.
8. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2010).

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

BY: _____


NANCY J. TIKALSKY

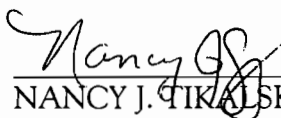
Assistant Attorney General
Environmental Bureau North
69 West Washington St., Suite 1800
Chicago, Illinois 60602
312-814-8567

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)	(Enforcement - Water)
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division of Rockford Blacktop Construction Co.,)	
an Illinois corporation,)	
)	
Respondent.)	

CERTIFICATE OF SERVICE

I, Nancy J. Tikalsky, an Assistant Attorney General, do certify that a true and correct copy of the Stipulation and Proposal for Settlement, Motion to Request Relief from Hearing Requirement, and Notice of Filing were sent by certified mail with return receipt requested to the persons listed on the Notice of Filing on June 8, 2011.

BY: 
NANCY J. TIKALSKY

I. STATEMENT OF FACTS

A. Parties

1. On June 21, 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. On March 29, 1991, Respondent, ROCKFORD SAND AND GRAVEL, INC. ("RS&G" or "Respondent"), an Illinois corporation, merged with Rockford Blacktop Construction Co., an Illinois corporation.

4. At all times relevant to this complaint, Respondent was and is a division of Rockford Blacktop Construction Co., which is in good standing with the Illinois Secretary of State.

5. At all times relevant to the Complaint, Respondent has operated an approximately 100 acre limestone quarry known as Nimitz Quarry located at 5300 Nimitz Road, Loves Park, Winnebago County, Illinois ("Facility").

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: Violation of National Pollutant Discharge Elimination System ("NPDES") Permit for Discharges
Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

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

On May 5, 2009, a meeting was held with the Illinois EPA pursuant to a Notice of Intent to Pursue Legal Action ("NIPLA") letter. During the meeting, Troy Kutz, Vice-President of RS&G, stated that after Respondent was notified of the violations, it limited authorization to initiate the pumping process to only one person at the Facility, locked the pumping mechanism and instituted sediment checks at the point of discharge and downstream.

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 (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 Complainant contends that human health and the environment were threatened by the Respondent's failure to properly control discharge of water containing TSS in amounts greater than those permitted by Respondent's NPDES Permit No. IL0060399 ("Respondent's NPDES permit") from the Facility into waters of the State. The Respondent asserts that human health and the environment were not threatened by the Respondent's failure

to properly control discharge of water containing TSS in amounts greater than those permitted by the Respondent's NPDES Permit.

2. There is social and economic benefit to the Facility.
3. The Facility is suitable for the area in which it is located.
4. The proper control of discharge of water containing TSS in amounts greater than those permitted by the Respondent's NPDES permit is both technically practicable and economically reasonable.
5. The Respondent has taken actions to comply 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) (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. The discharge of turbid waters was observed during the Illinois EPA inspection on January 15, 2010. The duration of pumping turbid water was estimated to be between 45 to 90 minutes. Sampling results of the turbid water taken by the Illinois EPA showed a TSS concentration of 3,860 milligrams per liter ("mg/l"). Sampling results of the turbid water taken by Respondent showed a TSS concentration of 4,110 mg/l. These results demonstrated a violation of the limit of 70 mg/l TSS authorized by the Respondent's NPDES permit.
2. The Respondent has been diligent in coming back into compliance with the Act and Board regulations. The Respondent has taken measures to ensure that an incident like the one in question does not happen again.
3. Complainant has determined, based upon the specific facts of this matter, that a civil penalty of Eight Thousand Dollars (\$8,000.00) will recoup any economic benefit realized by the Respondent.

4. Complainant has determined, based on the specific facts of this matter that a civil penalty of Eight Thousand Dollars (\$8,000.00) will serve to deter the Respondent from further violations and aid in future voluntary compliance with the Act and Board regulations.

5. In 1996, Rockford Blacktop Construction, the parent of RS&G, was ordered by the Board to pay a penalty of \$8,500.00 for operating a number of quarries without the required permits. The company paid the prescribed penalty.

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 Eight Thousand Dollars (\$8,000.00) 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 \$100.00 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. 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:

Nancy J. Tikalsky
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 at all times maintain the control measures it has undertaken, as detailed in Section I.D.1., to prevent the discharge of water with TSS in amounts greater than those allowed by the Respondent's NPDES permit.

2. Any time when the pump is discharging, the Respondent shall visually inspect the outfall to the unnamed tributary to the Rock River for clarity.

3. The Respondent shall at all times comply with the terms and conditions of the Respondent's NPDES permit.

4. In the event of any discharge not in compliance with the Respondent's NPDES permit, the Respondent shall upon discovery immediately orally notify the Illinois EPA (Charles Corley at 815- 987-7760) of the discharge pursuant to its NPDES permit, as well as the City of Loves Park (Nathan Bruck at 815. 654-5033). The Respondent shall, within twelve (12) hours of discovery of the discharge, initiate any necessary remedial and/or response activities for the deposited silt in the unnamed tributary to the Rock River upon consultation with the Illinois EPA.

5. 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.

6. 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.

7. 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 \$8,000.00 penalty, any specified costs and accrued interest, its commitment to cease and desist as contained in Section V.D.7. 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 the Complainant's Complaint filed on June 21, 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.

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

Nancy J. Tikalsky
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

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

Charles Corley
Water Pollution Regional Manager, Rockford
Illinois Environmental Protection Agency
4302 North Main Street
Rockford, Illinois 61103

Nathan Bruck
Planning Officer
City of Loves Park
100 Heart Boulevard
Loves Park 61111

As to the Respondent

John Holmstrom
Tim Jagielski
William Charles, Ltd.
1401 North Second Street
Rockford, Illinois 61105-1389

Charles F. Helsten
Hinshaw & Culbertson LLP
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389

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.

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. This Stipulation may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same instrument.

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

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

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

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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: _____

DATE: _____

FOR THE RESPONDENT:

ROCKFORD SAND AND GRAVEL,
INC.

BY: _____

DATE: _____

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS


ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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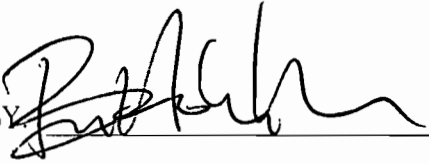
BY: 
JOHN J. KIM
Chief legal Counsel

DATE: 6/6/11

DATE: 6/2/11

FOR THE RESPONDENT:

ROCKFORD SAND AND GRAVEL,
INC.

BY  _____

DATE: 5-24-11