

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. 11-103
)	(Enforcement - Land)
MARKHAM TRANSFER &)	
RECYCLING, L.L.C., an Illinois limited)	
liability company,)	
)	
Respondent.)	

NOTICE OF FILING

To: See attached service list
(VIA ELECTRONIC FILING)

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

LISA MADIGAN
Attorney General
State of Illinois


JENNIFER A. VAN WIE

Dated: June 24, 2011

Jennifer A. Van Wie
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0609

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Service List

For Markham Transfer & Recycling, Inc.

Robert J. Slobig
Torshen, Slobig, Genden, Dragutinovich & Axel, Ltd.
105 West Adams Street, Suite 3200
Chicago, Illinois 60603

Illinois Environmental Protection Agency

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

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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 MARKHAM TRANSFER & RECYCLING, LLC., ("Respondent"), ("Parties to the Stipulation"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to this 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 Waste Disposal 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 24, 2011, 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, pursuant to Section 42 of the Act, 415 ILCS 5/42 (2010), 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 this Complaint, Respondent, MARKHAM TRANSFER & RECYCLING, L.L.C. ("MTR"), has been an Illinois limited liability company registered in good standing with the Illinois Secretary of State.

4. At all times relevant to the Complaint, MTR owned and operated, and continues to own and operate, a general construction or demolition debris recycling facility located at 2300 West 167th Street, Markham, Cook County, Illinois ("Site").

B. Allegations of Non-Compliance

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

- Count I: Open Dumping of Waste, in violation of Section 21(a) of the Act, 415 ILCS 5/21(a);
- Count II: Conducting a Waste Disposal Operation Without a Permit, in violation of Sections 21(d)(1) and (2) of the Act, 415 ILCS 5/21(d)(1) and (2) (2010), and Sections 807.201, 807.202(a) and 807.205(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 807.201, 807.202(a), and 807.205(a);
- Count III: Disposal and Storage of Waste at an Unpermitted Facility, in violation of Section 21(e) of the Act, 415 ILCS 5/21(e); and
- Count IV: Failure to Comply with General Construction and Demolition Debris Requirements, in violation of Section 22.38(b)(4) and (6) of the Act, 415 ILCS 5/22.38(b)(4) and (6).

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

1. On December 20, 2010, MTR submitted an application to the Illinois EPA for a permit to operate a portion of the Site as a landscape waste transfer station.

2. On March 21, 2011, the Illinois EPA granted MTR a permit to operate a landscape waste transfer station on a portion of the Site property.

3. MTR asserts that it has taken undertaken numerous activities to improve operation of its Site. These activities include the following:

- a. notifying regular customers by telephone of the limits of its authorization to accept their wastes and the types of waste the facility is not permitted to accept;
- b. implementing improved screening procedures for incoming waste loads, including diverting wastes MTR is not permitted to accept at the Site to a permitted transfer station and installing a pole-mounted video camera; and
- c. improving its recordkeeping and tracking procedures for the sources of incoming loads.

4. On March 1, 2011 and May 3, 2011, an Illinois EPA inspector inspected the Site. The Illinois EPA inspector observed that the site conditions noted during the February 2, 2009, November 13, 2009, May 3, 2010, and August 13, 2010 inspections had been remedied and the Site appears to be in compliance with the Act and Board regulations.

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 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 Illinois EPA's regulatory and permitting process was hindered by the Respondent's violations thereby threatening human health and the environment.

2. There is social and economic benefit to the Site.

3. The Site is suitable to the area in which it is located.

4. Obtaining a permit prior to storing and managing waste at the Site and compliance with its terms is both technically practicable and economically reasonable.

5. On March 21, 2011, the Illinois EPA granted MTR a permit to operate a landscape waste transfer station on a portion of the Site property.

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. Since at least February 2, 2009, the Respondent has operated a construction and demolition debris transfer, storage and treatment facility at the Site. Prior to March 21, 2011, Respondent had no permits to accept other types of waste at the Site.

2. Respondent has cooperated with the Illinois EPA to address the site conditions observed during the inspections conducted on February 2, 2009, November 13, 2009, May 3, 2010, and August 13, 2010 at the Site.

3. Complainant has determined, based upon the specific facts of this matter, that a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) will recoup any economic benefit realized by Respondent.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Twenty-Five Thousand Dollars (\$25,000.00) 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 Twenty-Five Thousand Dollars (\$25,000.00) 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.

C. Payment Procedures

1. Payment of the penalty of Twenty-Five Thousand Dollars (\$25,000.00) 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, Illinois 62794-9276

The case 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:

Jennifer A. Van Wie
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
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 Site 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 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 \$25,000.00 civil penalty and

applicable interest, its commitment to cease and desist as contained in Section V.D.3 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 24, 2011. 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 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.

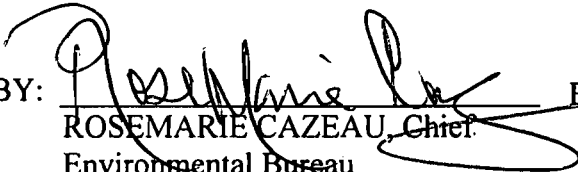
PEOPLE OF THE STATE OF ILLINOIS


ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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: 6/16/11

DATE: 6/14/11

RESPONDENT

MARKHAM TRANSFER &
RECYCLING, L.L.C.

BY: *J. W. Bracy*

Its: *managing member*

DATE: *June 10, 2011*

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
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Complainant,)	
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v.)	PCB No. 11-103
)	(Enforcement - Land)
MARKHAM TRANSFER &)	
RECYCLING, L.L.C., an Illinois limited)	
liability company,)	
)	
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) (2010), 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) (2010). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Sections 21(a), 21(d)(1) and (2), 21(e), and 22.38(b)(4) and (6) of the Act, 415 ILCS 5/21(a), 21(d)(1) and (2), 21(e), and 22.38(b)(4) and (6) (2010), and Sections 807.201, 807.202(a) and 807.205(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 807.201, 807.202(a), and 807.205(a).
2. Complainant is filing the Complaint with the Board simultaneous with this Motion and a Stipulation and Proposal for Settlement.
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) (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
State of Illinois

BY:



JENNIFER A. VAN WIE
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0609

DATE: June 24, 2011

CERTIFICATE OF SERVICE

I, JENNIFER A. VAN WIE, an Assistant Attorney General, certify that on the 24th day of June 2011, I caused to be served by U.S. Certified Mail (return receipt requested), the foregoing Complaint, Stipulation and Proposal for Settlement, Motion for Relief from Hearing Requirement and Notice of Filing to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



JENNIFER A. VAN WIE
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0609