

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	PCB NO. 09-131
)	(Enforcement-Water)
v.)	
)	
MOHAMMAD AKRABAWI,)	
d/b/a DEERFIELD CROSSINGS, LLC,)	<u>VIA ELECTRONIC FILING</u>
)	
Respondent.)	

NOTICE OF FILING

TO: Francis X. Lyons
Bryan Cave, LLP
161 North Clark Street, Suite 4300
Chicago, Illinois 60601-3315

Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Ste. 11-500
Chicago, Illinois 60601

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board ("Board") pursuant to Section 103.300(a) of the Board Procedural Rules, a Stipulation and Proposal for Settlement, an Agreed Motion for Relief from

THIS FILING IS SUBMITTED ON RECYCLED PAPER

the Hearing Requirement, Notice of Filing and a Certificate of Service, a copy of which is attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:



ZEMEHERET BEREKET-AB
Environmental Bureau
Assistant Attorney General
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-3816

DATE: November 21, 2011

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	PCB NO. 09-131
)	(Enforcement-Water)
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Respondent.)	

**AGREED MOTION TO REQUEST RELIEF
FROM THE HEARING REQUIREMENT**

In support of this Motion, the parties state as follows:

1. Today, the parties filed a Stipulation and Proposal for Settlement, with the Illinois Pollution Control Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act, ("Act"), 415 ILCS 5/31(c)(2)(2010) provides:

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). . . .

3. Complainant and Respondent agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2010).

WHEREFORE, Complainant and Respondent, request relief from the hearing requirement pursuant to Section 31(c)(2) of the Act.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

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

BY: 

ZEMEHERET BEREKET-AB
Environmental Bureau
Assistant Attorneys General
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-3094

DATE: November 21, 2011

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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Complainant,)
) PCB NO. 09-131
v.) (Enforcement – Water)
)
MOHAMMAD AKRABAWI,)
d/b/a DEERFIELD CROSSINGS, LLC,)
)
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 Mohammad Akrabawi, d/b/a Deerfield Crossing, LLC, (“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.* (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, 2009, 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 (2006), 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 (2006).

3. Complainant alleges that at all times relevant to the complaint, RESPONDENT, Mohammad Akrabawi, d/b/a Deerfield Crossings LLC, owned and operated Deerfield Crossings, LLC ("LLC") which is the owner/developer of Deerfield Crossings Subdivision ("Site"). The Site is 147 acres in size. The Site is located at the southeast quadrant of the intersection of Illinois Route 23 and U.S. Route 30 on the east side of the Village of Waterman, DeKalb County, Illinois. The closest receiving stream to the Site is Somonauk Creek.

4. On March 20, 2006, the Illinois EPA received a Notice of Intent for general permit to discharge storm water from construction site activities from Mohammad Akrabawi for the Deerfield Crossings Site.

5. On April 19, 2006, the Illinois EPA issued to Deerfield Crossings Subdivision a notice of coverage for storm water discharge associated with construction site activities NPDES Permit No. ILR10F194.

6. Complainant alleges that on March 21, 2007, the Illinois EPA, Rockford Regional Office inspected the Site and observed the following:

- (a) the letter granting coverage under the NPDES general storm water permit was not posted for public viewing at the Site as required by the permit;

(b) the Site lacked the proper sediment stabilization required in the NPDES general storm water permit;

(c) the berms of the detention basin located on the northern portion of the Site, and the discharge channel leading from the basin both lacked stabilization;

(d) storm water discharge was leaving the basin, flowing through a culvert under railroad tracks to a roadside ditch and into Somonauk Creek;

(e) a portion of the silt fence along the western perimeter of the Site was down; and,

(f) a portion of the silt fence on the eastern perimeter was down and water was flowing off-site, over the downed silt fence into an adjacent farm.

7. On June 27, 2007, the Illinois EPA issued a violation notice (“VN”) to Respondent citing failure to comply with terms and conditions of the NPDES general storm water permit and storm water violations.

8. On July 20, 2007, Respondent responded to the VN letter by submitting a Compliance Commitment Agreement (“CCA”).

9. On August 22, 2007 the Illinois EPA rejected the CCA due to the nature and seriousness of the violations.

10. Complainant alleges that on September 13, 2007, the Illinois EPA conducted a brief follow-up inspection of the Site and observed that the detention outlet from the north detention pond was overgrown with vegetation, observed erosion in the ground sloping toward the silt fence, the silt fence on the south side of the Site was overgrown with vegetation and the

Site as a whole was sparsely covered with weeds rather than proper ground cover. The Site was not properly stabilized.

11. On February 19, 2008, the Illinois EPA sent a notice of intent to pursue legal action (“NIPLA”) letter to Respondent.

12. Complainant alleges that on May 5, 2008, the Illinois EPA conducted an inspection of the Site and again observed that the Site was not properly stabilized and that some storm sewer inlets were choked with vegetation that had been carried to the inlet by storm water. Sediment controls were not maintained and ground cover was lacking. The detention pond outlet was “heavily silted” and weeds were growing out of the grated outlet.

13. Complainant alleges that on April 16, 2011, the Illinois EPA visited the Site and observed that large undeveloped areas of the Site remained unstabilized. Two complete, but empty homes existed on the Site at that time.

14. Respondent has represented that the Site is no longer under its control.

B. Allegations of Non-Compliance

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

- Count I: Cause, Threaten or Allow Water Pollution: violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006);
- Count II: Creating a Water Pollution Hazard: violation of Section 12(d) of the Act, 415 ILCS 12(d) (2006);
- Count III: Violation of NPDES Permit: violation of Part IV.D.2 (a), NPDES Permit No. ILR10F194, 35 Ill. Adm. Code 309.102(a) and Section 12(f) of the Act, 415 ILCS 5/12(f) (2006);

Count IV: Failure to Post Notification Coverage: violation of Part II.D.2 of NPDES Permit No. ILR10F194, 35 Ill. Adm. Code 309.102(a) and (12(f) of the Act, 415 ILCS 5/12(f) (2006);

Count V: Failure to Have Storm Water Pollution Prevention Plan Available at the Site: violation of Part IV.B.1 of NPDES permit No. ILR10F194, 35 Ill. Adm. Code 309.102(a) and Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

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.

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, managers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

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

Section 33(c) of the Act, 415 ILCS 5/33(c)(2006), 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, Complainant states as follows:

1. Improper stabilization at the Site threatened the safety and quality of waters of the State.
2. There is social and economic benefit to the Site if properly maintained.
3. Operation of the Site was suitable for the area in which it occurred.
4. Stabilizing the Site is both technically practicable and economically reasonable.
5. Respondent has made some improvements.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2006), 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, Complainant states as follows:

1. The discharge of silt-laden stormwater was observed in 2007 and inadequate erosion controls and stabilization have persisted to the present time. The Site was completely cleared of vegetation when development began.
2. Respondent did not show due diligence as inadequate stormwater controls were in place for more than a year and groundcover was sparse.
3. Due to financial hardships claimed and documented by Respondent, no economic benefit analysis was factored into the penalty calculation in this case. The \$5,000.00 (Five Thousand Dollars) penalty agreed herein addresses only the duration and gravity of the violation.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Five Thousand Dollars (\$5,000.00) 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 Five Thousand Dollars (\$5,000.00) 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 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.

3. 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.

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:

Zemeheret Bereket-Ab
Environmental Bureau
Illinois Attorney General's Office
69 West 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 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 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.

E. Release from Liability

In consideration of the Respondent's payment of the \$5,000.00 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, 2009. 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 (2006), 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

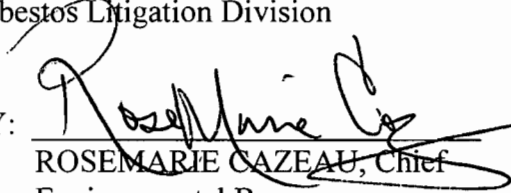
The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

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, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM, Interim Director

DATE: 11/14/11

DATE: 11/8/11

MOHAMMAD AKRABAWI,
d/b/a DEERFIELD CROSSING, LLC

BY: _____

Name: _____

Title: _____

DATE: _____

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

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Environmental Enforcement/
Asbestos Litigation Division

BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
JOHN J. KIM, Interim Director

DATE: _____

DATE: _____

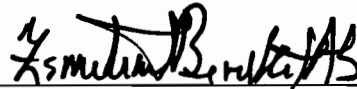
MOHAMMAD AKRABAWI, *on behalf of*
~~d/b/a~~ DEERFIELD CROSSING, LLC

BY: Mohammad E. Akrabawi
Name: Mohammad Akrabawi
Title: _____

DATE: Nov. 8, 2011

CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 21st day of November, 2011, the foregoing Notice of Filing, a Stipulation and Proposal for Settlement, and an Agreed Motion for Relief from the Hearing Requirement, 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.



ZEMEHERET BEREKET-AB

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THIS FILING IS SUBMITTED ON RECYCLED PAPER