

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant,)

v.)

RELIABLE MATERIALS LYONS, LLC, an)
Illinois limited liability company, GSG)
CONSULTANTS, INC., an Illinois corporation,)
O.C.A. CONSTRUCTION, INC., an Illinois)
corporation, SPEEDY GONZALEZ)
LANDSCAPING, INC., an Illinois corporation,)
PUBLIC BUILDING COMMISSION OF)
CHICAGO, an Illinois municipal corporation,)
BOARD OF EDUCATION OF THE CITY OF)
CHICAGO, a body politic and corporate,)

PCB No. 12-52
(Enforcement - Land)

Respondents.)


NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 29th day of May, 2012 I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement with Respondent O.C.A. Construction, Inc. only, 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
by LISA MADIGAN
Attorney General of the State of Illinois

BY:


STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau North
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-2087
ssylvester@atg.state.il.us

DATE: May 29, 2012

SERVICE LIST

Mr. Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601
halloranb@ipcb.state.il.us

Reliable Materials Lyons, LLC

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Board of Education of the City of Chicago

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cmanning@bhslaw.com

Speedy Gonzalez Landscaping, Inc.

Kevin B. Hynes
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**MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT
AS TO RESPONDENT O.C.A. CONSTRUCTION, INC. ONLY**

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 as to the following Respondent only, O.C.A. CONSTRUCTION, INC., an Illinois corporation. In support thereof, the Complainant states as follows:

1. On September 26, 2011, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter. On May 29, 2012, a Stipulation and Proposal for Settlement was filed with the Board in this matter with O.C.A. Construction, Inc. only.
2. 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.

3. 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).

4. No hearing is currently scheduled in the instant case.

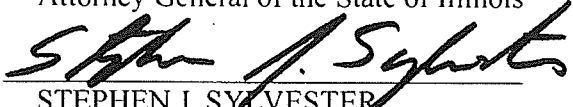
5. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2010).

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
by LISA MADIGAN
Attorney General of the State of Illinois

BY:


STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau North
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-2087
ssylvester@atg.state.il.us

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Respondents.)

**STIPULATION AND PROPOSAL FOR SETTLEMENT
WITH RESPONDENT O.C.A. CONSTRUCTION, INC ONLY**

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 O.C.A. CONSTRUCTION, INC. ("OCA"), only ("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 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 September 26, 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 and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), against Respondents, Reliable Materials Lyons, LLC ("Reliable"), GSG Consultants, Inc., OCA, Speedy Gonzalez Landscaping, Inc., Public Building Commission Of Chicago, and Board Of Education Of The City Of Chicago ("CPS").

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, OCA is an Illinois corporation in good standing.

4. At all times relevant to the Complaint, CPS owned a 7.5 acre parcel of land located at 401 North Sawyer Avenue, Chicago, Cook County, Illinois ("Site"), where the Westinghouse Vocational High School was being constructed.

5. At all times relevant to the Complaint, OCA was the general contractor of the project at the Site.

6. At all times relevant to the Complaint, Reliable owned and operated a clean construction or demolition debris ("CCDD") fill operation located at 4401 First Avenue, Lyons, Cook County, Illinois ("CCDD Facility").

B. Allegations of Non-Compliance

Complainant contends that OCA has violated the following provision of the Act:

Count I: OPEN DUMPING: Violation of Section 21(a) of the Act, 415 ILCS 5/21(a).

C. Non-Admission of Violations

OCA 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, OCA 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. OCA 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 OCA 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 the following:

1. Improper disposal of contaminated soil poses a risk to the environment.
2. There is social and economic benefit to the Site and the CCDD Facility.
3. Operations at the Site and the CCDD Facility were suitable for the areas in which they occurred.
4. Disposing of waste, in the form of contaminated soils, at a waste disposal facility permitted to accept such waste was both technically practicable and economically reasonable.
5. OCA has subsequently complied 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;
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; and
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. From at least April 4, 2006 to at least July 19, 2006, OCA allowed certain excavated contaminated soils from the Westinghouse construction project to be deposited at the Reliable CCDD Facility. Improper disposal of contaminated soil can pose a risk to the environment.

2. Once the Illinois EPA notified the Respondents, including OCA, of their noncompliance, the disposal of waste, in the form of contaminated soils, from the Site to the CCDD Facility ceased.

3. The civil penalty obtained includes any economic benefit that OCA may have accrued as a result of the disposal of waste, in the form of contaminated soils, at the CCDD Facility, which was not permitted to accept such wastes.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Fifteen Thousand Dollars (\$15,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, OCA has no previously adjudicated solid waste 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.

8. There was no Compliance Commitment Agreement for the violations alleged in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

OCA shall pay a civil penalty in the sum of Fifteen Thousand Dollars (\$15,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If OCA fails to make any payment required by this Stipulation on or before the date upon which the payment is due, OCA 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 OCA 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 OCA'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:

Stephen J. Sylvester
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 OCA to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

2. OCA 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 OCA's payment of the Fifteen Thousand Dollars (\$15,000.00)

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 OCA from any further liability or penalties for the violations of the Act and Board Waste Disposal 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 September 26, 2011. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against OCA 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 OCA'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 OCA.

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, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General, State of Illinois

JOHN J. KIM, Interim Director
Illinois Environmental Protection Agency

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

BY: Matthew J. Dunn
MATTHEW J. DUNN, Chief

BY: [Signature]
JOHN J. KIM, Interim Director

DATE: 5/29/12

DATE: 5/29/12

O.C.A. CONSTRUCTION, INC.

BY: _____

DATE: _____

Name: _____

Title: _____

G. Execution of Stipulation

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Attorney General, State of Illinois

JOHN J. KIM, Interim Director
Illinois Environmental Protection Agency

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

BY: _____
MATTHEW J. DUNN, Chief

BY: _____
JOHN J. KIM, Interim Director

DATE: _____

DATE: _____

O.C.A. CONSTRUCTION, INC.

BY: Kelly Heneghan

DATE: May 23, 2012

Name: Kelly Heneghan

Title: President

CERTIFICATE OF SERVICE

I, STEPHEN J. SYLVESTER, an Assistant Attorney General in this case, do certify that I caused to be served this 29th day of May, 2012 the foregoing Stipulation and Proposal for Settlement with O.C.A. Construction, Inc. only, Motion to Request Relief from Hearing Requirement and Notice of Filing upon the persons listed on the Service List by electronic mail and by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.


STEPHEN J. SYLVESTER