

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 15-72
)	(Enforcement -Water/Air)
STARVED ROCK ADVENTURES, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that we have today, April 22, 2015, filed the Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing. True and accurate copies of the documents so filed are attached herewith and served upon you.

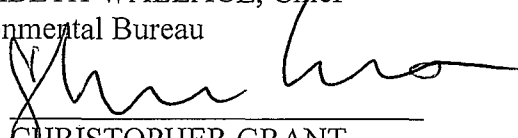
PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

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

ELIZABETH WALLACE, Chief
Environmental Bureau

BY:



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

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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 Starved Rock Adventures, Inc.
2. Section 31 of the Act, 415 ILCS 5/31 (2014), 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) (2014).

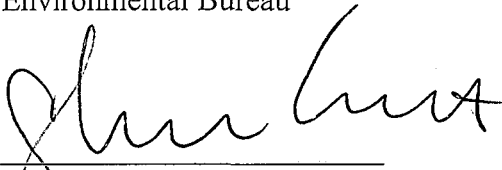
Respectfully submitted,

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

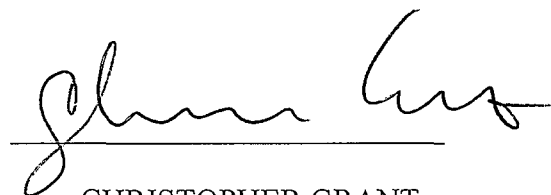
ELIZABETH WALLACE, Chief
Environmental Bureau

BY:


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

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 22nd day of April, 2015, the Stipulation and Proposal for Settlement, Motion to Request Relief from the Hearing Requirement, and Notice of Electronic Filing, upon the person listed below 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. Stephen Hedinger
Sorling Northrup
1 North Old State Capital Plaza
Suite 200
Springfield, IL 62705

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
(by electronic mail)

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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 Respondent STARVED ROCK ADVENTURES, INC. (“Respondent” or “SRA”) (“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.* (2014), 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 September 12, 2014, 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 (2014), 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 (2014).

3. At all times relevant to the Complaint, Respondent SRA was, and is, an Illinois corporation that is authorized to transact business in the State of Illinois.

4. SRA owns a parcel of land consisting of approximately 17 acres located at 1170 North 27TH Road (also known as Dee Bennett Road), Ottawa, La Salle County, Illinois ("Site"). The Site is located along the north bank of the Illinois River.

5. At all times relevant to the Complaint, SRA was developing the Site for use as a camping and recreational facility.

B. Allegations of Non-Compliance

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

Count I: AIR POLLUTION, violation of 415 ILCS 5/9(a) (2014), and 35 Ill. Adm. Code 201.141;

Count II: OPEN BURNING OF REFUSE AND TRADE WASTE, violation of 415 ILCS 5/9(a) (2014), 415 ILCS 5/9(c) (2014), and 35 Ill. Adm. Code 237.102;

Count III: CREATING A WATER POLLUTION HAZARD, violation of 415 ILCS 5/12(d) (2014);

Count IV: NPDES PERMIT VIOLATION: VIOLATION OF PERMIT CONDITIONS, 415 ILCS 5/12(f) (2014), and 35 Ill. Adm. Code Sections 309.102 and 305.102.

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, 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 (2014).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2014), 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 open burning of refuse and landscape waste caused brush fires to threaten nearby business and residences. Complainant has alleged that smoke from spreading brush fires on at least September 11, 2012 closed roads and railroad tracks in the vicinity of the Site. The alleged failure to prevent the threat of debris migrating into the Illinois River created a threat of water pollution in the Illinois River, an important commercial and recreational resource.
2. Development of the Site for recreational use will have social and economic benefit. Development of the Site requires clearing of undergrowth and contouring to accommodate the development plans.
3. The Site is suitable for development for recreational use provided landscape waste and debris is disposed of responsibly and adequate controls and inspections are implemented to prevent migration of contaminants into the Illinois River.
4. Safe and compliant disposal of landscape waste and trade waste, and management of the Site to comply with the Site's NPDES Permit is technically feasible and economically reasonable.
5. On April 5, 2013, the Respondent submitted a site-specific storm water pollution control plan to Illinois EPA, and thereby came into compliance with NPDES Permit

Condition IV.D.2, thus curing the violation of this Permit Condition alleged in Count IV.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2014), 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 there from 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;
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. Complainant alleges that the violations alleged in Count I occurred on at least September 11, 2012. Complainant alleges that the violations alleged in Count II occurred on April 9, 2012, June 14, 2012, and September 11, 2012. Complainant alleges that the violations alleged in Counts III and IV occurred on at least October 16, 2012. Complainant asserts that the alleged violations had a moderate degree of gravity.

2. Complainant asserts that that Respondent's combustion of landscape waste and trade waste in such manner that brush fires ignited and, on September 11, 2012 spread off-site, demonstrates an absence of diligence. Complainant also asserts that failure to develop an adequate storm water pollution prevention plan, and failure to install sediment controls also showed a want of diligence in meeting the requirements of the Act and Board regulations.

3. Complainant asserts that the on-site combustion of landscape waste and trade waste resulted in a saving of disposal fees. Respondent may have also realized a small economic benefit from failure to install sedimentation controls. Complainant asserts that assessment of a civil penalty of \$8,000.00 will recover any potential economic benefit realized by the Respondent for the alleged violations.

4. Complainant has determined, based upon the specific facts of this matter that a penalty of \$8,000.00 will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. 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.

8. Respondent did not complete an approved Compliance Commitment Agreement.

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. 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) (2014), 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 case name, case number and 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 \$8,000.00 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 September 12, 2014. 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 (2014), 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.

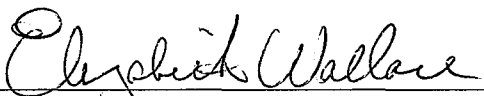
PEOPLE OF THE STATE OF ILLINOIS

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General of the
State of Illinois

LISA BONNETT, Director
Illinois Environmental Protection Agency

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

BY: 
ELIZABETH WALLACE, Chief
Assistant Attorney General
Environmental Bureau

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 4/17/15

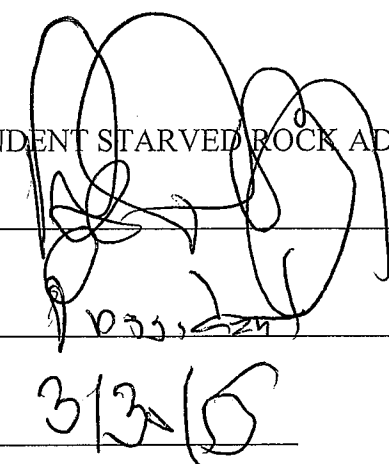
DATE: 4/13/15

RESPONDENT STARVED ROCK ADVENTURES, INC.

BY: _____

TITLE: _____

DATE: _____

A large, stylized handwritten signature in black ink is written over the signature line. Below the signature line, the date "3/3/15" is handwritten in black ink.

People v. Starved Rock Adventures, Inc., PCB 15-72