

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB No. 07-
) (Enforcement - Water)
 MEIJER STORES LIMITED PARTNERSHIP,)
 a Michigan domestic limited)
 partnership, and ROCKFORD)
 CONSTRUCTION CO., a Michigan)
 domestic corporation,)

 Respondents.)

NOTICE OF FILING

TO: See Attached Service List
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois 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.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: Jennifer A. Tomas
 Jennifer A. Tomas
 Assistant Attorney General
 Environmental Bureau
 188 W. Randolph St., 20th Floor
 Chicago, Illinois 60601
 (312) 814-0609

DATE: July 5, 2006

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Service List

Cynthia Warren
Meijer Corporate Counsel
2929 Walker Avenue, NW
Grand Rapids, Michigan 49544

Barry LaFreniere
Rockford Construction Company, Inc.
5540 Glenwood Hills Parkway SE
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Assistant Counsel, 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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 Respondents.)

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)(2004), 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)(2004). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Sections 12(a), (d) and (f) of the Act, 415 ILCS 5/12(a), (d) and (f)(2004).
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)(2004).

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)(2004).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:


JENNIFER A. TOMAS

Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-0609

DATE: July 5, 2006.

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a Michigan domestic limited)	
partnership, and ROCKFORD)	
CONSTRUCTION CO., a Michigan)	
domestic corporation,)	
)	
Respondents.)	

COMPLAINT FOR CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, MEIJER STORES LIMITED PARTNERSHIP, a Michigan domestic limited partnership, and ROCKFORD CONSTRUCTION CO., a Michigan domestic corporation, as follows:

COUNT I
WATER POLLUTION

1. This Complaint is brought 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 at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2004), and is an action for civil penalties.

2. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2004), and is charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Respondent MEIJER STORES LIMITED PARTNERSHIP ("Meijer"), was and is a Michigan domestic limited partnership. Meijer is not registered in Illinois.

4. At all times relevant to this Complaint, Respondent ROCKFORD CONSTRUCTION CO. ("RCC"), was and is a Michigan domestic corporation. RCC is not registered in Illinois.

5. RCC was retained by Meijer to manage construction of a new Meijer retail store on 32.29 acres located at 130 South Gary Avenue, Bloomingdale, DuPage County, Illinois ("Site"). The Site is now occupied by Meijer Store #198, a retailer of groceries and general merchandise.

6. RCC was responsible for construction activities at the Site including, but not limited to, erosion control at the Site.

7. On or about January 2, 2001, the Illinois EPA received a Notice of Intent from Meijer seeking coverage under the National Pollutant Discharge Elimination System ("NPDES") general storm water permit for construction site activities;

8. On January 5, 2001, the Illinois EPA granted Meijer coverage for the Site under the NPDES general storm water permit ("NPDES permit"), NPDES permit number ILR105967.

9. The NPDES permit required, in part, the control of sediment and erosion at the site.

10. On September 9, 2004, a representative of the Illinois EPA conducted an inspection of the Site. The Illinois EPA inspector observed that silt fencing was in place around the perimeter of the Site and that no storm sewers were present. The Illinois EPA inspector requested the Storm Water Pollution Prevention Plan ("SWPPP") for the Site from the Project Superintendent for RCC and was given an incomplete SWPPP. The Project Superintendent also failed to provide any storm water inspection reports. A complete SWPPP and regular storm water inspection reports are required by the terms of the NPDES permit.

11. On December 29, 2004, the Illinois EPA inspector again inspected the Site. The inspector observed that the south and east borders of the Site had either no silt fencing or inadequately maintained silt fencing. Storm sewers were now in place at the Site, but lacked proper erosion control.

12. On January 12, 2005, the Illinois EPA inspector again visited the Site to determine its compliance status. The RCC Project Superintendent failed to provide a copy of the SWPPP, as

requested by the inspector, and storm sewers at the Site still lacked proper erosion control. The Illinois EPA inspector notified Meijer's Construction Manager and Director of Construction of the ongoing noncompliance.

13. On March 23, 2005, two (2) Illinois EPA inspectors visited the Site at Meijer's request. The Illinois EPA inspectors observed that the Site had adequate erosion control, with only minor maintenance issues remaining.

14. On August 9, 2005, the Illinois EPA terminated the NPDES permit for the Site, pursuant to a Notice of Termination submitted on behalf of Meijer. In the Notice of Termination, Meijer stated that the project was completed and stabilized on June 16, 2006, an apparent errant entry that should have been "June 16, 2005."

15. Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

16. Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), provides the following definition:

"Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

17. Respondent Meijer, a limited partnership, and Respondent RCC, a corporation, are "persons" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2004).

18. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), provides the following definition:

"Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

19. Silt and eroded soil are "contaminants" as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2004).

20. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), provides the following definition:

"Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

21. Section 3.550 of the Act, 415 ILCS 5/3.550 (2004), provides the following definition:

"Waters" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or

partially within, flow through, or border upon this State;

22. The storm sewers located at the west border of the Site along Thorn Road travel east along Schick Road and lead to the Bloomingdale Sewer System. The Bloomingdale Sewer System is a "water" as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2004).

23. By causing, threatening or allowing the discharge of storm water containing silt and eroded soil into the Bloomingdale Sewer System, Respondents caused, threatened or allowed the discharge of a contaminant into the environment.

24. By causing, threatening or allowing the discharge of a contaminant into the environment, Respondents caused or tended to cause water pollution in Illinois.

25. By causing or tending to cause water pollution in Illinois, Respondents thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, MEIJER STORES LIMITED PARTNERSHIP, a Michigan domestic limited partnership, and ROCKFORD CONSTRUCTION CO., a Michigan domestic corporation, for the following relief:

1. Authorize a hearing in this matter at which time Respondents will be required to answer the allegations herein;

2. Find that Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2004);
3. Order Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a)(2004);
4. Assess against Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Order Respondents to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2004), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Grant such other relief as the Board deems appropriate and just.

COUNT II
WATER POLLUTION HAZARD

1-21. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 14 and paragraphs 16 through 22 of Count I as paragraphs 1 through 21 of this Count II.

22. Section 12(d) of the Act, 415 ILCS 5/12(d)(2004), provides as follows:

No person shall:

* * *

(d) Deposit any contaminants upon the land in such place and manner so as to create a water

pollution hazard.

23. By failing to have and maintain adequate erosion and sediment control measures at the Site, Respondents created a water pollution hazard as to a water of the State.

24. By creating a water pollution hazard, Respondents thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d)(2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, MEIJER STORES LIMITED PARTNERSHIP, a Michigan domestic limited partnership, and ROCKFORD CONSTRUCTION CO., a Michigan domestic corporation, for the following relief:

1. Authorize a hearing in this matter at which time Respondents will be required to answer the allegations herein;

2. Find that Respondents have violated Section 12(d) of the Act, 415 ILCS 5/12(d)(2004);

3. Order Respondents to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d)(2004);

4. Assess against Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Order Respondents to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2004), including

attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Grant such other relief as the Board deems appropriate and just.

COUNT III
NPDES PERMIT VIOLATION

1-21. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 14 and paragraphs 16 through 22 of Count I as paragraphs 1 through 21 of this Count III.

22. Section 12(f) of the Act, 415 ILCS 5/12(f)(2004), provides, in relevant part, as follows:

No person shall:

* * *

(f) Cause, threaten or allow the discharge of any ,contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program...

* * *

23. By failing to adequately implement the SWPPP for the Site, .failing to have a copy of the SWPPP available at the Site, and failing to conduct required inspections at the Site,

Respondents caused, threatened or allowed the discharge of storm water containing silt and sediment into the Bloomingdale Sewer System.

24. By causing, threatening or allowing the discharge of storm water containing silt and sediment into the Bloomingdale Sewer System, Respondents caused, threatened or allowed the discharge of a contaminant into the environment.

25. By causing, threatening or allowing the discharge of a contaminant into the environment in violation of conditions of an NPDES storm water permit, Respondents thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, MEIJER STORES LIMITED PARTNERSHIP, a Michigan domestic limited partnership, and ROCKFORD CONSTRUCTION CO., a Michigan domestic corporation, for the following relief:

1. Authorize a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Find that Respondents have violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2004);
3. Order Respondents to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f)(2004);
4. Assess against Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

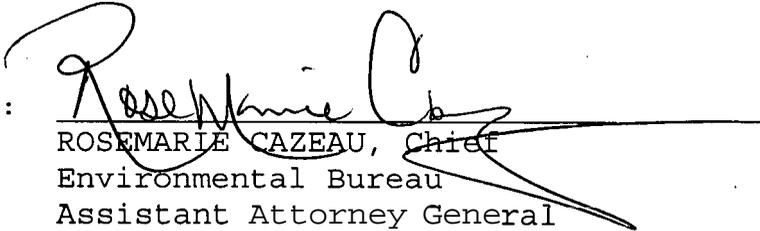
5. Order Respondents to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Grant such other relief as the Board deems appropriate and just.

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

By:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

JENNIFER A. TOMAS
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
(312) 814-0609

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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"), MEIJER STORES LIMITED PARTNERSHIP, a Michigan domestic limited partnership, and ROCKFORD CONSTRUCTION CO., a Michigan domestic corporation ("Respondents"), 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. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any

of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondents agree to be bound by the Stipulation and Board Order and not to contest its validity in any subsequent proceeding to implement or enforce its terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2004).

II. AUTHORIZATION

The undersigned representatives for each party 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.

III. STATEMENT OF FACTS

A. Parties

1. On July 5, 2006, 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 (2004), against the Respondents.

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 (2004).

3. At all times relevant to the Complaint, Respondent MEIJER STORES LIMITED PARTNERSHIP ("Meijer"), was and is a Michigan domestic limited partnership. Meijer is not registered in Illinois.

4. At all times relevant to this Complaint, Respondent ROCKFORD CONSTRUCTION CO. ("RCC"), was and is a Michigan domestic corporation. RCC is not registered in Illinois.

B. Site Description

1. Prior to March 23, 2005, RCC was retained by Meijer to manage construction of a new Meijer retail store on 32.29 acres located at 130 South Gary Avenue, Bloomingdale, DuPage County,

Illinois ("Site"). The Site is now occupied by Meijer Store #198, a retailer of groceries and general merchandise.

2. RCC was responsible for construction activities at the Site including, but not limited to, erosion control at the Site.

C. Allegations of Non-Compliance

Complainant contends that the Respondents have violated the following provisions of the Act and Board regulations:

Count I: Water Pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2004).

Count II: Water Pollution Hazard, in violation of Section 12(d) of the Act, ,415 ILCS 5/12(d)(2004).

Count III: NPDES Permit Violation, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f)(2004).

D. Admission of Violations

The Respondents admit to the violations alleged in the Complaint filed in this matter and referenced within Section III.C herein.

E. Compliance Activities to Date

1. On March 23, 2005, two (2) Illinois EPA inspectors visited the Site at Meijer's request. The Illinois EPA inspectors observed that the Site had adequate erosion control,

with only minor maintenance issues remaining.

2. On August 9, 2005, the Illinois EPA terminated Meijer's National Pollutant Discharge Elimination System ("NPDES") permit for the Site, pursuant to a Notice of Termination submitted on behalf of Meijer. In the Notice of Termination, Meijer stated that the project was completed and stabilized on June 16, 2006, an apparent errant entry that should have been "June 16, 2005."

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, Meijer, and any partner, agent, or employee of Meijer, and RCC, and any officer, director, agent or employee of RCC, as well as any successors or assigns of the Respondents. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their partners, officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local

laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2004), 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 state the following:

1. The environment was threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondents' violations.
2. There is social and economic benefit to the Site.
3. Operation of the facility is suitable for the area in which it is located.
4. Compliance with the terms of the NPDES permit for the Site was both technically practicable and economically reasonable.
5. Respondents have subsequently complied with the Act and the NPDES permit.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2004), 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 state as follows:

1. The Respondents failed to implement adequate erosion controls at the Site, failed to have complete inspection reports and failed to have a complete Storm Water Pollution Prevention Plan ("SWPPP") available at the Site. The failure to have adequate erosion control measures at the Site endured intermittently for approximately three (3) months, with periods of both compliance and noncompliance. The failure to have

complete inspection reports and a complete SWPPP at the Site endured intermittently for approximately nine (9) months, with periods of compliance and noncompliance. .

2. Respondents were relatively diligent in attempting to come back into compliance with the Act and NPDES permit once the Illinois EPA notified them of their noncompliance.

3. Respondents' failure to properly maintain erosion control measures at the Site and failure to complete required weekly inspection reports at the Site resulted in an economic benefit to Respondents of Fifteen Thousand Six Hundred Forty-Two Dollars (\$15,642.00). It is Respondents' position that no economic benefit was derived from their alleged noncompliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Eighty-Five Thousand Dollars (\$85,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act.

5. To Complainant's knowledge, Respondents have 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.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. Respondent Meijer shall pay a civil penalty in the sum of Sixty Thousand Dollars (\$60,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

2. Respondent RCC 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.

3. The economic benefit of Fifteen Thousand Six Hundred Forty-Two Dollars (\$15,642.00) is included in the total penalty of Eighty-Five Thousand Dollars (\$85,000.00) and split equally among the two (2) Respondents in their respective civil penalty amounts. It is Respondents' position that no economic benefit was derived from their alleged noncompliance.

4. Respondents do not guarantee each other's payment obligations under this Order.

5. The penalties described in this Stipulation shall be paid by certified check, money order or electronic funds transfer payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

6. The name, case number and each Respondent's individual Federal Employer Identification Number (FEIN), shall appear on each Respondent's check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Jennifer A. Tomas
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

James Allen Day
Assistant counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

7. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2004). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on

unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

8. For purposes of payment and collection, Respondents may be reached at the following addresses:

Meijer Stores Limited Partnership
Robert J. Verheulen, Registered Agent
2929 Walker Avenue, NW
Grand Rapids, Michigan 49544-9428

Rockford Construction Company
John J. Wheeler, Registered Agent
5540 Glenwood Hills Parkway
Grand Rapids, Michigan 49512

9. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

B. Future Use

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.D, below, the Respondents hereby agree that this Stipulation may be used

against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h)(2004). Further, Respondents agree to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

C. Cease and Desist

The Respondents shall cease and desist from future violations of the Act that were the subject matter of the Complaint as outlined in Section III.C ("Allegations of Non-compliance") of this Stipulation.

D. Release from Liability

1. In consideration of Respondent Meijer's payment of a \$60,000.00 penalty and any specified costs and accrued interest, its commitment to Cease and Desist as contained in Section VIII.C and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges Respondent Meijer from any further liability or penalties for

violations of the Act that were the subject matter of the Complaint herein.

2. In consideration of Respondent RCC's payment of a \$25,000.00 penalty and any specified costs and accrued interest, its commitment to Cease and Desist as contained in Section VIII.C and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges Respondent RCC from any further liability or penalties for violations of the Act that were the subject matter of the Complaint herein.

3. The releases set forth above do not extend to any matters other than those expressly specified in Complainant's Complaint filed on July 5, 2006. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents 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 Respondents' failure to satisfy the requirements of this Stipulation.

4. 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 or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), or entity other than the Respondents.

E. Correspondence, Reports and Other Documents

Any and all correspondence, except for payments pursuant to Sections VIII.A ("Penalty Payment"), shall be submitted as follows:

As to the Complainant

Jennifer A. Tomas
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

James Allen Day
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondents

Cynthia Warren
Meijer Corporate Counsel
2929 Walker Avenue, NW
Grand Rapids, Michigan 49544

Barry LaFreniere
Rockford Construction Company, Inc.
5540 Glenwood Hills Parkway SE
Grand Rapids, Michigan 49512

F. Modification of Stipulation

The parties may, by mutual written consent, agree to 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 VIII.E. **Any** such request shall be made by separate document, and shall not be submitted within any other submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of each party, and then accompany a joint motion to the Illinois Pollution Control Board seeking a modification of the prior order approving and accepting the Stipulation to approve and accept the Stipulation as amended.

G. Enforcement of Board Order

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, that

Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced as such through any and all available means.

2. Respondents agree that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then no party is bound by the terms herein.

4. It is the intent of the Complainant and Respondents that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

H. Execution of Document

This Order shall become effective only when executed by all parties and the Court. This Order may be executed by the parties in one or more counterparts, all of which taken together, shall constitute one and the same instrument.

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

PEOPLE OF THE STATE OF ILLINOIS,

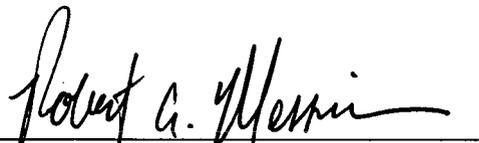
LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: 6/9/06

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 6/1/06

MEIJER STORES LIMITED PARTNERSHIP

BY: Robert J. VerHeulen DATE: 6/5/06
Name: Robert VerHeulen
Title: Deputy General Counsel

ROCKFORD CONSTRUCTION CO.

BY: _____ DATE: _____
Name: _____
Title: _____

MEIJER STORES LIMITED PARTNERSHIP

BY: _____

DATE: _____

Name: _____

Title: _____

ROCKFORD CONSTRUCTION CO.

BY:  _____

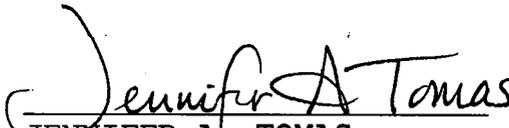
DATE: 6/22/06
6/2/06

Name: Barry LaFreniere

Title: Project Manager

CERTIFICATE OF SERVICE

I, JENNIFER A. TOMAS, an Assistant Attorney General, certify that on the 5th day of July 2006, I caused to be served by Certified Mail, Return Receipt Requested, the foregoing Complaint for Civil Penalties, Stipulation and Proposal for Settlement, and Motion for Relief from Hearing Requirement 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. TOMAS