

ORIGINAL



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JUN 25 2008

STATE OF ILLINOIS  
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

June 20, 2008

The Honorable Dorothy Gunn  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 West Randolph  
Chicago, Illinois 60601

Re: ***People v. Lake Arlann Drainage District, et al.***  
**PCB No. 07-32**

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Michael D. Mankowski".

Michael D. Mankowski  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031

MDM/pp  
Enclosures

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

JUN 25 2008

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
SOUTHWIND CONSTRUCTION CORP., )  
an Indiana corporation, )  
)  
Respondent. )

PCB No. 07-32  
(Enforcement - Water)

NOTICE OF FILING

To: Southwind Construction Corp.  
c/o Dirck H. Stahl  
Ziener, Stayman, Weitzel & Shoulders, LLP  
20 N.W. First Street, 9<sup>th</sup> Fl.  
P.O. Box 916  
Evansville, IN 47706-9016

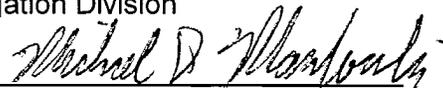
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY:   
MICHAEL D. MANKOWSKI  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: June 20, 2008

ORIGINAL

CERTIFICATE OF SERVICE

RECEIVED  
CLERK'S OFFICE

JUN 25 2008

STATE OF ILLINOIS  
Pollution Control Board

I hereby certify that I did on June 20, 2008, send by First Class mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT

To: Southwind Construction Corp.  
c/o Dirck H. Stahl  
Ziener, Stayman, Weitzel & Shoulders, LLP  
20 N.W. First Street, 9<sup>th</sup> Fl.  
P.O. Box 916  
Evansville, IN 47706-9016

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, IL 62794

  
MICHAEL D. MANKOWSKI  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE

JUN 25 2008

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, ) ORIGINAL  
 )  
 Complainant, )  
 )  
 v. ) PCB No. 07-32  
 ) (Enforcement - Water)  
 SOUTHWIND CONSTRUCTION CORP., )  
 an Indiana corporation, )  
 )  
 Respondent. )

**MOTION FOR RELIEF FROM HEARING REQUIREMENT**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2006), moves that the Illinois Pollution Control 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) (2006). In support of this motion, Complainant states as follows:

1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. 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) (2006).

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) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS  
LISA MADIGAN  
ATTORNEY GENERAL

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

BY:   
MICHAEL D. MANKOWSKI  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: June 20, 2008

JUN 25 2008  
STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )

Complainant, ) ORIGINAL

v. )

PCB No. 07-32  
(Water-Enforcement)

SOUTHWIND CONSTRUCTION CORP., )  
an Indiana corporation, )

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 SOUTHWIND CONSTRUCTION CORP. ("Respondent"), 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. (2006), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

**I. STATEMENT OF FACTS**

**A. Parties to the Stipulation**

1. On November 1, 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 (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. At all times relevant to the Complaint, Respondent was and is an Indiana corporation that is authorized to transact business in the State of Illinois.

4. At all times relevant to this Complaint, Southwind was the contractor for the Lake Arlann sediment removal project.

5. Lake Arlann is a natural lake previously called Lake Meyers, located in Pekin, Illinois.

6. The Lake Arlann sediment removal project utilized a hydraulic dredging process to remove approximately 330,000 cubic yards of accumulated sedimentation and siltation from Lake Arlann.

7. The project required the construction of a confined detention facility (“CDF”), located across 14<sup>th</sup> Street from Lake Arlann, in order to store and de-water the sediment hydraulically dredged and pumped from the lake bottom to the CDF. The CDF was an earthen lagoon constructed of compacted earthen dikes with approximately 550,000 cubic yards of capacity. Discharge from the CDF flowed back into Lake Arlann.

**B. Allegations of Non-Compliance**

Complainant contends that the Respondent has violated the following provisions of the

Act and Board regulations:

Count I: WATER POLLUTION, in violation of Sections 12(a) of the Act, 415 ILCS 5/12(a) (2006), and Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203

Count II: EFFLUENT VIOLATIONS, in violation of Sections 12(a) & (f) of the Act, 415 ILCS 5/12(a) & (f) (2006), and Sections 304.124(a) and 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.124(a) and 309.102(a).

The Complainant agrees to exclude the Respondent from Counts III and IV of the Complaint.

**C. 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 or this Stipulation, and this Stipulation shall not be interpreted as including such admission.

**D. Compliance Activities to Date**

The Lake Arlann sediment removal project has been completed. At the end of the project, the Respondent employed proper technology, namely a polyamine flocculent and silt curtain to reduce the amount of total suspended solids ("TSS") entering Lake Arlann from the CDF. The area of Lake Arlann surrounding the CDF outlet was the last area dredged, removing the majority of sediment that escaped the CDF.

## **II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. 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 42 (2006).

## **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, the parties state the following:

1. Elevated TSS levels, caused by the project threatened the health of the aquatic life within Lake Arlann. The extent of deviation from the requirements of the Act and the violations by the Respondent have a substantial adverse effect on the statutory and regulatory process.
2. The Respondent implemented additional control measures to mitigate the discharge of silt from the site at a cost to itself, and thus no economic benefit was accrued by the Respondent in this matter.
3. Operation of CDF and dredging project was suitable for the area in which it occurred.
4. The use of a flocculent and sufficient stormwater controls at the site was both technically practicable and economically reasonable.
5. Once having been notified of its non-compliance, the Respondent made substantial efforts to come into compliance with the Act and the Board's regulations.

#### **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, the parties state as follows:

1. The Respondent began dredging Lake Arlann in April of 2004. Elevated TSS levels were observed in the lake as early as April 15, 2004. Insufficient stormwater controls were also observed at this time. TSS violations persisted until at least June 2005.
2. The Respondent made substantial efforts to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified it of its noncompliance.
3. The Respondent implemented additional control measures to mitigate the discharge of silt from the site at a cost to itself, and thus no economic benefit was accrued by the Respondent in this matter.
4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a payment of Two Thousand Five Hundred Dollars (\$2,500.00) will serve to

deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. A review of Illinois EPA records does not indicate any previous enforcement action taken by the Illinois EPA against Southwind Construction Corp.

6. Southwind Construction Corp. did not voluntarily disclose to the Illinois EPA the violations that are the subject of this case.

7. The settlement of this matter does not include a supplemental environmental project.

## **V. TERMS OF SETTLEMENT**

### **A. Payment**

1. The Respondent shall pay the sum of Two Thousand Five Hundred Dollars (\$2,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. from the date the Board adopts and accepts this Stipulation, in a manner prescribed below.

### **B. 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:

Michael D. Mankowski  
Assistant Attorney General  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62702

**C. Release from Liability**

In consideration of the Respondent's payment of the Two Thousand Five Hundred Dollars (\$2,500.00) and any specified costs and accrued interest, completion of all activities required hereunder, and upon the Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for 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 November 1, 2006. 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 or the Illinois EPA 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.

**D. Enforcement and Modification 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.

**E. Execution of Stipulation**

The undersigned representatives for each party to this 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 this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

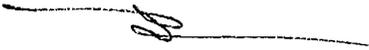
PEOPLE OF THE STATE OF ILLINOIS,

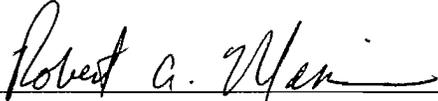
FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

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

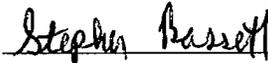
BY:   
\_\_\_\_\_  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
\_\_\_\_\_  
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 5/14/08

DATE: 5/2/08

SOUTHWIND CONSTRUCTION CORP.

BY:   
\_\_\_\_\_  
Name: Stephen Bassett  
Title: President

DATE: 6/9/08