

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
ENVIRONMENTAL RECLAMATION)
COMPANY, an Illinois corporation,)
)
Respondent.)

PCB No. 07-42
(Enforcement)

RECEIVED
CLERK'S OFFICE
SEP 02 2008
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: Brian Konzen
Lueders, Robertson & Konzen LLC
1939 Delmar Avenue
P.O. Box 735
Granite City, IL 62040-0735

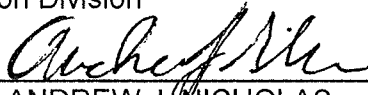
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

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: 
ANDREW J. NICHOLAS
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: August 28, 2008

CERTIFICATE OF SERVICE

I hereby certify that I did on August 28, 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:

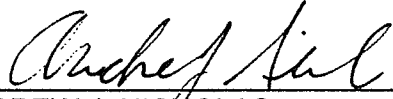
To: Brian Konzen
Lueders, Robertson & Konzen LLC
1939 Delmar Avenue
P.O. Box 735
Granite City, IL 62040-0735

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

To: John T. Therrault, Assistant 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



ANDREW J. NICHOLAS
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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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: 

ANDREW N. NICHOLAS
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: August 28, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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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 ENVIRONMENTAL RECLAMATION COMPANY, an Illinois corporation, ("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. The 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 20, 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 Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned and operated a "sanitary landfill" as such term is defined at Section 3.445 of the Act, 415 ILCS 5/3.445 (2006), pursuant to Landfill Permit Number 1994-524-LFM ("the permit") at West Route 316, Charleston, Coles County, Illinois ("site").

4. Provisions of the permit include prohibitions against litter and storm water runoff causing off-site impacts.

5. Respondent's facility is adjacent to Riley Creek.

6. On March 23, 2004, the Illinois EPA inspected the landfill and investigated the site conditions, including storm water runoff and erosion controls. The Complainant alleges that the west side of the landfill, the ditch between the county road and another ditch closer to the landfill (respectively, the "road ditch" and the "landfill ditch") was full of silt and sediment washed down from the slope of the landfill. The vegetation on the lower slope was inadequate to capture the sedimentation from the bare earth portions of the upper slope on the western face of the landfill. The road ditch drains into Riley Creek.

7. On June 15, 2004, the Illinois EPA inspected the landfill and investigated the runoff and other problems documented during the previous inspection. Complainant alleges that the Respondent failed to adequately provide for heavy storm water runoff resulting in sedimentation in the road ditch again. Complainant also alleges that a six-inch erosion gully was present on the west side of the landfill.

8. On August 3, 2004, the Illinois EPA inspected the landfill and investigated the

runoff and other problems documented during the previous inspections. Litter was not observed. The Respondent had installed a sedimentation fence and planned to place check bales and other devices in the road ditch to prevent sediment from flowing into the creek.

9. On October 19, 2004, the Illinois EPA inspected the landfill and investigated alleged runoff and other alleged problems documented during the previous inspections. The Complainant alleges there was heavy sedimentation in the road ditch, turbid water flowing toward and discharging into Riley Creek and some of the sedimentation fence had washed away and check bales recently placed in the road ditch were no longer in the ditch. Litter was not present, but Complainant alleges that exposed waste was sticking out from the cover material and that there was uncovered refuse in the active area from the previous operating day.

10. On December 2, 2004, the Illinois EPA inspected the landfill and investigated the runoff and other problems documented during the previous inspections. While the road ditch was still full of sediment, the check bales had been replaced and secured, thereby allowing relatively clear water to discharge into the creek.

11. On March 8, 2005, the Illinois EPA inspected the landfill and determined that it was in compliance with its permit and other requirements.

B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act and Board Regulations:

Count I: By failing to properly cover landfill waste by placing a uniform layer of at least six inches of clean soil material on top of the landfill waste by the end of each day of operation, the Respondent has violated its permit and Section 811.106(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code Section 811.106(a), and thereby violated Sections 21(d) and 21(o) of the Act, 415 ILCS 5/21(d) and (o) (2006).

Count II: Respondent has caused, threatened or allowed the discharge of silt, sediment and other contaminants into Riley Creek so as to cause or tend to cause water pollution, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006). Respondent is not permitted by the Agency in accordance with 35 Ill. Adm. Code 309 for its discharges of runoff from disturbed areas to waters of the State and has otherwise failed to comply with Section 811.103(a) of the Board's Waste Disposal Regulations, 35 Ill. Adm. Code 811.103(a).

Respondent has caused, threatened or allowed the discharge of silt, sediment and other contaminants into Riley Creek without an NPDES permit for point source discharges issued by the Agency, and thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

By failing to properly control storm water runoff from the site, the Respondent has violated its permit and thereby violated Section 21(d) of the Act, 415 ILCS 5/21(d) (2006).

C. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

Following the March and June 2004 inspections and noted violations, the Respondent excavated the accumulated sediment from the drainage ditch and installed storm water fences and check bales to resolve the drainage issues. Additionally, Respondent performed a number of improvements to address its closure and erosion issues, including re-grading and soil replacement. Following the October 2004 inspection and noted violations, the Respondent installed drainage basins to collect runoff and sedimentation.

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. Complainant contends that the injury to, or interference with, the protection of the health, general welfare, and physical property of the People, would be characterized as water and land pollution and the degree of injury was minimized due to the corrective action;
2. The parties agree that Respondent's site is of social and economic benefit;
3. Respondent's site is suitably located along West Route 316 in Coles County;
4. The parties agree that complying with the Act, regulations and the landfill permit is technically practicable and economically reasonable; and
5. Respondent implemented measures before and subsequent to the alleged violations that are the subject of the Complaint in this matter in order to operate in compliance with the Act and 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 failed to comply with the provisions of its landfill permit. The violations began in or around May 2004 and continued intermittently until October 2004. The Respondent resolved the individual violations at various times after notification of noncompliance.
2. The parties agree Respondent was successful in remedying violations after notification. It remains disputed whether the Respondent lacked diligence in maintaining its compliance up to the date of the next inspection.
3. The Respondent did not accrue any economic benefit from non-compliance.
4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of eight thousand five hundred dollars (\$8,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. The Illinois EPA pursued similar allegations through Administrative Citation in the 2004 calendar year and sought a one thousand dollar (\$1,000.00) penalty from the Respondent.
6. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental

project.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Eight Thousand Five Hundred Dollars (\$8,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

C. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

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

The name, case number and the Respondent's federal tax identification number shall appear on the check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, IL 62706

D. Future Compliance

1. The Respondent shall inspect all storm water devices weekly and following any precipitation event over ½ inch in a 24 hour period. Inspections shall be documented in written form and available to the Illinois EPA upon request.

2. The Respondent shall make temporary repairs to storm water devices within 24 hours of detection, and permanent repairs are to be completed within thirty (30) calendar days of detection.

3. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representative, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

4. 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.

E. Release from Liability

In consideration of the Respondent's payment of the \$8,500.00 penalty, completion of all activities required hereunder, 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 November 20, 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.

F. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for penalty payments, shall be submitted as follows:

As to the Complainant

Andrew J. Nicholas
Assistant Attorney General

Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

As to the Illinois EPA

Kyle Davis
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Dustin Berger
Inspector
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

As to the Respondent

CT Corporation System
Registered Agent
208 S. LaSalle St., Suite 814
Chicago, IL 60604

Brian Konzen
Lueders, Robertson & Konzen, LLC
1939 Delmar Ave.
P.O. Box 735
Granite City, IL 62040

G. Enforcement and Modification of Stipulation

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

H. 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,

LISA MADIGAN,
Attorney General
State of Illinois

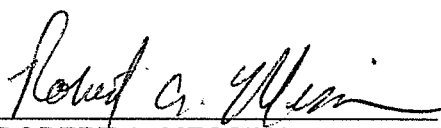
FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: 8/27/08

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 8/26/08

ENVIRONMENTAL RECLAMATION
COMPANY

BY: _____

Name: _____

Title: _____


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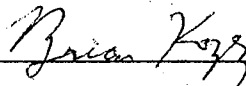
BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE: 8/27/08

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

ENVIRONMENTAL RECLAMATION
COMPANY

BY: 
Name: Brian Konzen
Title: Atty.

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

