

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
LISA MADIGAN, Attorney General of)	
the State of Illinois,)	
)	
Complainant,)	PCB 08-83
)	
v.)	(Enforcement - Water)
)	
RUPE CONTRACTING, INC.,)	
an Illinois corporation, and JOHN A. RUPE,)	
individually and as owner and operator of)	
Rupe Contracting, Inc.,)	
)	
Respondents.)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief from Hearing Requirement, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

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

By: *Andrew Armstrong*

ANDREW ARMSTRONG
Assistant Attorney General
Environmental Bureau
69 West Washington, 18th Floor
Chicago, Illinois 60602
(312) 814-0660

DATE: June 30, 2009

SERVICE LIST

Rupe Contracting, Inc.
John A. Rupe, President and Registered Agent
3096 800th Road
P.O. Box 201
Wenona, Illinois 61377

John A. Rupe
451 State Route 251
Rutland, Illinois 61358

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**MOTION TO REQUEST RELIEF
FROM HEARING REQUIREMENT**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On May 15, 2008, the Complaint was accepted for hearing by the Pollution Control Board ("Board") in this matter. On June 30, 2009, a Stipulation and Proposal for Settlement was filed with the Board. If accepted, the Stipulation and Proposal for Settlement will dispose of the case.
2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2006), allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement. Section 31(c)(2) provides:

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 currently scheduled in the instant case.
4. The Complainant requests the relief conferred by Section 31(c)(2) of the Act.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2006).

Respectfully submitted,

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

By: 
ANDREW ARMSTRONG
Assistant Attorney General
Environmental Bureau
69 West Washington, 18th Floor
Chicago, Illinois 60602
(312) 814-0660

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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 RUPE CONTRACTING, INC. and JOHN A. RUPE (“Respondents”) (“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.* (2006), and the Board 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

1. On May 1, 2008, 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 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 (2006).

3. At all times relevant to the Complaint, Respondent Rupe Contracting, Inc. ("Rupe Contracting") was an Illinois corporation that was authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent John A. Rupe ("John Rupe") was the president, owner, and registered agent of Rupe Contracting, and was in control of and responsible for the day-to-day operations of Rupe Contracting.

5. Complainant alleges that, on September 11, 2006, the Respondents performed grading and filling work on property located in Spring Valley, Bureau County, Illinois owned by another party ("the Site"). Complainant alleges that, in the course of performing grading and filling work at the Site, the Respondents struck and ruptured a sanitary sewer line.

B. Allegations of Non-Compliance

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

Count I: Creating a Water Pollution Hazard
Violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

Count II: Causing Sanitary Sewage Overflow
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a), and Section
306.304 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code
306.304.

C. Non-Admission of Violations

The Respondents represent that they have 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 Respondents do 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

On September 19, 2006, the Respondents repaired the ruptured sewer line at the Site by installing a new section of pipe and pouring concrete to seal the line.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation, and any officer, director, agent, or employee of the Respondents, 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 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 Respondents 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 to the Stipulation state the following:

1. The environment was threatened by the Respondents' violations.
2. There was social and economic benefit afforded by the Respondents' grading and filling work at the Site.
3. The Respondents' grading and filling work at the Site was suitable for the area in which it was located, so long as it had been conducted in accordance with all applicable statutory and regulatory requirements.

4. Compliance with all applicable statutory and regulatory requirements for the Respondents' grading and filling work at the Site was both technically practicable and economically reasonable.

5. On September 19, 2006, the Respondents repaired the ruptured sewer line at the Site by installing a new section of pipe and pouring concrete to seal the line. As of the date of filing of this Stipulation, the Respondents' grading and filling work at the Site is complete.

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 to the Stipulation state as follows:

1. The September 11, 2006 rupture of a sewer line at the Site allowed an estimated 108,000 gallons of untreated sewage to leak from the ruptured sewer line and accumulate in an adjacent ditch. The sewer line was not completely repaired until September 19, 2006.
2. Respondents were diligent in repairing the ruptured sewer line at the Site, after local authorities requested they do so.
3. Respondents did not receive an economic benefit from causing the rupture of the sewer line at the Site. The rupture was not caused by a failure to spend money to install necessary control equipment
4. The Complainant has determined, based upon the specific facts of this matter, that a penalty of Two Thousand Eight Hundred Thirty-Five Dollars (\$2,835.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board Regulations.
5. To the Complainant's knowledge, the 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.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondents shall jointly and severally pay a civil penalty in the sum of Two Thousand Eight Hundred Thirty-Five Dollars (\$2,835.00) within thirty (30) calendar days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents 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 Respondents 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 and case 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:

Andrew Armstrong
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

D. Future Compliance

1. Effective immediately, the Respondents shall conduct all construction activities in accordance with the Act, Board Regulations, and all applicable permits issued by the Illinois EPA.

2. 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 Board Regulations.

3. The Respondents 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 Respondents' payment of the \$2,835.00 penalty and their commitment to cease and desist as contained in Section V.D.3 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives, and discharges the Respondents

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 the Complainant's Complaint filed on May 1, 2008. 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.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondents.

F. Enforcement of Stipulation

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

G. Execution of Stipulation

The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

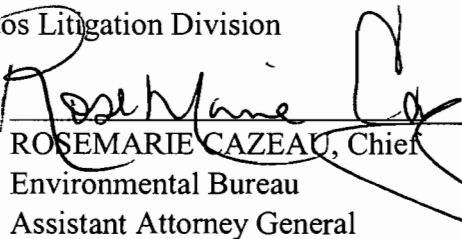
WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

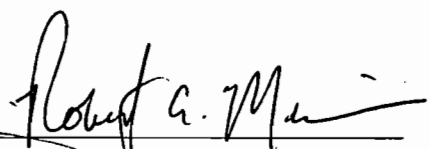
PEOPLE OF THE STATE OF ILLINOIS, THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

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

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 5/11/09

DATE: 5/4/09

RUPE CONSTRUCTION, INC.

JOHN A. RUPE

BY: _____
Name: _____
Title: _____

BY: _____
John A. Rupe

DATE: _____

DATE: _____

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

PEOPLE OF THE STATE OF ILLINOIS,

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

DOUGLAS P. SCOTT, Director
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BY: _____
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Chief Legal Counsel

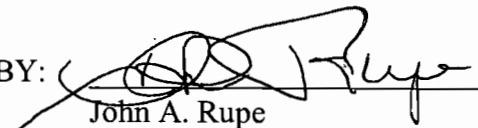
DATE: _____

DATE: _____

RUPE CONSTRUCTION, INC.

JOHN A. RUPE

BY: 
Name: _____

BY: 
John A. Rupe

Title: President

DATE: 6/17/09

DATE: 6/17/09

CERTIFICATE OF SERVICE

I, ANDREW ARMSTRONG, an Assistant Attorney General, do certify that I caused to be mailed this 30th day of June, 2009, the foregoing Motion to Request Relief from Hearing Requirement, Stipulation and Proposal for Settlement, and Notice of Filing, upon the persons listed on said notice, by U.S. first-class mail.



ANDREW ARMSTRONG
Assistant Attorney General
Environmental Bureau
69 West Washington, 18th Floor
Chicago, IL 60602
(312) 814-0660