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AUG 20 2009
STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 18, 2009

John T. Theriault, Assistant Clerk
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Illinois Valley Paving Co., Inc.***
PCB No. 09-40

Dear Clerk:

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 envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen J. Janasie".

Stephen J. Janasie
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

SJJ/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

PCB No. 09-40

ILLINOIS VALLEY PAVING COMPANY,)
INC.,)

Respondent.)

NOTICE OF FILING

To: Edward R. Gower
Hinshaw & Culbertson LLP
400 S. Ninth Street, Ste. 200
Springfield, IL 62701

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STATE OF ILLINOIS
Pollution Control Board

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: 
STEPHEN J. JANASIE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: August 18, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on August 18, 2009, 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: Edward R. Gower
Hinshaw & Culbertson LLP
400 S. Ninth Street, Ste. 200
Springfield, IL 62701

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


STEPHEN J. JANASIE
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
ILLINOIS VALLEY PAVING COMPANY,)
INC.,)
)
Respondent.)

PCB No. 09-40

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STATE OF ILLINOIS
Pollution Control Board

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) (2008), 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) (2008). 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) (2008).

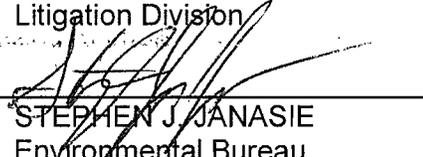
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: _____


STEPHEN J. JANASIE
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: August 18, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 ILLINOIS VALLEY PAVING)
 COMPANY, INC.)
)
 Respondent.)

PCB No. 09-40

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CLERK'S OFFICE

AUG 20 2009

STIPULATION AND PROPOSAL FOR SETTLEMENT OF ILLINOIS
Pollution Control Board

The 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 ILLINOIS VALLEY PAVING COMPANY, INC. ("Respondent") ("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'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. In conjunction with this Stipulation, 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, the Respondent was and is an Illinois corporation in good standing that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, the Respondent owned and operated a temporary concrete batch plant ("the site") which is located inside the northwest portion of the "cloverleaf" intersection of I-74 and I-474 just west of Peoria, Peoria County, Illinois. The site is located near an unnamed tributary of Kickapoo Creek and storm water and other runoff from the site flow into this waterway.

5. On March 4, 2005, Lyle Ray ("inspector") of the Illinois EPA's Peoria Regional Office performed an inspection at the site. At that time, the Respondent conducted operations on the site even though the site's silt fences were inadequate.

6. On June 16, 2005, the inspector re-inspected the site and found the Respondent using the site for washing out the remains of concrete residue from tandem dump trucks, which overwhelmed the erosion control devices. As a result of the runoff, the water containing concrete and residues entered the Kickapoo Creek via an unnamed tributary. Water samples of the runoff showed elevated levels of pH and Total Suspended Solids.

7. On July 28, 2005, the inspector conducted a re-inspection and found the concrete residues in the tributary to Kickapoo Creek were heavier than during the previous visit.

B. Allegations of Non-Compliance

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

Count I: Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), Section 302.203 of the Illinois Pollution Control Board's Water Quality Standards, 35 Ill. Adm. Code 302.203.

The Respondent caused water pollution by discharging contaminant-laden stormwater runoff into the Kickapoo Creek via an unnamed tributary and also caused waters of the State to contain sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin, by discharging contaminant-laden stormwater runoff into the Kickapoo Creek via an unnamed tributary.

Count II: Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

The Respondent violated the terms of its NPDES permit number ILPC06436 by failing to implement adequate erosion controls at the site.

C. Non-Admission of Violations

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

D. Compliance Activities to Date

The Respondent's concrete batch plant was a temporary operation, and all equipment has now been removed from the Site. Ultimately, the property will be transferred to the Illinois Department of Transportation.

The Respondent has implemented a number of erosion controls at the Site, including the application of top soil, seed, and straw mulch. Subsequent to the March 4, 2005 inspection, the Respondent constructed additional silt fences. Erosion controls have also been placed around the receiving ditch that is the subject of the Complaint referenced herein. The Respondent has implemented and applied erosion controls to the satisfaction of the Illinois EPA; however, additional grass cover needs to take root before the Site achieves final stabilization and the Respondent may terminate the general NPDES stormwater permit.

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 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).

The Respondent shall notify each contractor to be retained to perform work required in this Stipulation of each of the requirements of this Stipulation relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Stipulation to each contractor already retained no later than thirty (30) calendar days after the date of entry of this Stipulation. In addition, the Respondent shall provide copies of all schedules for implementation of the provisions of this Stipulation to the prime vendor(s) supplying the control technology systems and other equipment required by this Stipulation.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation. In the event that the Respondent proposes to sell or transfer any real property or operations subject to this Stipulation, the Respondent shall notify the Complainant and the Illinois EPA thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. The Respondent shall make as a condition of any such sale or transfer, that

the purchaser or successor provide to the Respondent site access and all cooperation necessary for the Respondent to perform to completion any compliance obligations required by this Stipulation. The Respondent shall provide a copy of this Stipulation to any such successor in interest and the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, the Respondent and a proposed purchaser or operator of the facility may jointly request, and the Complainant and the Illinois EPA, in their discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondent. This provision does not relieve the Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's failure to implement adequate erosion controls at the Site and the discharge of contaminant-laden stormwater runoff into the Kickapoo Creek via an unnamed tributary, in violation of the Respondent's general NPDES stormwater permit.

2. A temporary concrete batch plant has social and economic value.

3. Operation of the facility was suitable for the area in which it occurred.

4. Maintaining adequate erosion controls in compliance with the Respondent's general NPDES stormwater permit is both technically practicable and economically feasible.

5. The Respondent has subsequently complied with the Act and the Board 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 l 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 Respondent failed to implement adequate erosion controls at the Site, in violation of the Respondent's general NPDES stormwater permit, and caused water pollution through the discharge of contaminant-laden stormwater runoff into the Kickapoo Creek via an unnamed tributary. The violations began on or around March 4, 2005, and were individually resolved at various times in the following three years.
2. The Respondent was diligent in attempting 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's economic benefit of noncompliance was nominal.
4. The Complainant has determined, based upon the specific facts of this matter, that a penalty of Fifteen Thousand Two Hundred Dollars (\$15,200.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. The Respondent was the subject of a 1990 enforcement action arising from an Illinois EPA Bureau of Air referral. The matter was resolved by settlement agreement, with no admission of violations, and the payment of a \$15,000 penalty. The settlement agreement was accepted by an Order of the Board. The prior enforcement action occurred nearly twenty years

ago and involved dissimilar violations, so no enhancement of the penalty was made on the basis of the prior enforcement action.

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 Fifteen Thousand Two Hundred Dollars (\$15,200.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

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

2. Pursuant to Section 42(g) of the Act, 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 numbers 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:

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

D. Future Compliance

1. The Respondent shall continue to maintain erosion controls at the Site to ensure compliance with the Act and applicable state and federal regulations. The Respondent shall also continue to maintain erosion controls and increase grass cover on the Site in order to achieve final stabilization, terminate the Site's general NPDES stormwater permit, and ultimately transfer the Site to Illinois Department of Transportation.

2. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, 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.

3. 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.

4. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$15,200.00 penalty, its commitment to Cease and Desist as contained in Section V.D.4 above, 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 the Complainant's Complaint filed in conjunction with this Stipulation. 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, 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

Stephen J. Janasie
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62702

As to the Illinois EPA

Chad Kruse
Assistant Counsel
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondent

Edward R. Gower
Hinshaw & Culbertson LLP
400 South Ninth Street, Suite 200
Springfield, Illinois 62701-1908

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.

2. The Parties to the Stipulation may, by mutual written consent, agree to extend any compliance dates or 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 V.G. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Stipulation. Any such agreed modification shall be in writing, signed by authorized representatives of the Parties to the Stipulation.

H. 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 this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

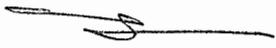
THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

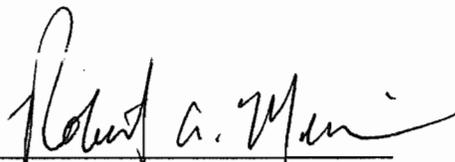
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY:



THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY:



ROBERT A. MESSINA
Chief Legal Counsel

DATE:

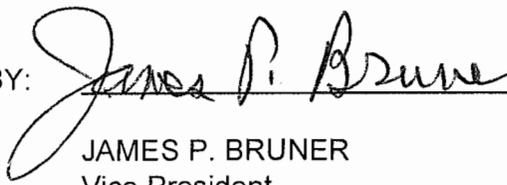
5/21/09

DATE:

5/12/09

ILLINOIS VALLEY PAVING, INC.

BY:



JAMES P. BRUNER
Vice President

DATE:

8-11-09