

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
) PCB No. 09-110
E.F. HEIL, LLC, an Illinois limited liability)
company,) (Enforcement - Land)
)
Respondent.)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 27th day of August, 2009, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief from Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

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

BY: 
STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau North
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-2087
ssylvester@atg.state.il.us

DATE: August 27, 2009

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Attorney for Respondent
Bill S. Forcade
Jenner & Block LLP
330 N. Wabash Avenue
Chicago, IL 60611-7603

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
) PCB No. 09-110
E.F. HEIL, LLC, an Illinois limited liability)
company,) (Enforcement - Land)
)
Respondent.)

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 as to Respondent, E.F. Heil, LLC, an Illinois limited liability company. In support thereof, the Complainant states as follows:

1. On May 20, 2009, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter. On August 27, 2009, a Stipulation and Proposal for Settlement was filed with the Board in this matter.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2008), effective August 1, 1996, 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.

3. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2008), provides as follows:

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).

4. No hearing is currently scheduled in the instant case.
5. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415

ILCS 5/31(c)(2) (2008).

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) (2008).

Respectfully submitted,

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

BY: _____


STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau North
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-2087
ssylvester@atg.state.il.us

Electronic Filing - Received, Clerk's Office, August 27, 2009

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 a limited liability company that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned and operated a clean construction and demolition debris ("CCDD") fill operation on approximately 93 acres, located at CR 089SE, Kankakee, Kankakee County, Illinois (ASite@).

4. On August 8, 2005, Respondent applied to the Illinois EPA for interim authorization to operate a CCDD fill operation at the Site.

5. On July 10, 2008, the Illinois EPA issued to Respondent CCDD Permit No. CCDD2007-034 to operate a CCDD fill operation at the Site.

B. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board Waste Disposal Regulations and Board CCDD Regulations:

Count I: Conducting a Waste Disposal Operation Without a Permit: Violation of Section 21(d)(1) of the Act, 415 ILCS 5/21(d)(1) (2006).

Count II: Failure to Determine If Waste Was Hazardous or Special: Violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2006), and Sections 722.111 and 808.121(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 722.111 and 808.121(a).

Count III: Disposing of Non-Clean Construction or Demolition Debris Waste at the Site: Violation of Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2006), and Sections 1100.201(a) and 1100.205(f) and (g) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(f) and (g).

Count IV: Failure to Use a Photo Ionization Detector or Other Equivalent Device to Check All Incoming Loads: Violation of Section 22.51(a) and (c) of the Act, 415 ILCS 5/22.51(a) and (c) (2006), and Sections 1100.201(a) and 1100.205(a)(1) and (c)(2) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(a)(1) and (c)(2).

Count V: Failure to Conduct Daily Discharge Inspections: Violation of Section 22.51(a) and (c) of the Act, 415 ILCS 5/22.51(a) and (c) (2006), and Sections 1100.201(a) and 1100.205(b)(1) and (c)(3) of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(b)(1) and (c)(3).

C. Non-Admission of Violations

The Respondent denies the violations alleged in the Complaint filed in this matter and referenced above.

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.

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 Respondents' failure to properly screen incoming loads at the Site and reject non-CCDD waste, to timely determine if the non-CCDD waste, in the form of painted brick, accepted by Respondent was a special waste or a hazardous waste, to perform load checks of all incoming loads for volatile organic compounds with a photo ionization detector or other equivalent device, and to conduct daily discharge inspections at the Site.
 2. The Site has social and economic benefit.
 3. Respondent's activities at the Site were suitable for the area in which they occurred.
 4. Properly screening incoming loads at the Site and rejecting non-CCDD waste, timely determining if the non-CCDD waste, in the form of painted brick, accepted by Respondent was a special waste or a hazardous waste performing load checks of all incoming loads for volatile organic compounds with a photo ionization detector or other equivalent device, and conducting daily discharge inspections at the Site were both technically practicable and economically reasonable.
 5. Respondent has subsequently complied with the Act and the Board Waste Disposal Regulations and Board CCDD 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 to the Stipulation state as follows:

1. Although it is unknown how long the Respondent accepted the loads without properly screening for volatile organic compounds or how long the painted bricks were stored on the property without Respondent making a special or hazardous waste determination, the duration

of the violations that are the subject of the Complaint are alleged to have occurred on or before May 25, 2007 and were individually resolved at various times in the following year prior to the June 2, 2008 Illinois EPA follow-up inspection.

2. Respondent took all necessary steps to remedy the violations and the Respondent's CCDD fill operation is currently in compliance.

3. The civil penalty obtained includes any economic benefit that Respondent may have accrued as a result of the delay in compliance.

4. Complainant states that a civil penalty payment of Twenty Thousand Dollars (\$20,000.00) will serve to deter further violations by Respondent and to otherwise aid in enhancing voluntary compliance with the Act and the Board Waste Disposal Regulations and Board CCDD Regulations by Respondent and other persons similarly subject to the Act and the Board Waste Disposal Regulations and Board CCDD Regulations.

5. To Complainant's knowledge, Respondent has had no previously adjudicated violations of the Act and the Board Waste Disposal Regulations and Board CCDD Regulations.

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 Twenty Thousand Dollars (\$20,000.00) 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 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:

Stephen J. Sylvester
Environmental Bureau

Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. 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.

2. 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.

3. 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 \$20,000.00 penalty, its commitment to cease and desist as contained in Section V.D. 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 Complainant's

Electronic Filing - Received, Clerk's Office, August 27, 2009

Complaint filed on May 20, 2009. 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 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. 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.

Electronic Filing - Received, Clerk's Office, August 27, 2009

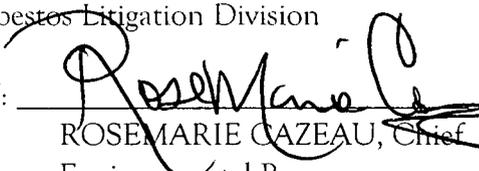
WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

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: 
JOHN J. KIM
Chief Legal Counsel

DATE: 8/11/09

DATE: 8/5/09

RESPONDENT, E.F. HEIL, LLC

BY: _____

Name: _____

Title: _____

DATE: _____

**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: _____

BY:

JOHN J. KIM
Chief Legal Counsel

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: _____

DATE: _____

RESPONDENT, E.F. HEIL, LLC

BY:



Name: Edward F. Heil

Title: Pres.

DATE:

8/21/09

CERTIFICATE OF SERVICE

I, STEPHEN J. SYLVESTER, an Assistant Attorney General in this case, do certify that I caused to be served this 27th day of August, 2009, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief from Hearing Requirement and Notice of Filing upon the persons listed on the Service List by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.


STEPHEN J. SYLVESTER