

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
)
vs.)
)
PAR DEVELOPMENT, INC.,)
an Illinois corporation,)
)
Respondent.)

PCB No. 09-69
(Enforcement - Water)

NOTICE OF FILING

TO: Warren R. Fuller
Fuller and Berres
Attorneys at Law
69 South Barrington Road
South Barrington, Illinois 60010

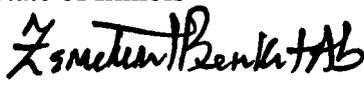
Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Ste. 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of the Stipulation and Proposal for Settlement, an Agreed Motion for Relief from the Hearing Requirement, Notice of Filing and a Certificate of Service, a copy of which is attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: 
ZEMEHERET BEREKET-AB
Environmental Bureau
Assistant Attorneys General
69 W. Washington St., Suite 1800.
Chicago, Illinois 60602
(312) 814-3816

DATE: September 14, 2009

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
LISA MADIGAN, Attorney General)	
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Complainant,)	
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vs.)	PCB No. 09-69
)	(Enforcement - Water)
PAR DEVELOPMENT, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

**AGREED MOTION TO REQUEST RELIEF
FROM THE HEARING REQUIREMENT**

In support of this Motion, the parties state as follows:

1. Today, the People of the State of Illinois, filed a Stipulation and Proposal for Settlement, with the Illinois Pollution Control Board.
2. Section 31(c)(2) of the Illinois Environmental Protection Act, ("Act"), 415 ILCS 5/31(c)(2)(2008) 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). . . .
3. Complainant and Respondent agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2008).

WHEREFORE, Complainant and Respondent request relief from the hearing requirement pursuant to Section 31(c)(2) of the Act.

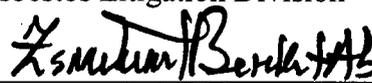
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

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

BY:



ZEMEHERET BEREKET-AB
Environmental Bureau
Assistant Attorneys General
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-3094

DATE: September 14, 2009

the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2008), against the Respondent PAR DEVELOPMENT, INC.

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 (2008).

3. At all times relevant to the Complaint, Respondent PAR was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, PAR was and is the developer at the parcel of real property intended to be a retail business development project called Lake Pointe located at the northeast corner of the intersection at Algonquin Road and Lakewood Road in Lake in the Hills, McHenry County, Illinois ("Site").

4. On September 24, 2004, the Illinois EPA received from PAR a Notice of Intent ("NOI") application for coverage under the NPDES general permit to discharge storm water from construction site activities. On October 26, 2004, the Illinois EPA issued to PAR Notice of Coverage Under Construction Site Activity Storm Water General Permit NPDES Permit No. ILR10B681.

5. The total size of the construction Site is approximately 26.3 acres and the closest receiving water is Exner Marsh, an Illinois protected area. The NOI indicated that storm water from the Site discharges directly to waters of the State, Exner Marsh.

6. On June 20, 2007, the Illinois EPA conducted an inspection of the construction Site.

7. During the June 20, 2007 inspection, the Illinois EPA observed that a pump was pumping sediment laden water adjacent to the silt fence, and the sediments were breaching the silt fence and entering into a pond named Rose's Pond, a "water" of the State of Illinois as

defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2008), which is located within the Site. Rose's Pond is a tributary to Exner Marsh, also a "water" of the State of Illinois as defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2008).

8. The Illinois EPA also observed some piles of dirt laden with debris as well as a pile of broken concrete with rebar adjacent to Rose's Pond and the silt fence. The exposed piles of soil laden with debris and pile of broken concrete with rebar (which Respondents advised was left in part by an unrelated prior owner) were placed in a manner which posed a potential hazard to water quality.

9. During the June 20, 2007, inspection, the Illinois EPA also observed that the NOI was not posted and there was no copy of the stormwater pollution prevention plan ("SWPPP") available for review at the Site.

10. On August 10, 2007, the McHenry County Soil and Water Conservation District ("MCSWCD") conducted an inspection of the Site under a delegation agreement with the Illinois EPA. Respondent alleges there is no evidence that it received any report of this inspection. The Complainant states there was no statutory or regulatory provision requiring the MCSWCD to provide the Respondent a copy of the report. Despite this, Complainant alleges that on August 15, 2007, the MCSWCD did send to Ryan Trottier of PAR Development a copy of its August 10, 2007 inspection report and photos.

11. During the August 10, 2007 inspection, the MCSWCD inspector observed sediment-laden water being pumped from an area adjacent to the Site where PAR's contractor was working to widen Algonquin Road for the McHenry County Highway Department. The Illinois EPA asserts that water was pumped from the area adjacent to the Site and discharged to the ground on the Site and traveled 300 to 400 feet over bare ground to the detention basin,

documented in photographs and from the basin, the water was pumped into a filter bag, which failed to remove suspended solids from the water. The water then flowed into Exner Marsh. The Respondent disputes the assertions made in the preceding sentence.

12. On July 9, 2007, the Illinois EPA sent a violation notice to PAR.

13. On July 16, 2007, PAR sent its compliance commitment agreement ("CCA") to the Illinois EPA.

14. On August 15, 2007, the Illinois EPA rejected PAR's CCA. PAR responded to the Illinois EPA's letter of August 15, 2007 and requested a conference for clarification with respect to the Illinois EPA's letter of August 15, 2007. No conference was held pursuant to that request, as Illinois law does not require the Illinois EPA to hold a conference with an alleged violator in this instance.

15. On March 20, 2008, the Illinois EPA issued a Notice of Intent to Pursue Legal Action ("NIPLA") letter. PAR requested a meeting with the Illinois EPA pursuant to the NIPLA letter, as a result of which a telephone conference was held on April 11, 2008.

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 Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

Count II: Water Pollution Hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2008).

Count III: NPDES Permit Violation-Discharge of Contaminants, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), and 35 Ill. Adm. Code 309.102(a).

Count IV: NPDES Permit Violation–Failure to Post Notification of Coverage, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), and 35 Ill. Adm. Code 309.102(a).

Count V: NPDES Permit Violation–Failure to Have Stormwater Pollution Prevention Plan Available at the Site, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), and 35 Ill. Adm. Code 309.102(a).

C. Non-Admission of Violations

The Respondent neither admits nor denies the violation(s) alleged in the Complaint filed in this matter and referenced herein.

D. Compliance Activities to Date

PAR has completed the following compliance activities to date:

1. Silt fence repair completed for west side of pond, north, east and south side of stockpile, and the east side of the area south of the stockpile.
2. Jute netting completed over rock checks and 50 feet of ditch prior to Rose Pond.
3. North Pond – Small area of existing silt fence replaced with monofilament silt fence and the area stabilized with seed and blanket.
4. Temporary seeding of the stockpile completed.
5. Repair utility areas completed: Backfill, seed and stabilization.
6. Restoration of machine tracking from utility, fence and tree installations around south pond completed.
7. Observed clean water leaving the Property.
8. Protecting all surface water inlets with monofilament drop-in basket.
9. Site stabilization with maturing vegetation.

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 (2008).

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.

III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c)(2008), 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 adjacent property to the Site is a marsh designated an Illinois protected area by the Illinois Department of Natural Resources. The discharge of contaminants into a protected natural resource poses serious injury to the State's natural resources.
2. There is social and economic benefit to Respondent's construction activities at the Site.
3. Operation of the facility was suitable for the area in which it occurred.
4. Implementing adequate erosion control measures and complying with NPDES permit operating conditions is both technically practicable and economically reasonable.
5. Respondent is in the process of implementing compliance measures to comply 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)(2008), 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. Stormwater permit violations were noted during the Illinois EPA's inspection on June 20, 2007, and the Illinois EPA asserts that continuing permit violations were observed during a follow-up inspection by the MC SWCD on August 10, 2007. The adjacent property known as the Exner Marsh is designated an Illinois protected area by the Illinois Department of Natural Resources.
2. Respondent took some steps to address erosion controls at the Site after the Illinois EPA's July 20, 2007 inspection, but the Illinois EPA asserts a second inspection of the Site approximately three weeks later indicated continuing problems at the Site. Respondent asserts that it was not notified of the follow-up inspection referred to in paragraph 1 preceding or

the second inspection or its results in endeavoring to resolve any issues related to its remedial efforts or follow-up inspection noted.

3. Economic benefits accrued by Respondent are believed to be minimal and are accounted for in the \$20,000.00 penalty agreed herein.

4. Complainant has determined, based upon the specific facts of this case, that a penalty of Twenty Thousand Dollars (\$20,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.

6. Respondent did not voluntarily disclose the violations that are the subject of this case but did execute an Incident of Non-Compliance Report ("ION") which acknowledged the pumping activities of the road building contractor referred to in Section I.A.II preceding after MCSWCD learned of the pumping activities and directed Respondent to submit the ION. The Respondent submitted a completed ION at the recommendation of its consultant, Haeger Engineering, LLC.

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. Stipulated Penalties, Interest and Default

1. If the Respondent fails to complete any activity or fails to comply with any response or reporting requirement by the date specified in this Stipulation, the Respondent shall provide notice to the Complainant of each failure to comply with this Stipulation and shall pay stipulated penalties in the amount of \$100.00 per day until such time that compliance is achieved. The Complainant may make a demand for stipulated penalties upon the Respondent for its noncompliance with this Stipulation. However, failure by the Complainant to make this demand shall not relieve the Respondent of the obligation to pay stipulated penalties. All stipulated penalties shall be payable within thirty (30) calendar days of the date the Respondent knows or should have known of its noncompliance with any provision of this Stipulation.

2. 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.

3. 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:

Environmental Bureau North
Illinois Attorney General's Office
69 West Washington Street, Suite 1800
Chicago, Illinois 60602

D. Future Compliance

1. By November 30, 2009, PAR shall complete adequate reseeded of the Site to establish final stabilization.
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 \$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 Complaint filed on March 30, 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 (2008), 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

Zemeheret Bereket-Ab
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

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

Karen Katamay
Division of Water Pollution Control
Field Operations Section
9511 West Harrison Street
Des Plaines, Illinois 60016

As to the Respondent

PAR Development, Inc.
1141 East Main Street, Suite 100
East Dundee, Illinois 60118

Warren R. Fuller
Fuller and Berres
69 S. Barrington Road
South Barrington, Illinois 60010

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

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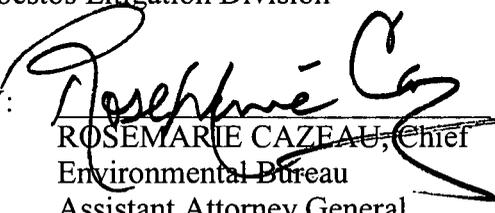
PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 8/27/09

DATE: 8/25/09

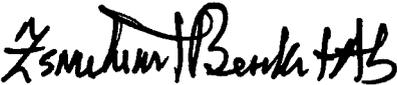
PAR DEVELOPMENT, INC.

BY: 
Name: Daniel L Sheppard
Title: Exec. V. P.

DATE: 9/3/09

CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 14th day of September, 2009, the foregoing Notice of Filing, a Stipulation and Proposal for Settlement, and an Agreed Motion for Relief from the Hearing Requirement, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.


ZEMEHERET BEREKET-AB