



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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CLERK'S OFFICE

NOV 12 2009

STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

November 6, 2009

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

Re: ***People v. James Buysee***
PCB No. 09-31

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, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Christine Zeivel".

Christine Zeivel
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

CZ/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
)
Respondent.)
JAMES BUYSEE,)
d/b/a J & B Landscaping,)

PCB No. 09-31
(Enforcement - Water)

NOTICE OF FILING

To: James D. Buysee
J & B Landscaping
31 Shaffer Drive
P.O. Box 398
Coal Valley, IL 61240

RECEIVED
CLERK'S OFFICE
NOV 12 2009
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: Christine Zeivel
CHRISTINE ZEIVEL
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 6, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on November 6, 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: James D. Buysee
J & B Landscaping
31 Shaffer Drive
P.O. Box 398
Coal Valley, IL 61240

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


CHRISTINE ZEIVEL
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
Respondent.)
JAMES BUYSEE,)
d/b/a J & B Landscaping,)

PCB No. 09-31
(Enforcement - Water)

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NOV 12 2009
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: Christine Zeivel
CHRISTINE ZEIVEL
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 6, 2009

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 a landscape contractor doing business as J & B Landscaping (“J & B”) in Illinois. At all times relevant to the Complaint, Respondent was located at Route 6 and Niabi Road approximately two miles north of Coal Valley, Rock Island County, Illinois (“site”).

4. On October 5, 2006, the Illinois EPA conducted an inspection of the Respondent’s site and observed a green, dried hydroseed mixture that had been dumped on the bank of Shaffer Creek, a tributary to the Rock River. A trail of the green mixture flowing to the creek was noted.

5. When the Respondent completed a landscaping job, he dumped the hydroseed mixture on the bank and into Shaffer Creek.

6. A sample of the green dried material was collected and analysis showed the presence of the pesticide dichloro-diphenyl-trichloroethane (“DDT”) at 17 parts per billion (“ppb”) or micrograms/kilogram (“ug/Kg”), the DDT derivative; dichloro-diphenyl-dichloroethylene (“DDE”) at 16 ppb, and aroclor-1248 at 320 ppb.

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

By causing or allowing the discharge of the hydroseed mixture into Shaffer Creek, the Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

By dumping the hydroseed mixture on the bank of Shaffer Creek, the Respondent violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

Count II: Open Dumping Violations

By causing or allowing open dumping of leftover hydroseed mixture at its site, the Respondent has violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2006).

By disposing of leftover hydroseed mixture at his site, the Respondent violated Section 21(e) of the Act, 415 ILCS 5/21(e) (2006).

By spilling hydroseed mixture onto the bank and into Shaffer Creek, the Respondent violated Section 21(p)(4) of the Act, 415 ILCS 5/21(p)(4) (2006).

Count III: Water Quality Violations

By discharging bright green colored hydroseed onto the land and into the waters of the State, the Respondent violated Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

C. Admission of Violations

The Respondent admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.B. herein.

D. Compliance Activities to Date

The Respondent instituted a company policy to clean out its hydroseed equipment upon completion of all landscaping work at each job site. In addition, all leftover hydroseed mixture is

now being applied to the finished landscaped area rather than disposing of it at the Respondent's site.

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).

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 by the Respondent's violations.
2. There is social and economic benefit to Respondent's business.
3. Operation of Respondent's business is suitable for the area in which the discharges occurred.
4. Compliance with the Act and Board regulations is both technically practicable and economically reasonable.
5. 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 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 violations were first brought the attention of the Illinois EPA on October 4, 2006. The Respondent’s method of disposal of leftover hydroseed mixture was ongoing for over six years. The violations were resolved in the spring of 2007.

2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified him of his noncompliance.

3. The Respondent avoided daily, weekly, monthly and yearly costs associated primarily with the extra labor expense of properly disposing of the contaminants in the correct manner. Utilizing the United States Environmental Protection Agency’s BEN model, the Respondent obtained a \$10,495.00 economic benefit from the noncompliance in this matter.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of fourteen thousand and three hundred dollars (\$14,300.00) 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. 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 fourteen thousand and three hundred dollars (\$ 14,300.00). The Respondent shall make three payments according to the following payment schedule:

Payment Number 1: \$4,800 within thirty (30) days of Board approval.

Payment Number 2: \$4,800 within one hundred and ninety (190) days of Board approval.

Payment Number 3: \$4,700 within three hundred and sixty (360) days of Board approval.

B. Default and Interest

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:

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

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 \$ 14,300.00 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 November 12, 2008. 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 and Modification 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.

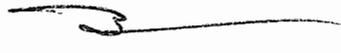
WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY:



THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

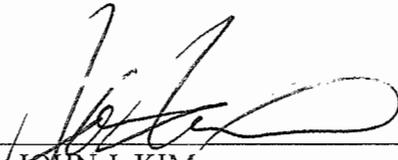
DATE:

11/06/09

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY:

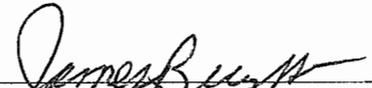


JOHN J. KIM
Chief Legal Counsel

DATE:

11/4/09

BY:



JAMES BUYSEE

DATE:

10-10-09