

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB No. 09-65
	)	(Enforcement)
STARK EXCAVATING, INC.,	)	
an Illinois corporation,	)	
	)	
Respondent.	)	

**NOTICE OF ELECTRONIC FILING**

To: See Attached Service List


PLEASE TAKE NOTICE that on June 24, 2010, I electronically filed 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: June 24, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I did on June 24, 2010, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.



---

Stephen J. Janasie  
Assistant Attorney General

This filing is submitted on recycled paper.

**SERVICE LIST**

Edward R. Gower  
Attorney at Law  
400 South Ninth Street, Suite 200  
Springfield, IL 62701-1908

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
Springfield, IL 62794

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>PCB No. 09-65</b>
	)	<b>(Enforcement)</b>
<b>STARK EXCAVATING, INC.,</b>	)	
<b>an Illinois corporation,</b>	)	
	)	
<b>Respondent.</b>	)	

**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. On February 26, 2009, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter.

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).

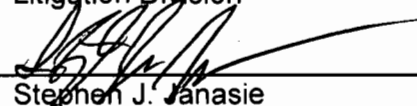
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2008).

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: June 24, 2010

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>vs.</b>	)	<b>No. PCB 09-065</b>
	)	<b>(Enforcement)</b>
<b>STARK EXCAVATING, INC.,</b>	)	
<b>an Illinois corporation,</b>	)	
	)	
<b>Respondent.</b>	)	

**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 Respondent, STARK EXCAVATING, INC., ("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.* (2008), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

**I. STATEMENT OF FACTS**

**A. Parties**

1. On February 26, 2009, 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 (2008), 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 (2008).

3. At all times relevant to the Complaint, Respondent was and is an Illinois perpetual corporation in good standing with the Illinois Secretary of State's Office.

Respondent's President and registered agent is Mr. David K. Stark.

4. Respondent operates a clean construction and demolition debris disposal site ("site") which is located in Section 5 of Downs Township, just outside of the western outskirts of Downs, McLean County, Illinois, and immediately north of Interstate 74. The site is a former sand pit owned by Mr. David K. Stark.

5. On or about September 25, 2007, Illinois EPA inspectors conducted an inspection of Respondent's site. At that time, Illinois EPA learned that Respondent performed no inspections of incoming loads of clean construction and demolition debris at the site.

6. On or about September 25, 2007, Illinois EPA inspectors conducted an inspection of Respondent's site. At that time, Illinois EPA learned that Respondent maintained no records on site of the incoming loads of clean construction and demolition debris at the site.

7. On or about September 25, 2007, Illinois EPA inspectors conducted an inspection of Respondent's site. At that time, Illinois EPA learned that Respondent did not use a photo ionization detector ("PID device") to inspect incoming loads of clean construction and demolition debris at the site.

8. Respondent's site is a waste disposal site as that term is defined in Section 3.540 of the Act, 415 ILCS 5/3.540 (2006).

9. Respondent's site is also a CCDD fill operation as that term is defined in Section 1100.103 of the Board's Clean Construction of Demolition Debris Regulations, 35 Ill. Adm. Code 1100.103.

**B. Allegations of Non-Compliance**

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

Count I: Sections 21(d)(2), 21(e), and 22.51(a) of the Act, 415 ILCS 5/21(d)(2), 21(e), 22.51(a) (2008), Sections 1100.201(a), 1100.210(b), 1100.205(b)(1), 1100.205(c)(1), 1100.205(g) and 1100.205(h) of the Board's Clean Construction or Demolition Debris Regulations, 35 Ill. Adm. Code 1100.201(a), 1100.210(b), 1100.205(b)(1), 1100.205(c)(1), 1100.205(g) and 1100.205(h).

The Respondent allowed for the accumulation and use of clean construction and demolition debris on the site without following the requisite inspection and record keeping practices.

Count II: Sections 21(d)(2), 21(e), 22.51(a), and 22.51(c)(2)(A), of the Act, 415 ILCS 5/21(d)(2), 21(e), 22.51(a), and 22.51(c)(2)(A) (2008), Sections 1100.201(a) and 1100.205(a)(1) of the Board's Clean Construction or Demolition Debris Regulations. 35 Ill. Adm. Code 1100.201(a) and 1100.205(a)(1).

The Respondent failed to inspect incoming loads of clean construction and demolition debris at the site with a PID device.

**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 made all requisite changes to the inspection and record keeping practices at the site upon being notified by the Illinois EPA that the Respondent was in violation of the Act and Board regulations.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. 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 violations 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).

### **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 Illinois EPA states that human health and the environment were threatened by the Respondent's violations. Stark Excavating denies that its conduct actually threatened human health or the environment due to the care taken by Stark in screening materials prior to their delivery to the site in question.
2. A clean construction and demolition debris disposal site has social and economic benefit.
3. The operation of a clean construction and demolition debris disposal site is

suitable for the area in which it is located.

4. The implementation of the requisite inspection and record keeping practices at the site was 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)(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. The Respondent failed to implement requisite inspection and record keeping

practices at the site. The violations began on or around September 25, 2007 and continued until February of 2008. The violations were resolved after Respondent was notified by the Illinois EPA of its failure to comply with the Act and Board regulations.

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 received no economic benefit from the noncompliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Five Thousand Dollars (\$5,000.00) would serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations. However, Complainant has agreed with Respondent to accept a supplemental environmental project ("SEP"), including Eleven Thousand One Hundred and Thirty Three Dollars and Seventy Cents (\$11,133.70) of work performed, in lieu of a penalty payment.

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 include a SEP. The Respondent provided material, labor, equipment, and funds for the payment of all hauling and landfill fees in the demolition of two dilapidated structures owned by the Illinois State Police Heritage Foundation at 4000 North Peoria Road, Springfield, Sangamon County, Illinois. Expenditures made in the demolition of the two structures totaled \$11,133.70.

## **V. TERMS OF SETTLEMENT**

### **A. 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.

**B. Supplemental Environmental Project**

1. In order to promote the goals of the Act to restore, protect and enhance the quality of the environment, the Respondent has performed the following supplemental environmental project ("SEP"). The settlement value of the SEP is Eleven Thousand One Hundred and Thirty Three Dollars and Seventy Cents (\$11,133.70) and will offset penalties sought by the Complainant and the Illinois EPA in this matter. The SEP consisted of the demolition of two dilapidated structures at 4000 North Peoria Road, Springfield, Sangamon County, Illinois for the Illinois State Police Heritage Foundation. The Respondent provided material, labor, and equipment for the physical demolition of the structures. The Respondent also paid for the removal of demolition debris from the site of the demolition by Donley Trucking, Inc. of Williamsville, IL. Finally, the Respondent paid for the disposal of demolition debris at the Sangamon Valley Landfill, 2565 Sandhill Road, Springfield, Sangamon County, Illinois.

2. By signature on this Stipulation, the Respondent certifies that, as of the date of entry of this Order, it was not required to perform or develop the foregoing SEP by any federal, state or local law or regulation, nor is it required to perform or develop the SEP by agreement or injunctive relief in any other case. The Respondent further certifies that it has not received, and is not presently negotiating to receive credit for, the SEP in any other enforcement action.

3. Any public statement, oral or written, in print, film or other media, made by the Respondent making reference to any SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the Illinois Attorney General and the Illinois EPA for alleged violations of the Illinois Environmental Protection Act and regulations promulgated thereunder."

**C. Release from Liability**

In consideration of the Respondent's payment commitment to cease and desist as contained in Section V.A. above, its performance of the SEP as contained in Section V.B. above, its 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 February 26, 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.

**D. 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.

**E. 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

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

BY:

  
\_\_\_\_\_  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

DATE:

6/23/10

BY:

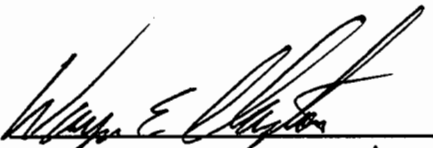
  
\_\_\_\_\_  
JOHN J. KIM  
Chief Legal Counsel

DATE:

6/2/10

STARK EXCAVATING, INC.

BY:

  
\_\_\_\_\_  
Name: WAYNE E. CLAYTON

Title: SAFETY DIRECTOR - RISK MANAGER

DATE:

6/18/10