

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
 by LISA MADIGAN, Attorney )  
 General of the State of Illinois, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 AMERICAN EXCAVATING & SEPTIC )  
 SERVICES, INC., an Illinois corporation, and )  
 CBS LEASING, L.L.C., an Illinois limited )  
 liability company, )  
 )  
 Respondents. )

PCB No. 11-55  
(Enforcement)

**NOTICE OF FILING**

To: See attached service list  
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement, copies of which are attached and hereby served upon you.

LISA MADIGAN  
Attorney General  
State of Illinois

  
 JENNIFER A. VAN WIE

Dated: June 28, 2011

Jennifer A. Van Wie  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-0609

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**Service List**

**As to the Respondent CBS**

Todd L. Stevenson  
Kane, Norby & Reddick, P.C.  
2100 Asbury Road, Suite 2  
Dubuque, Iowa 52001-3091

**As to the Respondent AESS**

James E. Goodman, Jr.  
O'Connor & Thomas, P.C.  
700 Locust Street, Suite 200  
Dubuque, Iowa 52001

**Illinois Environmental Protection Agency**

Charles Gunnarson  
Assistant Counsel  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
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 )  
Respondents. )

**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 Respondents, AMERICAN EXCAVATING & SEPTIC SERVICES, INC. and CBS LEASING, L.L.C., (“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.* (2010), 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 28, 2011, 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 (2010), 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 (2010).

3. At all times relevant to the Complaint, Respondent, American Excavating & Septic Services, Inc. ("AESS"), has been an Illinois corporation registered in good standing with the Illinois Secretary of State's office.

4. At all times relevant to this Complaint, Respondent, CBS Leasing L.L.C. ("CBS"), has been an Illinois limited liability company registered and in good standing with the Illinois Secretary of State's office.

5. CBS is the owner of a 3.6 acre parcel of real property located at 8937 West Stagecoach Trail, Galena, Jo Daviess County, Illinois, which is operated as a limestone quarry ("Site").

**B. Allegations of Non-Compliance**

Complainant contends that the Respondents have 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) (2010);

- Count II: Operation of Equipment Capable of Causing or Contributing to Water Pollution without a Permit, in violation of Section 12(b) of the Act, 415 ILCS 5/12(b) (2010);
- Count III: Creation of a Water Pollution Hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2010);
- Count IV: Discharging without a Permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2010); and
- Count V: Failure to Obtain a Permit to Construct or Conduct Mining Operations, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), and Section 404.101(a)(1) and (2) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 404.101(a)(1) and (2).

**C. Admission of Violations**

- 1. Respondent CBS admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.
- 2. Respondent AESS admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.B. herein.

**D. Compliance Activities to Date**

- 1. On March 16, 2010, Respondents submitted an application for an operating permit for Respondents' mining operations at the Site.
- 2. On June 18, 2010, the Illinois EPA issued Respondent CBS a state mining permit allowing it to construct and operate a mine at the Site.

**II. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondents 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 Respondents 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 (2010).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2010), 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's information gathering responsibilities were hindered by the Respondent's violations thereby threatening human health and the environment.
2. There is social and economic benefit to the Site.
3. Operation of the facility was suitable for the area in which it occurred.

4. Obtaining a permit prior to mining at the Site and compliance with its terms is both technically practicable and economically reasonable.
5. Respondents have 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) (2010), 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. From at least July 22, 2009 to June 18, 2010, Respondents operated a quarry without the required operation permit.
2. Respondents were diligent in attempting to come back into compliance with the Act and Board regulations, once the Illinois EPA notified them of their noncompliance.
3. The Illinois EPA has determined that Respondents gained an economic benefit of \$1,510.00 by failing to obtain a mining permit in a timely manner, and the penalty includes the economic benefit obtained.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Eight Thousand Dollars (\$8,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations. This penalty includes the \$1,510.00 economic benefit realized by Respondents.
5. To Complainant's knowledge, Respondents have 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. Respondent CBS shall pay a civil penalty in the sum of Three Thousand Dollars (\$3,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.
2. Respondent AESS shall pay a civil penalty in the sum of Five Thousand Dollars (\$5,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.



**B. Interest and Default**

1. If either Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, that 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 Respondents 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, Illinois 62794-9276

The case 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:

Jennifer A. Van Wie  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

**D. Future Compliance**

1. Effective immediately, Respondents shall at all times comply with the terms and conditions of Water Pollution Control Permit No. 2010-MO-0318 at the Site.

2. The Respondents shall at all times operate the Site with a permit in place as required by State law and in the future shall timely apply for permits.

3. 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 Site 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.

4. This Stipulation in no way affects the responsibilities of the Respondents to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board regulations.

5. The Respondents 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 CBS's payment of \$3,000, and Respondent AESS's

payment of \$5,000, for a total of penalty payment of \$8,000, and any specified costs and accrued interest, their commitment to cease and desist as contained in Section V.D.5 above, their compliance with the requirements of Section V.D, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents 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 28, 2011. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents 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 Respondents.

**F. Correspondence, Reports and Other Documents**

Any and all correspondence shall be submitted as follows:

As to the Complainant

Jennifer A. Van Wie  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602

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

Nancy Sisson  
Illinois EPA  
Bureau of Water-Field Operations Section  
4302 North Main Street  
Rockford, Illinois 61103

As to the Respondent CBS

Todd L. Stevenson  
Kane, Norby & Reddick, P.C.  
2100 Asbury Road, Suite 2  
Dubuque, Iowa 52001-3091

Carl B. Schoenhard, Jr.  
CBS Leasing, L.L.C.  
8970 W. Stagecoach Trail  
Galena, Illinois 61036

As to the Respondent AESS

James E. Goodman, Jr.  
O'Connor & Thomas, P.C.  
700 Locust Street, Suite 200  
Dubuque, Iowa 52001

Chad Sproule  
American Excavating & Septic Services, Inc.  
12555 W. Norris Lane  
Galena, Illinois 61036

**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.F. 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.

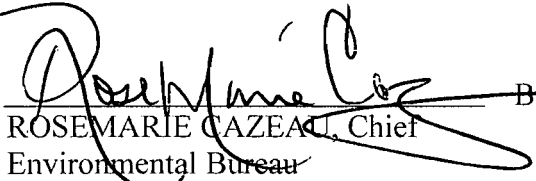
PEOPLE OF THE STATE OF ILLINOIS


ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

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

LISA BONNETT, Interim Director  
Illinois Environmental Protection Agency

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

BY:   
JOHN J. KIM  
Chief Legal Counsel

DATE: 6/16/11

DATE: 6/13/11

RESPONDENT CBS LEASING, L.L.C.

By: Carl B. Schenhard, J.  
Its President

DATE: 6-20-11

RESPONDENT AMERICAN  
EXCAVATING & SEPTIC SERVICES,  
INC.

By: \_\_\_\_\_  
Its \_\_\_\_\_

DATE: \_\_\_\_\_

RESPONDENT CBS LEASING, L.L.C.

By: \_\_\_\_\_

Its \_\_\_\_\_

DATE: \_\_\_\_\_

RESPONDENT AMERICAN  
EXCAVATING & SEPTIC SERVICES,  
INC.

By: Chad J. Inert

Its President

DATE: 6-14-11





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) (2010).

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) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:

  
JENNIFER A. VAN WIE

Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-0609

DATE: June 28, 2011

**CERTIFICATE OF SERVICE**

I, JENNIFER A. VAN WIE, an Assistant Attorney General, certify that on the 28<sup>th</sup> day of June 2011, I caused to be served by U.S. Certified Mail (return receipt requested), the foregoing Stipulation and Proposal for Settlement, Motion for Relief from Hearing Requirement and Notice of Filing to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

A handwritten signature in black ink that reads "Jennifer A. Van Wie". The signature is written in a cursive style and is positioned above a horizontal line.

JENNIFER A. VAN WIE  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-0609