

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	PCB 2011-054
Complainant,)	
)	(Enforcement-Air/Water)
v.)	
)	
STEWART SPREADING, INC., an)	
Illinois Corporation,)	
)	
Respondent.)	

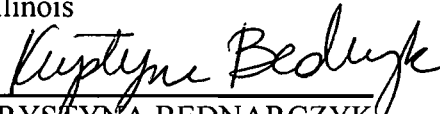
NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 7th day of July, 2011, 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

LISA MADIGAN
Attorney General of the
State of Illinois

By: 
KRYSTYNA BEDNARCZYK
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Fl.
Chicago, IL 60602
(312) 814-1511

DATE: July 7, 2011

SERVICE LIST

Mark J. Steger
Holland & Knight
131 South Dearborn St.
30th Floor
Chicago, IL 60603

Michelle Stewart
Stewart Spreading, Inc.
3870 North State Route 71
Sheridan, IL 60551

Mr. Bradley Halloran
Chief Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, 11th Floor
Chicago, IL 60601

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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 STEWART SPREADING INC. (“Respondent”) (collectively, “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 25, 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 was and is an Illinois corporation that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent performed the application of bulk biosolids generated by wastewater treatment plants to a farm field located east of the intersection of Douglas Road and Collins Road, in the west half of the west half of the northwest quarter of Section 26 in Oswego Township, Kendall County, Illinois ("Site").

B. Allegations of Non-Compliance

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

Count I: Air Pollution
Violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2010).

Count II: Water Pollution
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

Count III: Stockpile of Sewage Sludge Without a Land Application Permit
Violation of Section 12(b) of the Act, 415 ILCS 5/12(b) (2010).

Count IV: Creating a Water Pollution Hazard
Violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2010).

Count V: Failure to Properly Stockpile Bulk Sewage Sludge
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010) and Sections 391.305(a) and (d) and 391.403(b) and (d) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 391.305(a) and (d) and 391.403(b) and (d).

C. Admission of Violations

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced above, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

1. On precise dates best known to Respondent, but no later than December 23, 2009, Respondent sprayed odor counteractant on the sludge piles on the Site to diminish excessive odors.

2. On precise dates best known to Respondent, but no later than December 23, 2009, Respondent deployed hay bales around the sludge piles to prevent actual or threatened runoff from reaching the intermittent streams running across the property.

3. On precise dates best known to Respondent, but no later than December 28, 2009, Respondent installed silt fencing along the field at the Site.

4. On precise dates best known to Respondent, but beginning on or about January 11, 2010, and before January 14, 2010, Respondent transported all the bulk sewage sludge present on the Site from the Site to the Naperville-Springbrook wastewater treatment plant, in Naperville, Illinois.

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 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. Human health and the environment were threatened by the Respondent's violations as alleged in the Complaint.
2. There was social and economic value to the land application of bulk biosolids on farm fields on the Site.
3. The Respondent's land application of bulk biosolids was suitable for the area in which it was located.

4. The land application of bulk biosolids on farm fields in compliance with all applicable statutory and regulatory requirements was both technically practicable and economically reasonable.

5. Upon notification by the Illinois EPA of an odor complaint, the Respondent acted promptly to address the alleged violations. The Respondent was diligent in coming back into compliance 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. Complainant asserts that Respondent's failure to properly apply bulk biosolids to a farm field and stockpiling the bulk biosolids between 100 and 200 feet from a drainage ditch violated provisions of its permit, thereby violating the Act and the Board regulations. The violations began on a date prior to December 23, 2009 and continued through January 14, 2010.

2. Complainant asserts that Respondent was not diligent in complying with the requirements of the Act and Board regulations before being contacted by Illinois EPA. However, Respondent was diligent in coming back into compliance with the Act and Board regulations after Illinois EPA notified Respondent of excessive odors at the farm field and the threat of water pollution by providing runoff containment measures and subsequently returning the bulk biosolids to the Naperville-Springbrook wastewater treatment plant, in Naperville, Illinois.

3. Illinois EPA has determined, based on the specific facts of this matter, that the penalty of Thirteen Thousand Dollars (\$13,000.00) will recoup any economic benefit realized by the Respondent.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Thirteen Thousand Dollars (\$13,000.00) 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 self-disclose the violations. However, Respondent asserts that it was diligent in keeping the Illinois EPA informed of its site activities after being notified by the Illinois EPA.

7. The settlement of this matter does not include a supplemental environmental project.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. Respondent shall pay a civil penalty in the sum of Thirteen Thousand Dollars (\$13,000.00) 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 the 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, 415 ILCS 5/42(g) (2010), 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, 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:

Krystyna Bednarczyk
Environmental Bureau
Illinois Attorney General's Office
69 West Washington Street, 18th Floor
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 \$13,000.00 civil penalty and its commitment to cease and desist as contained in Section V.D.3. above, 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 25, 2011. 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 Respondents' 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.

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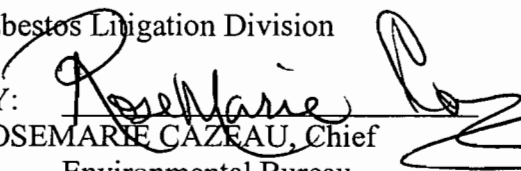
PEOPLE OF THE STATE OF ILLINOIS,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

LISA BONNETT, Interim 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: 6/23/11

DATE: 6/16/11

STEWART SPREADING, INC., an
Illinois Corporation

BY: _____
Name: MICHELLE STEWART
Title: President

DATE: _____

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: _____

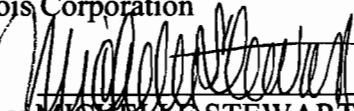
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA BONNETT, Interim Director
Illinois Environmental Protection Agency

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

STEWART SPREADING, INC., an
Illinois Corporation

BY:  _____
Name: MICHELLE STEWART
Title: President

DATE: June 20, 2011

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**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. In support thereof, the Complainant states as follows:

1. On February 25, 2011, a Complaint was filed with the Pollution Control Board ("Board") in this matter. On July 7, 2011, a Stipulation and Proposal for Settlement was filed with the Board.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2), 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. Section 31(c)(2) 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). 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).

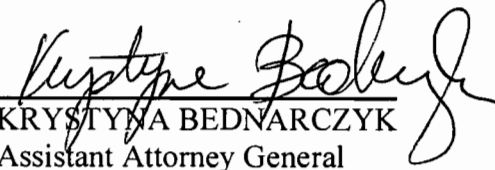
3. No hearing is currently scheduled in the instant case.
4. The Complainant requests the relief conferred by Section 31(c)(2) of the Act.

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)(2002).

Respectfully submitted,

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

By:


KRYSTYNA BEDNARCZYK
Assistant Attorney General
Environmental Bureau
69 W. Washington St. 18th Fl.
Chicago, IL 60602
(312) 814-1511

CERTIFICATE OF SERVICE

I, KRYSZYNA BEDNARCZYK, an Assistant Attorney General in this case, do certify that I caused to be served this 7th day of July, 2011, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief From Hearing Requirement and Notice of Filing upon the persons listed on said Notice by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 69 W. Washington St., Chicago, Illinois, at or before the hour of 5:00 p.m.



KRYSZYNA BEDNARCZYK