

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB 12 - 064
)	(Enforcement – Water)
CORDRAY BROTHERS, INC., an Illinois)	
corporation,)	
)	
Respondent.)	

NOTICE OF FILING
(ELECTRONIC FILING)

TO: Nathan Noble
Registered Agent
Cordray Brothers, Inc.
215 State Street
Belvidere, Illinois 61008

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601

PLEASE TAKE NOTICE that today, March 8, 2012, I have filed with the Office of the Clerk of the Pollution Control Board a Motion to Request Relief from Hearing and a Stipulation and Proposal for Settlement, copies of which are attached and hereby served upon you.

Respectfully submitted,
PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois

BY:



L. NICHOLE CUNNINGHAM
Assistant Attorney General
Illinois Attorney General's Office
69 W. Washington St., 18th Fl.
Chicago, Illinois 60602
(312) 814-3532

Date: March 8, 2012

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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 December 2, 2011, the Pollution Control Board (“Board”) accepted the People’s Complaint for hearing in this matter.
2. On March 8, 2012, the Complainant and Respondent filed with the Board a “Stipulation And Proposal For Settlement.” If accepted, the stipulation and proposal for settlement will dispose of the case.
3. Section 31(c)(2) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31(c)(2) (2010), 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. Both parties agree that a hearing on the Stipulation and Proposal for

Settlement is not necessary, and respectfully request relief from such hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2010).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully 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,
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois

BY:



L. NICHOLE CUNNINGHAM
Assistant Attorney General
Illinois Attorney General's Office
Environmental Bureau
69 W. Washington St., 18th Flr.
Chicago, Illinois 60602
(312) 814-3532
ARDC # 6285988

Date: March 8, 2012

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<i>ex rel.</i> LISA MADIGAN, Attorney General)	
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CORDRAY BROTHERS, INC., an Illinois)	
corporation,)	
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Respondent.)	

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 CORDRAY BROTHERS, INC., an Illinois corporation, (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 November 23, 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, CORDRAY BROTHERS, INC., ("Cordray Bros." or "Respondent") was and is an Illinois corporation that is authorized to transact business in the State of Illinois. At all times relevant to the Complaint, Respondent owned and operated a 42-acre limestone quarry located at 11085 Leaf River Road, Leaf River, Ogle County, Illinois 61047 ("Leaf River Quarry" or "facility").

B. Allegations of Non-Compliance

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

- COUNT I Causing or Allowing Water Pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010);
- COUNT II Constructing, Installing and Operating Equipment Capable of Causing or Contributing to Water Pollution in violation of Section 12(b) of the Act, 415 ILCS 5/12(b) (2010); and
- COUNT III Discharging without an NPDES Permit in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

C. Non-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 within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

On August 18, 2010, an Illinois EPA inspector informed Respondent of improper discharge from the quarry; Respondent turned off the pump and immediately discontinued the illegal discharge. On May 10, 2011, Cordray Bros. obtained coverage under the NPDES General Permit No. ILG840191 for non-coal mine facilities, which allows Respondent to discharge water from the facility.

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. The environment was threatened by the Respondent's violations.
2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Ensuring no off-site water discharges from the facility 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)(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. The Respondent violated the terms of its permit by pumping and discharging waste water from the facility. The violations began on or around mid July 2010, and were resolved on or about August 18, 2010.

2. Respondent was diligent in attempting to come back into compliance with the Act and Board regulations once the Illinois EPA notified it of its noncompliance.

3. Cordray Bros. received an economic benefit from saving the cost of obtaining an NPDES permit to allow for water discharges from the facility. Cordray Bros. state operating permit was issued on March 29, 2006; Respondent paid an annual fee for the state operating permit of \$1,000 per year. Illinois EPA charges a \$5,000 fee per year to obtain and keep an NPDES mining permit. Respondent's estimated economic benefit is \$2,192.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of \$7,700 will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. Respondent was referred by the Illinois EPA to the Illinois Attorney General's Office in 2006 for failure to have a state operating permit or NPDES permit, resulting in enforcement matter No. PCB 06-157. The prior case was resolved on October 4, 2007, with a Stipulation and Proposal for Settlement.

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 Seven Thousand Seven Hundred Dollars (\$7,700.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. 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:

L. Nichole Cunningham, AAG
Environmental Bureau
Illinois Attorney General's Office
69 West Washington St., #1800
Chicago, Illinois 60640

C. Future Compliance

1. Cordray Bros. shall maintain compliance with all the terms and conditions of its NPDES General Permit No. ILG840191, the Act, and all applicable regulations.

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.

D. Release from Liability

In consideration of the Respondent's payment of the \$7,700.00 penalty, its commitment to cease and desist as contained in Section V.C.4 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 23, 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 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.

E. 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.

F. 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, THE ILLINOIS ENVIRONMENTAL
LISA MADIGAN, Attorney General PROTECTION AGENCY
State of Illinois

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

BY: 
MATTHEW J. DUNN, Chief

BY: 
JOHN J. KIM, Interim Director

DATE: 3/7/12

DATE: 2/22/12

CORDRAY BROTHERS, INC.

BY: _____

DATE: _____

Name: Patrick Cordray

Title: _____

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, THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN, Attorney General
State of Illinois

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

BY: _____
MATTHEW J. DUNN, Chief

BY: _____
JOHN J. KIM, Interim Director

DATE: _____

DATE: _____

CORDRAY BROTHERS, INC.

BY: Patrick Cordray DATE: 2/28/12

Name: Patrick Cordray

Title: president

CERTIFICATE OF SERVICE

I, Lorren Nichole Cunningham, Assistant Attorney General, do certify that on the 8th day of March, 2012, I caused to be served upon Respondent the foregoing Motion to Request Relief from Hearing, Stipulation and Proposal for Settlement and Notice of Filing by depositing the same at the United States Postal Service facility located at 100 W. Randolph, Chicago, Illinois.


LORREN NICHOLE CUNNINGHAM
Assistant Attorney General
(312) 814-3532