

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.) **No. PCB 12-120**
) **(Enforcement)**
)
 S.H. Bell Co., Inc., a Pennsylvania corporation)
)
 Respondent.)

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that on the 30th day of March, 2012, the People of the State of Illinois, filed with the Illinois Pollution Control Board, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and a STIPULATION AND PROPOSAL FOR SETTLEMENT, true and correct copies of which are attached hereto and is hereby served upon you.

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

By:



George D. Theophilos
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Fl.
Chicago, IL 60602
(312) 814-6986
gtheophilos@atg.state.il.us

DATE: March 30, 2012

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
Chicago, IL 60601
halloranb@ipcb.state.il.us]

Ms. Erin W. McDowell
Counsel for Respondent
Eckert Seamans Cherin & Mellott, L.L.C.
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Ms. Maureen Wozniak, Esq.
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
maureen.wozniak@illinois.gov

hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

2. Board Procedural Rule 103.300 provides, in relevant part, as follows (emphasis in original):

Request for Relief from Hearing Requirement in State Enforcement Proceeding.

(a) 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 proposed stipulation and settlement accompanied by a request for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act

3. On March 30, 2012, the Complaint in this matter was filed with the Board.

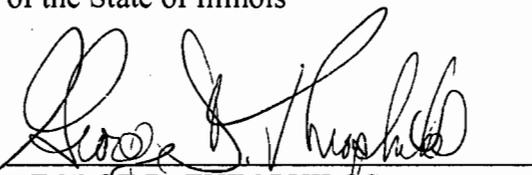
4. The parties to this action reached agreement on a Stipulation and Proposal For Settlement, which is being filed with the Board concurrently with this motion. No hearing is currently scheduled in this case.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully moves for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act and Board Procedural Rule 103.300.

Respectfully submitted,

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

BY:



GEORGE D. THEOPHILOS
Assistant Attorney General
Environmental Bureau/North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
312-814-6986
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DATE: March 30, 2012

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, a Pennsylvania corporation registered to do business in Illinois, owned and operated a ferrous and nonferrous material processing, storage and transfer facility located at 10218 South Avenue 0, Chicago, Cook County, Illinois 60617 ("Facility"). Emission units at the Facility include screen boxes controlled by building enclosures, a jaw crushing/screening plant controlled by wet suppression at selected transfer points and building enclosure, screener controlled by a building enclosure, bag filling station controlled by a baghouse and building enclosure, box filling station controlled by a baghouse and building enclosure, product transfer (i.e., handling / storage) controlled by building enclosures as appropriate, material unloading (via truck, rail, and barge) controlled by building enclosures as appropriate, railcar loading controlled by a baghouse and building enclosure, wind erosion of stockpiles controlled by water sprays/building enclosure as appropriate, and roadways controlled by watering/sweeping program.

4. On April 10, 2006, the Illinois EPA issued to Respondent a revised Federally Enforceable State Operating Permit ("FESOP") number 83020023. This FESOP contained an expiration date of October 19, 2006.

5. On April 20, 2006, Respondent submitted an application for a renewal of a Lifetime Operating Permit.

6. On May 10, 2006, the Illinois EPA issued a Notice of Incompleteness to Respondent as the application lacked information on the use of enclosures and control devices, sources of

fugitive emissions, emissions, factors, and capture and control efficiencies in order to demonstrate eligibility for a Lifetime Operating Permit. Respondent did not respond to the Notice of Incompleteness and thereafter the FESOP expired.

7. On July 7, 2010, Illinois EPA conducted an unannounced inspection of Respondent and noted that Respondent was operating emission units without the requisite permit. On December 28, 2010, the Illinois EPA issued Violation Notice ("VN") A-2010- 00120 to Respondent for failure to timely renew its FESOP, resulting in operation of a major source without the requisite Clean Air Act Permit Program ("CAAPP") permit.

8. On or about February 15, 2011, Respondent submitted an application for a FESOP to the Illinois EPA.

9. Respondent's permit application is currently under review by the Illinois EPA.

10. By failing to timely submit its FESOP permit renewal application, Respondent now operates a major source without the requisite CAAPP permit.

B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondent has violated the following provisions of the Act:

Count I: By operating a CAAPP source without a CAAPP permit, Respondent has violated Section 39.5(6)(b) of the Act, 415 ILCS 5/39.5(6)(b) (2010).

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 above, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

On or about February 15, 2011, the Illinois EPA received Respondent's FESOP permit renewal application on CAAPP forms. Respondent has continued to operate under the terms and conditions of the now expired FESOP and has submitted required reports to the Illinois EPA. Further, Respondent worked with the Illinois EPA in order to finalize the FESOP renewal permit.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondent, 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.

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 this Stipulation state the following:

1. 1. The Illinois EPA's information gathering responsibilities were hindered by the Respondent's violation.
2. There is social and economic benefit to the facility.
3. Operation of the facility is suitable for the area in which it occurs.
4. Submitting a CAAPP permit renewal application and timely obtaining a CAAPP permit is both technically practicable and economically reasonable.
5. Respondent's renewal application is currently under technical review by the Illinois EPA.

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 this Stipulation state as follows:

1. From October 20, 2006 through the present, Respondent failed to obtain and operates without the requisite CAAPP or FESOP permit issued by the Illinois EPA. However, the Respondent continued to operate in accordance with the terms and conditions of the now expired FESOP permit which also included submitting, in a timely manner, required reports relative to all emission sources operated by the source.

2. Respondent demonstrated an absence of due diligence in complying with the Act, prior to the issuance of the VN letter by the Illinois EPA as evidenced by its failure to timely apply for and obtain the requisite FESOP permit.

3. Any economic benefit attributable to the noncompliance at issue would be minimal.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Fifteen Thousand Dollars (\$15,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's and the Illinois EPA's knowledge, Respondent has no previously

adjudicated violations of the Act.

6. There was no self-disclosure of the violations contained within this referral.

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 Fifteen Thousand Dollars (\$15,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

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
69 West Washington Street
Chicago, Illinois 60602

D. Future Compliance

1. Effective immediately, Respondent shall at all times operate its facility in compliance with the terms of FESOP no. 83020023, which expired October 20, 2006, as amended by construction permit no. 11020023, issued by the Illinois EPA on May 4, 2011, until such time as the Respondent obtains a FESOP renewal permit.

2. Effective immediately upon the issuance of FESOP renewal permit by the Illinois EPA, Respondent shall at all times operate its facility in compliance with all of the terms and conditions of the FESOP renewal permit, including any and all special conditions contained therein.

3. Respondent shall at all times in the future timely submit to the Illinois EPA all permit renewal applications.

4. 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.

5. 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.

6. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

7. This Stipulation does not serve as a permit issued by the Illinois EPA authorizing operation of the Source and shall not be construed as such.

E. Release from Liability

In consideration of the Respondent's payment of the \$15,000.00 penalty, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant and the Illinois EPA release, waive and discharge 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 January 31, 2012. 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 or the Illinois EPA 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

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.

G. Execution of Stipulation

The undersigned representatives for each party to this 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 this 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,

LISA MADIGAN
Attorney General
State of Illinois

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

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

JOHN J. KIM, Interim Director
Illinois Environmental Protection Agency

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

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

S.H. BELL CO., INC.

BY: John M. Bell / 20 March 2012

Name: JOHN M. BELL

Title: President

PEOPLE OF THE STATE OF ILLINOIS,

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

JOHN J. KIM, Interim Director
Illinois Environmental Protection Agency

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

BY: Matthew J. Dunn
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: [Signature]
JOHN J. KIM
Interim Director

DATE: 3/26/12

DATE: 3/20/12

S.H. BELL CO., INC.

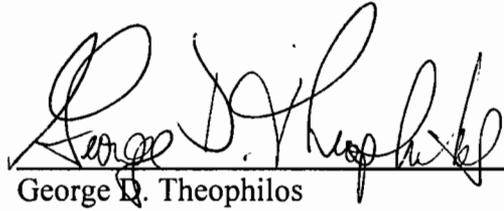
BY: _____

Name: _____

Title: _____

CERTIFICATE OF SERVICE

I, George D. Theophilos, an Assistant Attorney General, do certify that I caused the foregoing Motion For Relief From Hearing Requirement and Stipulation And Proposal For Settlement to be electronically mailed to the persons listed on the attached Service List on this the 30th day of March, 2012.


George D. Theophilos